A STUDY OF
REGIONAL JUVENILE DETENTION
NEEDS IN PHILLIPS, MONROE
AND LEE COUNTIES, ARKANSAS

Prepared for the
Multi-County Jail Commission
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by
Patricia McFall

with contributions by:
Richard Gable
John Hutzler
Hunter Hurst
John Leake
Sally Jo Congleton
Ellen Nimick

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National Center for Juvenile Justice
701 Forbes Avenue
Pittsburgh, PA 15219
412-227-6950
INTRODUCTION

Accurate planning to remove juveniles from jails cannot occur without a thorough understanding of the communities involved and their justice systems. Identifying the characteristics of the target population, assessing the resources already in place and those that are needed, examining a range of options and developing estimates of cost and time necessary to implement the plan are essential steps in the development of a viable strategy.

The Multi-County Jail Commission, composed of officials from Phillips, Monroe and Lee Counties, Arkansas, requested that the National Center for Juvenile Justice (NCJJ) conduct a planning study to determine the feasibility of building a regional juvenile detention center. St. Francis County asked to be included after the project began, and NCJJ agreed to estimate the additional capacity which would be required if St. Francis were to use the regional facility.

Circumstances which prompted the commission to seek advice include: 1) juveniles are being held in jails because there is no other available alternative; 2) the jails do not meet adult criminal justice system standards nor do the cells adequately provide the sight and sound separation requirements mandated by the federal Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974; 3) the JJDP Act as amended in 1980, requires that no juvenile be detained or confined in any jail or lock-up after December, 1985; 4) a design for the regional jail completed for the Commission in June, 1981 would not achieve compliance with the 1985 jail removal requirement as it includes a wing for juvenile boys and a wing that would mix adult and juvenile females; and 5) the counties are rural and poor; none could
support the cost of building or operating a facility on its own.

During an early meeting with the project director at which the nature and extent of juvenile jailing were discussed, it became clear that the Multi-County Jail Commission wanted the regional plan to address the detention needs of all youth under the age of 18 regardless of the court having jurisdiction. This meant expanding the target population to include those juveniles brought before the municipal and circuit courts.

As a result of the unique provisions of Arkansas law regarding jurisdiction over the misbehavior of persons under the age of 18, most such cases are actually handled by courts other than the juvenile court. The inclusion of municipal and circuit court cases involving juveniles in the feasibility study made the task more complex than originally anticipated. The impact of that population on the matter of compliance with JJDP Act provisions which require the removal of "juveniles" from adult jails, the ramifications of applying for the low population density exclusion, and the legal and programmatic problems associated with mixing types of offenders in the same facility needed to be considered.

Method and Approach

Several methods were utilized in gathering information for this project. Applicable federal and state statutes were reviewed to determine the legal parameters placed on local jurisdictions considering the removal of juveniles from adult jails and lock-ups. Discussions with representatives of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the Arkansas Division of Youth Services (DYS) clarified agency policy regarding the jailing
and detention of youth.

Statistical data on cases handled in 1981 by the juvenile courts in the three counties were supplied by DYS from the Arkansas Statewide Juvenile Information System. Since no such automated data system exists for courts exercising criminal jurisdiction, municipal and circuit court dockets were reviewed manually to obtain data on cases involving juveniles disposed of by those courts. Data from the National Juvenile Justice Archive, maintained by NCJJ, was utilized to forecast the child population in the three counties over the next decade.

Jail logs for 1981 were examined to gather as much data as possible on the number of juveniles jailed, the reasons for referral, the time spent in jail and the status while in jail, i.e., awaiting trial, awaiting transfer or serving a sentence. Court dockets and juvenile court records were reviewed to identify which court disposed of the jailed case and the finding of that court.

Interviews and on-site visits were conducted for the purposes of understanding the practices of the courts and police, assessing current resources, discovering unmet needs and anticipating the use of a regional detention facility. Police chiefs, sheriffs, county judges, municipal court judges, juvenile court referees, quorum court members, court administrators, probation and multi-county youth services officers and prosecutors were asked for their impressions of the working of the county's juvenile justice system and their opinions regarding the potential utilization of a regionalized facility.
LEGAL REQUIREMENTS AND POLICY

A. Federal Law

The Juvenile Justice and Delinquency Prevention Act of 1974, as amended through 1980, imposes several requirements upon states who wish to receive federal formula grant funds. Such requirements are expressed in Sections 223(a)(12), (13), (14) and (15) of the Act and are interpreted through regulations issued by OJJDP.

The first thing which must be kept in mind, is that the federal act and regulations regarding separation relate only to juveniles within the jurisdiction of the juvenile court. They impose no requirements upon the states regarding the care of persons under the age of 18 who are subject to the jurisdiction of adult courts such as Arkansas' municipal courts which have jurisdiction over misdemeanor offenses and traffic violations and the state's circuit courts which have jurisdiction over felony offenses.

Section 223(a)(12)(A) provides that status offenders and non-offenders (dependent and neglected youngsters) may not be placed in secure detention or correctional facilities. There are two exceptions:

1. any of these youngsters detained for less than 24 hours need not be reported in detention monitoring.

2. the valid court order amendment (VCO) allows for secure detention, beyond that 24-hour grace period, of status offenders only who have violated a VCO, only under certain conditions and not longer than a total of 72 hours.

Section 223(a)(13) provides that an alleged or adjudicated juvenile offender may not be detained or confined where he has regular contact with adults. Regular contact is defined as sight and sound contact with
incarcerated adults and seeks as complete a separation as possible which permits no more than haphazard or accidental contact. This requirement applies only to juveniles alleged or adjudicated to be delinquents, status offenders or non-offenders. It does not prohibit the confinement (in institutions where they have regular contact with adults) of juveniles subject to the jurisdiction of the circuit or municipal court or, apparently, of juveniles against whom a petition in juvenile court has not yet been filed.

Section 223(a)(14), known as the "jail removal requirement," states that by December 8, 1985, no juvenile shall be detained or confined in any adult jail or lock-up. This requirement, unlike the separation mandate above, applies to any juvenile in Arkansas under the age of 18, unless criminal charges have been filed against the juvenile. In practice, this means that a youngster who is awaiting a determination of jurisdiction, is a juvenile and may not be in jail. There are a number of exceptions:

1. for the purpose of monitoring and reporting compliance, a 6-hour grace period for the detention of delinquents only is acceptable, but the sight and sound restriction requiring the separation of juveniles and adults must be maintained. This detention is limited to the temporary holding in jail or lock-up for the purpose of identifying, processing and transferring to a juvenile court official or to a juvenile shelter or detention facility, and in no way allows status offenders or non-offenders to be detained in jails or lock-ups.

2. the low population density exception provides for the temporary detention in jail (for up to 48 hours) of serious juvenile offenders if there is no alternative available. This exception requires that:

- the area must have been certified as having "low population density" based upon criteria developed by the state and approved by OJJDP which take into account total county population per square mile.

- the juvenile must be accused of serious crime against persons (criminal homicide, forcible rape, mayhem, kidnapping, aggravated assault, robbery or extortion by threat of
violence).

- a determination has been made that there is no existing acceptable alternative placement available for the juvenile pursuant to criteria developed by the state and approved by OJJDP.

- the county is not served by a local or regional juvenile detention facility, meaning no public or private facility operated within the county or none established to serve the county.

Section 223(a)(15) requires that the state provide for an adequate system of monitoring jails, detention facilities and non-secure facilities to ensure that the above requirements are met.

The regulations further define the terms "secure" and "facility." Secure includes residential facilities which have fixtures designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences or other physical structures. Facility is a place, an institution, a building or part thereof, set of buildings or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned or operated by public or private agencies.

B. Federal Policy

OJJDP policy regarding the jail removal initiative is to encourage states and counties to develop a range of alternatives and criteria for determining the care pending trial status of juveniles. The Act applies to juveniles within the jurisdiction of the juvenile court. However, those older juveniles (15, 16 and 17 years old) who have had charges filed in Arkansas municipal or circuit courts need not be separated by sight and sound from adult offenders
in jail nor excluded from being detained in a delinquent facility. Further, the 1985 jail removal requirement excepts those juveniles waived or transferred to criminal court and over whom a criminal court has established jurisdiction. The two sides of OJJDP's interpretation of the removal requirement are that: 1) if criminal charges are filed against the juvenile and the case is being heard in criminal court, he may be held in jail and 2) if the juvenile is essentially subject to the jurisdiction of the juvenile court by virtue of his age, and is technically not an "adult" even though the juvenile is being tried in criminal court, he may be detained with delinquents.

The negative connotations of detaining juveniles in jails or secure detention and the costs of building and operating such facilities have prompted the Office to target most of its funds for less restrictive alternatives, such as emergency shelter beds and home detention. The aim is to limit the use of secure detention to those juveniles whose needs cannot be met by less restrictive options. The JJDP monitor encourages creativity in developing a continuum of services and suggests that states and counties consider the use of secure rooms which may be available in hospitals instead of jails.

C. Arkansas Law

Relevant provisions of Arkansas law are contained in the Arkansas Juvenile Code of 1975 as amended through 1981 and the Juveniles in Need of Supervision Act of 1977. Both Acts define a juvenile as any person who has not yet reached his 18th birthday. Delinquent juvenile means any juvenile who has committed an act other than a traffic violation, which if such act had
been committed by an adult would subject that adult to prosecution for a felony, misdemeanor or violation under the applicable criminal laws of the state. Although Section 45-406 provides that the juvenile courts of several counties shall have original and exclusive jurisdiction in all cases of delinquency, JINS and dependency/neglect, the Arkansas Supreme Court has held that the Arkansas Juvenile Code does not require that all juveniles (persons under 18 years of age) be charged and tried for criminal acts in juvenile court. Sargent v. Cole, 598 S.W.2nd 749 (1980).

Potential conflict exists between juvenile courts and criminal courts concerning acts which are both acts of delinquency and violations of the criminal law. Act 793 of 1981 provides that youth under 15 years of age be dealt with exclusively in the juvenile court except for the offenses of capital felony murder, first degree murder, second degree murder, or rape. A juvenile 14 years or older, alleged to have committed one of these acts, or any juvenile 15, 16 or 17 years of age at the time of the offense, may be charged either with delinquency in juvenile court or with a criminal offense in municipal or circuit court. No standardized or objective criteria exist for determining to which court such referrals will be made. In fact, a survey recently completed by DYS revealed that there are as many cases of persons under 18 years of age being heard in adult courts as in juvenile courts in the state of Arkansas.

Conditions under which a juvenile may be taken into custody are as follows: a) if the juvenile is taken into custody pursuant to a warrant, he must be taken before the court that issued the warrant and that court assumes jurisdiction, but then may transfer jurisdiction to another court either juvenile or circuit court, as the case may be, § 45-417; b) if the juvenile is
informed against in circuit court, that court assumes jurisdiction with the power to transfer to the juvenile court; c) if the juvenile is petitioned against in the juvenile court, that court assumes jurisdiction with the power after a transfer hearing to have the case heard before the circuit court; and d) if the juvenile is taken into custody without a warrant, he must be taken to the juvenile court and will be prosecuted at either the juvenile court or the criminal court at the discretion of the prosecuting attorney, § 45-418.

Sections of the Arkansas Juvenile Code which apply to the detention of juveniles are:

- Section 45-418, which provides that if an information, petition or indictment has not been filed in any court within 96 hours of the arrest or 24 hours of the detention hearing, the youngster must be released;

- Section 45-604 which provides that a juvenile shall not be incarcerated in secure detention for more than 72 hours for the purpose of determining his identity, age, background and whether he will be charged as a delinquent or a JINS, without the benefit of a court order authorizing further detention for such purpose; and

- Section 45-421 which provides that if the youngster is taken into custody as an alleged delinquent, and is not released by the law enforcement or intake officer, a detention hearing shall be held within 72 hours or the juvenile must be released.

Sections of the law relating to the jailing of juveniles include the following:

- Section 45-605 provides that alleged or adjudicated delinquents shall not be detained in any institution where they have regular contact with alleged or adjudicated adult criminals;

- Section 45-606 provides that juveniles determined to be JINS may not be held or placed in secure detention facilities or in any facility utilized for the detention of alleged or adjudicated delinquents, nor may JINS be placed in any facility utilized for the detention of adults; and

- These provisions may have overruled by implication an earlier provision, § 45-422, which states that juveniles in facilities with adult convicts shall not be in the same cell pending adjudication.
The applicable section of Arkansas law which permits a regional facility to be built is 45-499 which states, nothing herein shall prohibit two or more counties, cities or school districts of this State from agreeing, by compact, to share the costs of juvenile court personnel or juvenile facilities to serve both or all of the counties so agreeing.

Sections of the law relating to the possible use of a regional detention facility for the disposition of adjudicated juveniles include:

- Section 45-406(b), which provides that the juvenile court may not commit a dependent or neglected juvenile to any facility used for the imprisonment of juvenile delinquents or adult criminals;

- Section 45-436(3)(b), which provides that delinquents aged 13 years and older may be committed to a secure detention facility other than a DYS facility, for no more than 30 days; and

- Section 45-451, which provides that delinquents may be committed to any other facility for not more than 30 days, as an alternative to DYS or DHS.

D. Arkansas Policy

DYS is sponsoring a program to support the development and implementation of projects which will address the problems associated with 1) removing all juveniles under 18 years of age from jails and lock-ups, 2) reducing the number of juveniles committed to the Department of Corrections and 3) reducing the number of training school commitments.

The thrust of DYS planning has been for regionalized, community-based services through the multi-county youth services network. DYS does not, however, intend to become involved in the operation of regional detention centers in the near future. DYS would offer assistance to counties in developing a plan for secure detention, but believes that the state is not the
best service provider and detention is a court function.

DYS recognizes that detention of juveniles in jail will continue as long as there are only three juvenile facilities in the state that provide secure placement. The state anticipates applying for the low population density exclusion to the federal jail removal mandate in 1983. Officials at DYS realize that their initiative aimed at removing juveniles under 18 years of age from jail goes further than the requirements of the federal act. It is DYS' position that juveniles charged in municipal or circuit court may be detained with delinquents in a juvenile facility. State-level officials do not anticipate any legislative action in the near future to alter the provisions for overlapping jurisdiction over youth under 18 years of age.

DYS recognizes the need for a realistic approach to the development of economically feasible alternatives to the present situation regarding the detention of persons under 18. Whereas Arkansas law prohibits the detention of status offenders with delinquents or in any secure facility, DYS realizes that status offenders are being held in jail and would prefer that they be held in an available juvenile facility, even a secure regional facility. However, officials are concerned about the problems associated with mixing types of offenders and types of beds in the same facility.

E. Summary of Legal Requirements and Policy

It is clear that juveniles taken into custody pursuant to a criminal court warrant may be detained in jail. It also appears that juveniles taken into custody without a warrant may, under Arkansas law, be detained in jail for up to 72 hours for purposes of investigation to determine whether they
will be charged in juvenile court. This latter conclusion is not clear, however, since Arkansas law requires that a juvenile taken into custody without a warrant be taken immediately before the juvenile court, which then notifies the county attorney who then decides whether to file in criminal or juvenile court. It is likely that federal laws and regulations would consider such juveniles to be within the jurisdiction of the juvenile court from the time they are taken into custody and brought before the court until a decision is made by the prosecutor to pursue the case in criminal court. If so, these youngsters must be removed from adult jails until charges are filed in a criminal court.

If these eastern Arkansas counties qualify as low population density areas, juvenile offenders charged with serious crimes against persons could be detained in jail for up to 48 hours if no facility were available. Construction of a regional facility which would provide secure detention for accused juvenile offenders from these counties would, however, preclude their qualification for the low population density exclusion to the jail removal requirement.

**LOCAL JURISDICTIONS**

Interviews with local law enforcement and court officials were conducted to gain insight into current practice with regard to juvenile offenders and perceptions of the nature and extent of and problems associated with the jailing of juveniles. The eastern Arkansas counties of Phillips, Monroe and Lee are predominately rural, agricultural communities with approximately 64,500 residents in 1980. Children and youth (age 0-17) constituted about 22,960 or 36% of the area's population. The population of the typical juvenile court client (age 10-17) was approximately 11,060 and is projected to decrease
by 14% in the next decade. These projections could reverse themselves should the proposed slack-water harbor in the Helena/West Helena area be constructed. Even though the population is diverse, all three counties fall below the national poverty level and the tax base is low. A significant percentage of the population is collecting welfare or unemployment benefits. Law enforcement officers stated that shoplifting, truancy, burglary, theft, possession of marijuana and traffic violations constitute the majority of crimes committed by juveniles.

A. The Court Process

In Arkansas, the county courts have jurisdiction over juvenile and bastardy proceedings and cases involving county taxes, expenditures and claims against the county. In most instances, the county judge appoints a referee to hear juvenile cases. County courts are not courts of record nor are there written rules or procedures. Municipal courts, also courts of limited jurisdiction, handle the majority of cases such as misdemeanor offenses, local traffic and ordinance violations, minor civil cases and felony preliminaries. The circuit courts have original jurisdiction in criminal matters and hear civil cases over $100, felony cases and appeals from courts of limited jurisdiction. The juvenile courts in the three counties meet once a week (or whenever necessary); municipal courts convene several times a week; the circuit court has two fall terms, two spring terms and regular pre-trial, filing dates.

Arkansas laws providing for concurrent jurisdiction over many juvenile offenders promote inconsistency in practice from county to county. Even within the same county, the practice of which court determines jurisdiction or
who has the authority to decide which court hears the case was not viewed consistently. By law, juveniles arrested pursuant to a warrant are to be taken before the court which issued the warrant and the judge decides whether to hear or transfer the case. Juveniles arrested without a warrant are to be taken first before the juvenile court and the prosecuting attorney decides where the case will be heard.

In practice, the decision is made by the sheriff, police chief or the prosecuting attorney and is usually based upon the juvenile's age and the offense. Officials from all four counties agreed that the majority of juveniles 14 years of age and younger are initially referred to the juvenile court. The process varies within and among the counties when 15, 16 and 17 year olds are arrested without a warrant. Generally, one of two things happens: either the municipal court decides which court should hear the case or the juvenile court makes that decision. The circuit court is usually reserved for serious, repeat felony offenders. Offenses typically excluded from juvenile court jurisdiction include traffic and local ordinance violations, DWI (driving while intoxicated) and possession of drugs or alcohol. These charges are heard in municipal court which was viewed by some as being a "catch-all" since the court also hears misdemeanor offenses and reduced felony charges.

That practice differs from the procedure specified by law in determining which court hears the case, reflects the informal manner in which cases are handled in rural areas. The principals know one another and are usually acquainted with the juvenile, his brothers and sisters and his parents. In one county, the juvenile referee and the municipal court judge are the same individual. With so few resources available to the juvenile courts, law
enforcement officials feel quite confident about knowing which cases the juvenile court would transfer to the municipal court for a fine or jail term. Except in felony cases, the prosecutor is usually not contacted.

Table 1 shows that, in 1981, more 16 and considerably more 17 year olds were disposed of by municipal courts than by juvenile courts in the three county area. In Lee and Monroe Counties, the municipal court also heard a significant number of the cases involving 15 year olds. Generally, the juvenile court heard the cases of young offenders (aged 8-15); however, the Monroe County municipal court heard considerably more cases involving juveniles than did that county's juvenile court. This may have resulted, in part, from the fact that Monroe County had no juvenile referee in 1981.

**TABLE I**

*Ages of Juvenile Cases Appearing Before the Juvenile or Municipal Court in 1981 by County*

<table>
<thead>
<tr>
<th></th>
<th>8</th>
<th>9</th>
<th>10</th>
<th>11</th>
<th>12</th>
<th>13</th>
<th>14</th>
<th>15</th>
<th>16</th>
<th>17</th>
<th>Total Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phillips County</td>
<td>Juv.</td>
<td>2</td>
<td>4</td>
<td>11</td>
<td>16</td>
<td>11</td>
<td>28</td>
<td>31</td>
<td>34</td>
<td>22</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Muni.</td>
<td>-</td>
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<td>-</td>
<td>1</td>
<td>1</td>
<td>8</td>
<td>45</td>
</tr>
<tr>
<td>Lee County</td>
<td>Juv.</td>
<td>2</td>
<td>1</td>
<td>5</td>
<td>8</td>
<td>6</td>
<td>7</td>
<td>18</td>
<td>22</td>
<td>19</td>
<td>4</td>
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<tr>
<td></td>
<td>Muni.</td>
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<td>1</td>
<td>1</td>
<td>16</td>
<td>22</td>
</tr>
<tr>
<td>Monroe County</td>
<td>Juv.</td>
<td>1</td>
<td>-</td>
<td>1</td>
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<td>7</td>
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<td></td>
<td>Muni.</td>
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<td>2</td>
<td>5</td>
<td>12</td>
<td>13</td>
<td>31</td>
<td>58</td>
</tr>
</tbody>
</table>

Some police officers expressed frustration about the lack of direction or information sharing among law enforcement agencies, the prosecutor's office and the different courts as to who has the decision-making authority or the responsibility in cases dealing with juveniles under age 18. Most were of the opinion that municipal courts were used for the more serious and often times repeat offender for whom the police, sheriff, or in some cases the prosecutor,
felt there was not much hope of reform. In fact, except when a training school or a D.O.C. commitment was desired, the municipal court was seen as handing out harsher penalties or disciplines than either the juvenile or circuit courts. The municipal courts routinely impose fines and court costs or jail sentences on the juvenile offender, whereas the circuit court routinely sees plea bargains, appeals and the unwillingness of a jury to send juveniles to the penitentiary. Limited options available to the juvenile court, preclude the referral of all but the younger, less serious offender.

B. Resources of the Juvenile Justice System

The juvenile justice systems of Phillips, Monroe, Lee and St. Francis counties are not well developed or visible. Although it is the position of DYS that most juveniles under 18 should be handled by the juvenile justice system which can offer more services than the adult system, even the commissioner of DYS acknowledges that this eastern region has not received as much assistance from DYS in developing juvenile services as have other parts of the state.

In Phillips County, dispositional alternatives used by the juvenile court referee depend on the number of times the juvenile has been before the court. First offenders are usually dismissed or are placed on probation; on the second referral, parents will likely pay court costs and the juvenile receives 10 Saturday's of work detail and sometimes a mental health evaluation; the third appearance results in a suspended commitment to the training school or youth home; and on the fourth referral the juvenile is usually committed to the training school.
Lee County utilizes a similar range of dispositions from court costs and restitution, probation and work detail to training school placements. The Marianna police department operates a community summer program which the juvenile referee prefers over a training school commitment. It should be noted that the work detail is available as a disposition for both the juvenile and municipal courts.

St. Francis County juvenile court uses probation, court costs and restitution and jail on weekends or a training school placement.

The Monroe County juvenile court places juveniles on probation without supervision, or imposes the dispositions of restitution, training school commitment or probation with supervision.

The multi-county youth services program serves the counties of Cross, St. Francis, Lee, Phillips and Monroe and contracts with DYS to provide casework services, psychosocial counseling and aftercare to status offenders and delinquent youth.

There are no private care providers offering group home or shelter care placements, or counseling services in the communities, nor is there an adequate foster care network for delinquents and status offenders. Eastern Arkansas Mental Health, a private agency, provides a full range of out-patient services on a sliding scale fee basis. In addition, it operates a small residential adolescent treatment unit for emotionally disturbed youngsters.
C. Juvenile Jailings

When a juvenile is arrested and taken into custody, the police have two options: release to the parents or detain in jail. The police and sheriff departments have been urged by the Phillips County Court Administrator to contact the juvenile authorities when a juvenile has been taken into custody. Even though there are no written guidelines for law enforcement on whom to detain, police stated that discretion is utilized in deciding whether to jail a juvenile. Criteria included parental attitude and level of responsibility, prior arrest history of juvenile and siblings, nature of offense and juvenile's attitude.

It should be mentioned that when being questioned, the majority of those interviewed referred to the nature of juvenile jailings as those cases going before the juvenile court. Without exception, juveniles going before the municipal or circuit courts - for the purpose of establishing eligibility for jailing - were considered "adults." Thus, officials interviewed believed it was both appropriate and legal for juveniles under municipal or circuit court jurisdiction to be held in jail.

Local police lock-ups are 14-day facilities and are used for those offenders charged with misdemeanor offenses or traffic violations. Females, younger juveniles and individuals charged with felony offenses are held in the county jails. Even though jailers try to enforce the sight and sound separation requirements, by design, this is practically impossible.

Despite the fact that juveniles are detained in jail, most of the police chiefs do not want the responsibility or the problems associated with detaining juveniles. Some stated that they would only hold a juvenile with a court order and no one under 14 or 15 years old. One chief transports females
and status offenders who need detention to the county jail in Des Arc, 45 miles away. Another police chief believed that he did not have a "runaway" group and that jail was an extremely non-productive and negative environment for a young offender. Other officers use the jail as a holding facility pending notification of parents, pending a hearing for those juveniles whom they fear would not appear in court or for those who are drunk and disorderly.

D. Need for a Juvenile Facility

Officials in the eastern counties identified the following types of offenders as those whose detention needs should be addressed:

1. runaway youth and those unable to return home for whatever reason,
2. youth charged with delinquent offenses in juvenile court,
3. youth under 18 years of age charged with misdemeanor offenses or traffic violations in municipal court, and
4. youth under 18 years of age charged with felony offenses in circuit court.

The general consensus among those interviewed was that there was a need for secure and non-secure beds, both pre- and post-trial, particularly for the first three groups mentioned above; and that the majority of juveniles jailed in the area were those 15-17 year olds charged with misdemeanor offenses in municipal court. Those juveniles under 18 years of age arrested for violent or person crimes and subsequently going before the circuit court, would most likely continue to be detained in jail.

Officials were of the opinion that juveniles charged with less serious misdemeanor offenses and going before the municipal court could be detained in a juvenile facility. Several judges and police officers saw a need for non-secure beds for JINS and runaways. These individuals believed that a
significant number of youth are returned home and that the lack of alternative resources prohibits a more appropriate response from the justice system. Many responded that even though there is a greater demand for pre-trial beds, judges would sentence to the regional detention facility. All of the police and sheriff departments maintained a need to use local jails as holding facilities for 24-48 hours.

Local officials were questioned about possible problems associated with utilizing a regional facility. Cost, transportation problems and cross-county cooperation were sited most often as obstacles. Principals agreed that the concept of a regional facility was legitimate but that the cost needs to be affordable. Some police chiefs stated that if the cost of keeping a juvenile in a regional facility had to come from the police budget, the juvenile would be detained there only on a court order. The cost of keeping a person in any of the jails is estimated to be approximately $5-10 a day.

Lengthy travel time between the point of arrest and the regional facility, questions as to the authority of police officers to transport outside the city limits or across the county lines, and reluctance to tie-up an officer's time to transport an offender were sited as problems in utilizing a regional facility. Further, if hearing and service functions were regionalized, lack of public transportation would prohibit family members and witnesses from attending the hearings. One attorney noted that if detention or adjudicatory hearings were to be held at the regional facility, visits to the facility to discuss the case with the juvenile would probably mean that more cases would be filed in the closer municipal court.

Respondents identified numerous problems associated with administering
the facility, controlling intake, affording the costs of construction and operation and convincing the community. The potential site of the regional facility at the Phillips County Land Fill was viewed by some as not being centrally located in the three county area. The development of a transportation network operating out of the facility might alleviate that problem. Others were concerned about the working relationship among the counties. Monroe County citizens are reluctant to support a facility in another county, especially the construction costs. Because Phillips County is larger and has a bigger tax base, some officials were concerned that the smaller counties would have less control in the administration of the facility.

A general feeling pervaded that the communities were not willing to spend money on "bad" youngsters and if the cost of construction is put to a vote, it would probably be defeated. Additional problems include: jurisdiction questions as to whether the municipal or circuit court could sentence to a juvenile facility, use of the facility for commitments would require additional programming and increase the cost of operation, and the bail provisions available to the municipal and circuit court population would pose intake problems in a small juvenile facility.

E. Statistical Summary

To provide a complete assessment of the population of juveniles who were jailed in the 3 counties in 1981, an in-depth data collection effort was necessary. Data in this section of the report were gathered from jail logs, municipal and circuit court dockets, juvenile court records, arrest data supplied by law enforcement and juvenile court information from the statewide
information system. Because the data came from so many different sources, help with the collection effort was offered by local officials. Also, DYS officials provided tally sheets for juvenile cases heard in municipal court in the 3 counties.

Once the data were gathered, a coding scheme was developed and the data were entered into the Center's computer. Four files were generated and then collapsed into two databases so that analyses could be performed. The Social History File contained the juveniles' ID number, age, sex, race, date of birth, number of arrests, number of juvenile court contacts and number of training school commitments. The Admissions File contained data on each jail admission of a juvenile in 1981 and included: juveniles' ID number, county and jail identifiers, date in, date released, offenses charged, court with final disposition, court which transferred the case, number of days in jail, status while in jail and whether bond was posted. The Court Hearing File included the juvenile's ID number, the county and the court which heard the case, the offenses and dispositions and the dates of the first and final court hearing. The fourth data file contained arrest information but was too incomplete to be incorporated into the databases. The discussions of the tables which follow resulted from the analyses performed on the "Juvenile" Base composed of the Social History File and the "Admissions" Base which included the Admissions and Court Hearing Files.

In 1981, Phillips, Monroe and Lee County law enforcement officials admitted 159 juveniles (under age 18) to jail a total of 236 times. (Some of the juveniles had been admitted 2 or more times.) The demographic characteristics of these 159 juveniles are reflected in Table 2. This is the only table which describes the "juveniles" who made up the universe of
juvenile "admissions." All other tables reflect data collected on the 236 "admissions."

Males comprised 84% and Blacks represented 64% of the juveniles jailed. The majority (72%) were 16 and 17 years old compared to 14% being 11-14 years old. Seventy percent of the juveniles were jailed just once during 1981; 5% were jailed 4 or 5 times.

Although prior arrest and juvenile court history data were incomplete, data available show that 48% of the juveniles had been arrested anywhere from 2 to 13 times before and 36% had been sent to the training school from 1 to 7 times prior to the 1981 jail admission.

A profile of the typical juvenile who was admitted to these jails in 1981 is a black male, 17 years old awaiting trial in municipal court on a charge of burglary or theft.

Table 3 shows a breakdown of the number of juvenile admissions in 1981, the total number of days spent in jail and the average length of stay per admission. Total number of days and average length of stay (L.O.S.) are indicators of the volume of admissions and are important planning figures for determining the number of beds needed in a facility. The 236 admissions stayed a total of 3074 days for an average length of stay of about 14 days. Notice that the county jails generally had a longer L.O.S. than the city jails which are 14 day facilities. Approximately 66% of the admissions were in Phillips County jails, 20% were in Monroe County jails and 14% in Lee County jails.

There were only 7 admissions age 11-13 years to the jails in 1981. As
Table 2

PROFILE OF ALL JUVENILES (10-17) ADMITTED TO JAILS
IN MONROE, PHILLIPS AND LEE COUNTIES IN 1981

159 Juveniles Were Admitted to Jail 236 Times in 1981.
Of These 159 Juveniles:

<table>
<thead>
<tr>
<th>Variable</th>
<th>Number of Juveniles</th>
<th>Variable</th>
<th>Number of Juveniles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age (Years):</td>
<td></td>
<td>No. of Juvenile Court Hearings:</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>1</td>
<td>1</td>
<td>23</td>
</tr>
<tr>
<td>12</td>
<td>2</td>
<td>2</td>
<td>20</td>
</tr>
<tr>
<td>13</td>
<td>4</td>
<td>3</td>
<td>15</td>
</tr>
<tr>
<td>14</td>
<td>15</td>
<td>4</td>
<td>15</td>
</tr>
<tr>
<td>15</td>
<td>19</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>16</td>
<td>46</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>17</td>
<td>70</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td>Unknown</td>
<td>2</td>
<td>8</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>9</td>
<td>2</td>
</tr>
<tr>
<td>Sex:</td>
<td></td>
<td>Male</td>
<td>133</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Female</td>
<td>26</td>
</tr>
<tr>
<td></td>
<td></td>
<td>No. of Times Committed to Training School:</td>
<td></td>
</tr>
<tr>
<td>Black</td>
<td>102</td>
<td>0</td>
<td>38</td>
</tr>
<tr>
<td>White</td>
<td>56</td>
<td>1</td>
<td>31</td>
</tr>
<tr>
<td>Unknown</td>
<td>1</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>No. of Times Admitted to Jail:</td>
<td></td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>1</td>
<td>112</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>27</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>3</td>
<td>12</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>4</td>
<td>7</td>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>6</td>
<td>1</td>
<td>Unknown</td>
<td>64</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No. of Times Arrested:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>39</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>23</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>13</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>14</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unknown</td>
<td>44</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 3

TOTAL NUMBER OF JUVENILE ADMISSIONS TO EACH JAIL IN 1981
TOTAL NUMBER OF DAYS SPENT IN EACH JAIL AND
AVERAGE LENGTH OF STAY IN EACH JAIL

<table>
<thead>
<tr>
<th>Jail</th>
<th>Total # of Admissions</th>
<th>Total # of Days in Jail</th>
<th>Average Length of Stay (Days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Helena</td>
<td>41</td>
<td>410</td>
<td>10</td>
</tr>
<tr>
<td>West Helena</td>
<td>46</td>
<td>406</td>
<td>10</td>
</tr>
<tr>
<td>Phillips County</td>
<td>70</td>
<td>1,279</td>
<td>19</td>
</tr>
<tr>
<td>Lee County</td>
<td>32</td>
<td>331</td>
<td>10</td>
</tr>
<tr>
<td>Brinkley</td>
<td>3</td>
<td>11</td>
<td>4</td>
</tr>
<tr>
<td>Monroe County</td>
<td>44</td>
<td>637</td>
<td>16</td>
</tr>
<tr>
<td>TOTALS:</td>
<td>236</td>
<td>3,074</td>
<td>14</td>
</tr>
</tbody>
</table>
reflected in Table 4, these younger juveniles stayed an average of just 1 day. The 16 admissions who were 14 years old stayed approximately 2 1/2 days whereas the older juvenile admissions had an average L.O.S. of 11 to 18 days.

A clearer picture of the nature of juvenile jailings in the region emerges when several pieces of information are collapsed into one table. Table 5 looks at the following variables: the court which had the final disposition, the status of the juvenile while in jail (i.e., awaiting trial, serving a sentence, awaiting transfer to the D.O.C., training school or youth home and other—awaiting transfer to another jurisdiction, held as a witness) and the total number of days, the average L.O.S. and the number of cases in each of the court and status categories. Although a bit more difficult to read, Table 5 shows that the 64 admissions awaiting trial in municipal court stayed a total of 259 days for an average L.O.S. of 4 days. The 34 admissions awaiting trial in juvenile court spent a total of 78 days in jail for an average L.O.S. of 2 1/2 days. The 45 admissions awaiting trial in circuit court stayed a total of 1580 days for an average L.O.S. of 35 days. Clearly, the time it takes for motions to be filed and cases to be heard before the circuit court necessitates that defendants spend a considerable length of time in jail awaiting their trial.

The average L.O.S. of an admission serving time from a municipal court was 26 days; for an admission serving time from the circuit court it was 93 days. There were no admissions serving time from the juvenile courts in the region. Additionally, the table reveals that whereas the number of jail admissions of circuit court cases is fewer than those of the municipal or juvenile court, they take up 60% of the total number of days spent in jail by a juvenile admission and thus a longer average length of stay.
Table 4
TOTAL NUMBER OF DAYS SPENT IN JAILS ACCORDING TO THE JUVENILE'S AGE, 1981 (includes all courts)

<table>
<thead>
<tr>
<th>Age</th>
<th>Total Number of Days</th>
<th>Number of Admissions</th>
<th>Average Length of Stay (Days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>2</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>13</td>
<td>6</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>36</td>
<td>16</td>
<td>2</td>
</tr>
<tr>
<td>15</td>
<td>436</td>
<td>25</td>
<td>17</td>
</tr>
<tr>
<td>16</td>
<td>778</td>
<td>72</td>
<td>11</td>
</tr>
<tr>
<td>17</td>
<td>1,809</td>
<td>101</td>
<td>18</td>
</tr>
</tbody>
</table>
### Table 5
TOTAL NUMBER OF DAYS JUVENILE ADMISSIONS SPENT IN JAIL BASED ON THE COURT WITH FINAL DISPOSITION AND THE STATUS WHILE IN JAIL, 1981

| Court With Final Disposition | Awaiting Trial | | Serving Time in Jail | | Awaiting Transfer to Training School/DOC | | Other |
|-----------------------------|----------------|---|---------------------|---|-------------------|---|-----------------|---|
|                             | # of Admissions | # of Days | # of Admissions | # of Days | # of Admissions | # of Days | # of Admissions | # of Days |
| Municipal Court             | 64             | 259       | 17              | 445       | 0                | 0          | 0               | 0          |
| Juvenile Court              | 34             | 78        | 0               | 0         | 17               | 45         | 0               | 0          |
| Circuit Court               | 45             | 1580      | 3               | 279       | 0                | 0          | 0               | 0          |
| No Court                    | 0              | 0         | 3               | 107       | 4                | 7          | 3               | 6          |
| Total:                      | 143            | 1917      | 23              | 831       | 21               | 52         | 3               | 6          |

(19.5% missing data)

---

### Table 6
TOTAL NUMBER OF DAYS SPENT IN JAIL, NUMBER OF JUVENILE ADMISSIONS AND THE AVERAGE LENGTH OF STAY BASED ON THE COURT WITH FINAL DISPOSITION, 1981

<table>
<thead>
<tr>
<th>Status</th>
<th>Total # of Days</th>
<th># of Admissions</th>
<th>Avg. Length of Stay (Days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipal Court</td>
<td>704</td>
<td>81</td>
<td>8.7</td>
</tr>
<tr>
<td>Juvenile Court</td>
<td>129</td>
<td>54</td>
<td>2.4</td>
</tr>
<tr>
<td>Circuit Court</td>
<td>1859</td>
<td>48</td>
<td>38.7</td>
</tr>
<tr>
<td>No Court</td>
<td>120</td>
<td>10</td>
<td>12.0</td>
</tr>
</tbody>
</table>

(18.2% missing data)

### Table 7
TOTAL NUMBER OF DAYS SPENT IN JAIL, NUMBER OF JUVENILE ADMISSIONS AND THE AVERAGE LENGTH OF STAY BASED ON THE STATUS WHILE IN JAIL, 1981

<table>
<thead>
<tr>
<th>Status</th>
<th>Total # of Days</th>
<th># of Admissions</th>
<th>Avg. Length of Stay (Days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awaiting Trial</td>
<td>2099</td>
<td>166</td>
<td>12.6</td>
</tr>
<tr>
<td>Serving Sentence</td>
<td>889</td>
<td>27</td>
<td>32.9</td>
</tr>
<tr>
<td>Awaiting Transfer</td>
<td>52</td>
<td>21</td>
<td>2.5</td>
</tr>
<tr>
<td>Other</td>
<td>6</td>
<td>3</td>
<td>2.0</td>
</tr>
</tbody>
</table>

(8.1% missing data)
The next series of tables provide clarification on the differences in length of stays for males and females. Tables 6, 7 and 8 detail for each court, the L.O.S. and the total number of days male and female admissions spent in jail depending on their status. (Note: the "other" status category was deleted from this table because of the small number of cases.) Although the length of stay varies depending on which court has jurisdiction and whether the juvenile is awaiting trial or serving a sentence, overall males stay an average of 15 days; females stay an average of 2 days.

Table 6 displays data on jail admissions that went before the municipal court. The average length of stay for male admissions awaiting trial in municipal court was 4 1/2 days; female admissions awaiting trial stayed 2 days. If the male admission was in jail serving a sentence from municipal court, he stayed an average of 27 1/2 days; the one female admission stayed 5 days.

The column on the right side of the table gives a more accurate indication of the length of time spent in jail than the average L.O.S. column. The mean or average length of stay can be affected dramatically by extreme cases staying a long period of time which would affect programming for these juveniles. Use of the figures which reflect the length of stay in 50% of the cases offers another way of estimating capacity. For example, the average L.O.S. for males awaiting trial in municipal court was 4 1/2 days. However, the right column shows that 50% of these cases stayed less than 1 1/2 days.

Table 7 describes juvenile court admissions. There were no juvenile admissions sentenced to jail by the juvenile court in the 3 county area. Slightly more than half of the juvenile admissions were in jail awaiting
Table 6
TOTAL NUMBER OF DAYS AND LENGTH OF STAY BY
STATUS AND SEX FOR MUNICIPAL COURT CASES, 1981

**MALES**

<table>
<thead>
<tr>
<th>Status</th>
<th>Total # of Days</th>
<th># of Admissions</th>
<th>Average Length of Stay (Days)</th>
<th>Median Length of Stay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awaiting Trial</td>
<td>245</td>
<td>56</td>
<td>4½</td>
<td>50% Staying &lt; 1½ days</td>
</tr>
<tr>
<td>Serving Time</td>
<td>440</td>
<td>16</td>
<td>27½</td>
<td>50% Staying &lt; 21½ days</td>
</tr>
<tr>
<td>Awaiting Transfer</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

**FEMALES**

<table>
<thead>
<tr>
<th>Status</th>
<th>Total # of Days</th>
<th># of Admissions</th>
<th>Average Length of Stay (Days)</th>
<th>Median Length of Stay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awaiting Trial</td>
<td>14</td>
<td>8</td>
<td>2</td>
<td>50% Staying &lt; 1½ days</td>
</tr>
<tr>
<td>Serving Time</td>
<td>5</td>
<td>1</td>
<td>5</td>
<td>-</td>
</tr>
<tr>
<td>Awaiting Transfer</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>
trial, the males stayed 2 1/2 days, the girls 1 day. Admissions awaiting transfer to the training school or youth home stayed about 3 days for boys and 2 days for girls.

Table 8 shows that admissions to jail in 1981 under the jurisdiction of the circuit court were all males. The 45 male admissions awaiting trial before the circuit court stayed an average of 35 days; 50% of them stayed 17 days or less. The 3 male admissions serving a sentence from the circuit court stayed an average of 93 days.

Table 9 is an estimate of the number of beds needed in a juvenile detention facility based on the factors of offense, court, status and sex. The projections of youth population over the next decade will not appreciably effect the number of beds needed in the region. The standard formula used to calculate the bed space of a facility having less than 20 beds is the total number of days of care divided by 365 days/year times 2 to allow for peaks in required capacity, extreme variations in the length of stay and sex separations. Therefore, because the total number of days spent in jail by all juvenile admissions was 3074, the three county region would need a 17 bed facility. But how many beds would be needed if the Multi-County Jail Commission decides to keep those juveniles under the jurisdiction of the circuit court in jail?

Table 9 shows that about 10 beds would be subtracted from the 17 if the facility were to detain only those cases going before the juvenile or municipal court. Also for the few cases that are jailed which are under juvenile court jurisdiction, there is no need to build a separate juvenile detention facility if it is to serve only this population.
<table>
<thead>
<tr>
<th>Status</th>
<th>Total # of Days</th>
<th># of Admissions</th>
<th>Average Length of Stay (Days)</th>
<th>Median Length of Stay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awaiting Trial</td>
<td>71</td>
<td>18</td>
<td>$2\frac{1}{2}$</td>
<td>50% Stayed &lt; 2 days</td>
</tr>
<tr>
<td>Serving Time</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Awaiting Transfer</td>
<td>33</td>
<td>11</td>
<td>3</td>
<td>50% Stayed &lt; 3 days</td>
</tr>
</tbody>
</table>

**FEMALES**

<table>
<thead>
<tr>
<th>Status</th>
<th>Total # of Days</th>
<th># of Admissions</th>
<th>Average Length of Stay (Days)</th>
<th>Median Length of Stay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awaiting Trial</td>
<td>7</td>
<td>6</td>
<td>1</td>
<td>50% Stayed &lt; 1 day</td>
</tr>
<tr>
<td>Serving Time</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Awaiting Transfer</td>
<td>12</td>
<td>6</td>
<td>2</td>
<td>50% Stayed &lt; 1$\frac{1}{2}$ days</td>
</tr>
</tbody>
</table>
Table 8

TOTAL NUMBER OF DAYS AND LENGTH OF STAY BY
STATUS AND SEX FOR CIRCUIT COURT CASES, 1981

<table>
<thead>
<tr>
<th>Status</th>
<th>Total # of Days</th>
<th># of Admissions</th>
<th>Average Length of Stay (Days)</th>
<th>Median Length of Stay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awaiting Trial</td>
<td>1580</td>
<td>45</td>
<td>35</td>
<td>50% Stayed &lt; 17 days</td>
</tr>
<tr>
<td>Serving Time</td>
<td>279</td>
<td>3</td>
<td>93</td>
<td>-</td>
</tr>
<tr>
<td>Awaiting Transfer</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

** FEMALEs

No female circuit court cases in jail, 1981
Table 9
"BED SHEET"

Juveniles spent a total of 3,074 days in jail in 1981 in Monroe, Phillips and Lee Countie.*

For this population, 17 beds are needed.

Formula = \( \frac{\text{Days of Care}}{365} \times 2 = \text{Number of Beds} \)

<table>
<thead>
<tr>
<th>Court with Final Disposition</th>
<th>Total # of Days</th>
<th># of Admissions</th>
<th>Number of Beds Needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipal</td>
<td>704</td>
<td>81</td>
<td>3.9</td>
</tr>
<tr>
<td>Juvenile</td>
<td>129</td>
<td>54</td>
<td>0.9</td>
</tr>
<tr>
<td>Circuit</td>
<td>1859</td>
<td>48</td>
<td>10.3</td>
</tr>
<tr>
<td>No Court</td>
<td>120</td>
<td>10</td>
<td>0.9</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Status</th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Awaiting Trial</td>
<td>2099</td>
<td>166</td>
<td>11.6</td>
</tr>
<tr>
<td>Serving Time</td>
<td>889</td>
<td>27</td>
<td>4.8</td>
</tr>
<tr>
<td>Awaiting Transfer</td>
<td>52</td>
<td>21</td>
<td>0.4</td>
</tr>
<tr>
<td>Other</td>
<td>6</td>
<td>3</td>
<td>0.2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sex</th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>3016</td>
<td>195</td>
<td>16.6</td>
</tr>
<tr>
<td>Female</td>
<td>58</td>
<td>29</td>
<td>0.4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Offense</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape, Robbery, Assault</td>
<td>935</td>
<td>23</td>
<td>5.2</td>
</tr>
<tr>
<td>Burglary</td>
<td>844</td>
<td>42</td>
<td>4.6</td>
</tr>
<tr>
<td>Theft, Stolen Property, MVT</td>
<td>726</td>
<td>58</td>
<td>4.0</td>
</tr>
<tr>
<td>Drugs</td>
<td>90</td>
<td>10</td>
<td>0.6</td>
</tr>
<tr>
<td>DWI, MIP, PI, Disorderly</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conduct, Curfew, Loitering</td>
<td>81</td>
<td>36</td>
<td>0.4</td>
</tr>
<tr>
<td>Vandalism/Trespassing</td>
<td>174</td>
<td>12</td>
<td>1.0</td>
</tr>
<tr>
<td>Runaways/JINS</td>
<td>28</td>
<td>17</td>
<td>0.2</td>
</tr>
<tr>
<td>Traffic</td>
<td>14</td>
<td>5</td>
<td>0.1</td>
</tr>
<tr>
<td>Nonpayment of Fines</td>
<td>122</td>
<td>5</td>
<td>0.7</td>
</tr>
<tr>
<td>Other (includes probation violation, held as witness, transfer to other county)</td>
<td>40</td>
<td>8</td>
<td>0.2</td>
</tr>
</tbody>
</table>

* Based on limited information, St. Francis County would require 5.4 beds.
If the facility were to hold only those cases awaiting trial, 12 beds would be needed. Further, if it is a co-educational facility, almost all of the beds would be needed for males.

The final category in Table 9 is a first look at the offenses alleged to have been committed by the juvenile admissions to jail in the 3 counties. There were 23 admissions for the violent crimes of rape, robbery and assault and 935 days of care. This group would require 5 beds. The 42 admissions for burglary required 844 days in the jail, or about 5 beds. The 58 admissions for theft, stolen property and motor vehicle theft stayed 726 days and would require 4 beds.

**SUMMARY AND RECOMMENDATIONS**

The purpose of this final report has been to review the laws and regulations affecting the jailing and detention of juveniles, describe the current practice in the three county area and assess the resources available to meet the detention needs of the region. Further, the National Center for Juvenile Justice was to determine the feasibility of building a regional juvenile detention facility which would comply with the requirements of state and federal law.

The lack of any viable community or placement resources or intake and screening services in the area and the sub-standard conditions of the jails point to the need for a facility which would hold youngsters both securely and non-securely. Discrepancies between federal and state policies affecting those older juvenile offenders caught between concurrent jurisdiction provisions pose problems in deciding which population would be eligible for detention in a juvenile facility. Additionally, federal and state laws which
prohibit the placement of status offenders in secure or delinquent facilities preclude the building of two facilities in an already economically depressed area.

The ideal solution of providing a range of alternatives from home detention to secure beds was impossible for each county to meet, thus the regional attempt was seen as the key to complying with the federal JJDPA's mandate to remove juveniles from jail. However, even with a regional approach, it is still infeasible to accomplish the ideal at this time. Therefore, a feasible plan is seen as a significant improvement over present circumstances and would probably be acceptable as such.

The following recommendations are presented for consideration by the National Center for Juvenile Justice. We believe that they represent the best and most useful direction for meeting the needs of the three-county area. The recommendations, and comments, have been developed from discussions with county officials, data analysis describing current practice, and review of existing legal and regulatory materials.

Recommendation #1

Planning for the multi-county jail should include twelve beds which generally meet the separation by sight and sound requirements of the federal government. These beds would be reserved for pre-trial and sentenced municipal and circuit court offenders, under the age of eighteen, who require secure holding.
Comment:

A thorough reading of federal and state legislation indicates that persons under the age of eighteen, who are charged in the municipal or circuit courts, are not included within the target group to be removed from adult jails and lockups by 1985. As such, there is no external requirement that such young offenders be placed in a separate juvenile facility. It is, however, the stated desire of both the Arkansas Division of Youth Services and some eastern Arkansas county officials that all young persons under the age of eighteen be detained separately. It is our position that such a shift in practice must occur over a period of time, as additional resources and expertise with alternatives to jailing are developed. Therefore, it is essential that plans for a multi-county, regional jail include space which provides for separate secure holding in jail during this interim period.

We have chosen to limit the number of available spaces allocated for this purpose to encourage the use of alternatives to secure holding for this population. It is recognized, however, that within this population there will be youngsters charged or convicted of serious offenses who require secure detention. Both common sense and community standards are likely to mandate that these youngsters be held in jail. Of the twelve beds assigned within the multi-county jail facility, it is anticipated that ten be reserved for male offenders and two for female offenders. Under no circumstances would these beds be available for youngsters falling within the jurisdiction of the juvenile court.

The "sight and sound" separation requirement is not mandated by
federal law or regulations except for juveniles within juvenile court jurisdiction charged with serious crimes who may be jailed under the low population density exception. It was the consensus of those interviewed, however, that separation from older adult criminals was desirable for those youngsters who were to remain eligible for jail detention.

Recommendation #2

The Multi-County Jail Commission should construct a non-secure eight-bed facility in the same general vicinity as the multi-county jail.

Comment:

This recommendation recognizes the need for an alternative to jailing for a portion of the population falling within the jurisdiction of the circuit and municipal courts, as well as all youngsters within the jurisdiction of the juvenile court. It also recognizes the need for short-term, interim placement for a broad spectrum of eastern Arkansas youngsters. It is recommended as a non-secure facility both to increase its potential for utilization and to restrict the costs required for operation. Security in this facility should be accomplished via supervision and programming, rather than through physical restraint. The facility should be seen primarily as a placement resource for youngsters within the jurisdiction of the juvenile court, and as an alternative for that subset of municipal and circuit court offenders not requiring secure holding. In that it is a
non-secure facility, it may also be utilized as an interim placement for status offenders and dependent/neglected youth. Further, it should be mentioned that the building of a non-secure facility does not prohibit the counties from applying for the low population density exceptions. A juvenile arrested for a "serious" offense may be jailed for 48 hours if a determination has been made that he should not be in the non-secure facility.

The most pressing dilemma for this multi-county youth shelter facility lies not in the funds necessary for its construction, but rather for operating funds. To minimize the cost of operation, the facility should be constructed so that it can use all ancillary services, such as transportation, food service, laundry and maintenance, in conjunction with the multi-county jail. Further, the only feasible staffing pattern requires the employment of a houseparent couple who would maintain full-time residence in the facility. Such an arrangement increases somewhat the construction costs, but saves significantly on the ongoing operating expenses. With a houseparent couple, the facility could be operated with the addition of only two half-time relief staff. All other ancillary administrative and services staff would be shared with the jail, with program component personnel (counseling, medical, educational) purchased on an as-needed contract basis from existing service providers. Such a program "core" represents an absolute "bare-bones" minimum for an eight-bed generic facility. It is, in our estimation, the only staffing complement which is feasible, given the economic constraints in the three-county area. It is, however, a program foundation upon
which additional components can be constructed, given external funding. For example, discussions with Eastern Arkansas Mental Health indicated the possibility of external demonstration funds from the state to provide mental health services. In addition, it is our belief that, once in operation, the Arkansas Division of Youth Services should be encouraged to assist in the funding of program components.

The multi-county youth services facility should be co-educational and flexible in its male/female ratio. It is anticipated that there will be six males and two females in the facility at any given time.

Recommendation #3

The multi-county youth services facility should provide transportation services for the three-county area.

Comment:

It has become abundantly clear that the utilization of a regional facility by local county officials is dependent upon the ease with which youngsters can be transported to that facility. Local sheriffs' departments and municipal police simply do not have the available personnel to allow for the transportation of youngsters to a central facility. If accomplished in conjunction with the multi-county jail, transportation vans could be dispatched on a regular or "on-call" basis from the central facility to short-term holding facilities in each of the three counties. Transportation vans would need to be divided so as to segregate adult prisoners from youth en route to the
non-secure facility.

**Recommendation #4**

A twenty-four hour intake/screening procedure should be established as a part of the central facility. Decisions regarding intake into either the multi-county jail or the youth services facility would be at the discretion of the central intake worker.

**Comment:**

The central facility must have control over its own intake. Guidelines and operating procedures should be established by the administrative governing body (see below) but would be exercised by a twenty-four hour, on-call, intake worker. Intake decisions should be guided by the need for security, the needs of the youngster, and the anticipated length of stay. All intake decisions should be made prior to dispatching a vehicle to transport the youngster to the facility.

It is anticipated that an intake/screening process could reduce the need both for secure detention and for non-secure holding, if there are alternative community services available. It is expected that one of the major roles for the intake worker would be in the development of such alternatives. While perhaps somewhat burdensome in its procedure, such a process requires a thoughtful approach to detention practice. It also allows the centralized facility to manage the composition of its own population.
Recommendation #5

The regional youth services facility should be administered by the Multi-County Jail Commission. A subcommittee, consisting of one member from each of the three counties involved, should be appointed to develop recommendations to be submitted to the full Commission regarding intake and program policies.

Comment:

The Multi-County Jail Commission, as a legal, corporate entity, is in the best position to oversee the operation of the multi-county youth services facility. In addition, regional planning of youth services and alternatives to detention requires an administrative oversight organization, with representation from all counties involved. Operating costs for the facility should be budgeted by the Multi-County Jail Commission, with basic operating costs assessed proportionately to each county. In addition, a daily cost-of-care fee should be assessed, based on actual utilization. In this way, no county is required to support the entire operating costs of the facility, and each participating county shares in the cost at a rate equivalent to its use.

Recommendation #6

Centralized juvenile court services, in conjunction with the multi-county services facility, should not be implemented at this time.
Comment:

Although there is more than adequate justification for a central facility and a centralized intake function, a multi-county juvenile court does not appear to be feasible at this time. Legal requirements regarding venue, and the unanticipated consequence of an increase in municipal court filings, argue strongly against a three-county juvenile court at this time. While it is an idea which merits further consideration in the future, it is more likely that it would receive support after a period of successful experience with the multi-county facility. In any event, a multi-county juvenile court would require a referee who held juvenile court hearings in the local community.

Recommendation #7

In-community resources should be developed, as funds become available, to provide for emergency shelter, in-home detention and foster care placement facilities, as alternatives either to secure or non-secure holding of youngsters in a central facility.

Comment:

It is the clear intention of these recommendations that the multi-county youth services facility serve primarily as an alternative to the current practice of placing youngsters in jail. That is to say, while the facility violates no law or regulation which precludes the possibility of placing status offender or dependent/neglected youngsters, its primary purpose is to reduce the number of youngsters placed in jail. In recommending such a facility, we recognize that this will tend to create an older, more serious population for the
youth services facility. As such, it provides little remedy for the younger offender or the dependent youngster. It is our feeling, however, that services to this group are best accomplished through community alternatives. Since there is a strong need for these youngsters to be maintained in a community setting, it seems inappropriate (except in an emergency situation) to place them in a facility removed from their home community. We would encourage the Multi-County Jail Commission and the administrative subcommittee for the multi-county youth services facility to examine the possibility of contracting with the community residents to provide temporary, emergency shelter-care for such youngsters in each of the three counties. It is our expectation that funds could be made available from the Division of Youth Services for this purpose.

The National Center for Juvenile Justice would like to thank the people of Phillips, Monroe and Lee Counties for their cooperation and help in completing the work for this final report. Everyone that we contacted for assistance was very helpful and friendly. Your southern hospitality was greatly appreciated.
APPENDIX A

LIST OF INTERVIEWS
LIST OF INTERVIEWS

PHILLIPS COUNTY

Hon. A.Y. Gordon  
County Judge

Hon. Edward Grauman  
Municipal County Judge  
Helena

Mr. Ray Culver  
Court Administrator

Chief Lee Roy Davis  
Helena

Hon. John L. Anderson  
Circuit Court Judge  
First Judicial District

Dr. Robert Miller  
Quorum Court

Mr. Richard Maxwell  
Director, Eastern Arkansas Mental Health

Sheriff Marion Hickey

Hon. Rusty Porter  
Municipal Court Judge  
West Helena

Ms. Kathleen Bell  
Juvenile Court Referee

Chief James Cross  
West Helena

Mr. Gene Raff  
Prosecuting Attorney  
First Judicial District

Mr. Willie Douglas  
Juvenile Probation Officer

Mr. Steve Crouch  
Director  
Helena Center, EAMH

LEE COUNTY

Hon. Kenneth Hunter  
County Judge

Hon. Dan Felton  
Municipal Court Judge  
Juvenile Court Referee

Mr. Jack Harden, Jr.  
Quorum Court

Sheriff Robert May  
Chief Deputy - Carl Oxner

Chief James Rutledge  
Marianna

Mr. David Calhoun  
Asst. Prosecuting Attorney
MDNROE COUNTY

Hon. Thomas Catlett
County Judge

Hon. James Sproutt
Municipal Court Judge
Clarendon, Brinkley

Mr. Mike Catlett
Quorum Court

Mr. Steven Elledge
Asst. Prosecuting Attorney

Sheriff Larry Morris

Chief Ned James
Clarendon

Chief George Bethell
Brinkley

ST. FRANCIS COUNTY

Hon. Robert Cisco
County Judge

Mr. James Cottrell
Director
Multi-County Youth Services

Sheriff Coolidge Conlee

DIVISION OF YOUTH SERVICES

Commissioner Scott Gordon

Deputy Commissioner Larry Myers

REPRESENTATIVES FROM:

Arkansas Advocates
Children & Youth Services
Pulaski County Judge's Office
Governor Clinton's Office
Legal Services
APPENDIX B

BIBLIOGRAPHY
BIBLIOGRAPHY


APPENDIX C

EXCERPTS FROM:

- JJDP ACT WITH 1980 AMENDMENTS
- FEDERAL REGISTER
general local government or combinations thereof within the State on an equitable basis.

(d) In accordance with regulations promulgated under this part, 5 per centum of the minimum annual allotment to any State under this part shall be available to assist the advisory group established under section 223(a)(3) of this Act. (42 U.S.C. 5632)

STATE PLANS

SEC. 223. (a) In order to receive formula grants under this part, a State shall submit a plan for carrying out its purposes applicable to a 3-year period. Such plan shall be amended annually to include new programs, and the State shall submit annual performance reports to the Administrator which shall describe progress in implementing programs contained in the original plan, and shall describe the status of compliance with State plan requirements. In accordance with regulations which the Administrator shall prescribe, such plan shall—

(1) designate the State criminal justice council established by the State under section 402(b)(1) of the Omnibus Crime Control and Safe Streets Act of 1968 as the sole agency for supervising the preparation and administration of the plan;

(2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) (hereafter referred to in this part as the "State criminal justice council") has or will have authority, by legislation if necessary, to implement such plan in conformity with this part;

(3) provide for an advisory group appointed by the chief executive of the State to carry out the functions specified in subparagraph (F), and to participate in the development and review of the State's juvenile justice plan prior to submission to the supervisory board for final action and (A) which shall consist of not less than 15 and not more than 33 persons who have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice, (B) which shall include locally elected officials, representation of units of local government, law enforcement and juvenile justice agencies such as law enforcement, correction or probation personnel, and juvenile or family court judges, and public agencies concerned with delinquency prevention or treatment such as welfare, social services, mental health, education, special education, or youth services departments, (C) which shall include representatives of private organizations concerned with delinquency prevention or treatment; concerned with neglected or dependent children; concerned with the quality of juvenile justice, education, or social services for children; which utilize volunteers to work with delinquents or potential delinquents; community-based delinquency prevention or treatment programs; business groups and businesses employing youth, youth workers involved with alternative youth programs, and persons with special experience and competence in addressing the problem of school violence and vandalism and the problem of learning disabilities; and organizations which represent employees affected by this Act, (D) a majority of whose members (including the chairman)
shall not be full-time employees of the Federal, State, or local government, (E) at least one-fifth of whose members shall be under the age of 24 at the time of appointment, and at least 3 of whose members shall have been or shall currently be under the jurisdiction of the juvenile justice system; and (F) which (i) shall, consistent with this title, advise the State criminal justice council and its supervisory board; (ii) shall submit to the Governor and the legislature at least annually recommendations with respect to matters related to its functions, including State compliance with the requirements of paragraph (12)(A) and paragraph (13); (iii) shall have an opportunity for review and comment on all juvenile justice and delinquency prevention grant applications submitted to the State criminal justice council, except that any such review and comment shall be made no later than 30 days after the submission of any such application to the advisory group; (iv) may be given a role in monitoring State compliance with the requirements of paragraph (12)(A) and paragraph (13), in advising on State criminal justice council and local criminal justice advisory board composition, in advising on the State's maintenance of effort under section 1002 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and in review of the progress and accomplishments of juvenile justice and delinquency prevention projects funded under the comprehensive State plan; and (v) shall contact and seek regular input from juveniles currently under the jurisdiction of the juvenile justice system;

(4) provide for the active consultation with and participation of units of general local government or combinations thereof in the development of a State plan which adequately takes into account the needs and requests of local governments, except that nothing in the plan requirements, or any regulations promulgated to carry out such requirements, shall be construed to prohibit or impede the State from making grants to, or entering into contracts with, local private agencies or the advisory group;

(5) unless the provisions of this paragraph are waived at the discretion of the Administrator for any State in which the services for delinquent or other youth are organized primarily on a statewide basis, provide that at least 66% per centum of funds received by the State under section 222, other than funds made available to the State advisory group under section 222(d), shall be expended through—

(A) programs of units of general local government or combinations thereof, to the extent such programs are consistent with the State plan; and

(B) programs of local private agencies, to the extent such programs are consistent with the State plan, except that direct funding of any local private agency by a State shall be permitted only if such agency requests such funding after it has applied for and been denied funding by any unit of general local government or combination thereof;

(6) provide that the chief executive officer of the unit of general local government shall assign responsibility for the preparation and administration of the local government's part of a State plan, or for the supervision of the preparation and ad-

ministration of the local government's part of the State plan, to that agency within the local government's structure or to a regional planning agency (hereinafter in this part referred to as the "local agency") which can most effectively carry out the purposes of this part and shall provide for supervision of the programs funded under this part by that local agency;

(7) provide for an equitable distribution of the assistance received under section 222 within the State;

(8) relate (A) an analysis of juvenile crime problems and juvenile justice and delinquency prevention needs within the relevant jurisdiction, a description of the services to be provided, and a description of performance goals and priorities, including a specific statement of the manner in which programs are expected to meet the identified juvenile crime problems and juvenile justice and delinquency prevention needs of the jurisdiction; (B) an indication of the manner in which the programs relate to other similar State or local programs which are intended to address the same or similar problems; and (C) a plan for the concentration of State efforts which shall coordinate all State juvenile delinquency programs with respect to overall policy and development of objectives and priorities for all State juvenile delinquency programs and activities, including provision for regular meetings of State officials with responsibility in the area of juvenile justice and delinquency prevention;

(9) provide for the active consultation with and participation of private agencies in the development and execution of the State plan; and provide for coordination and maximum utilization of existing juvenile delinquency programs and other related programs, such as education, health, and welfare within the State;

(10) provide that not less than 75 per centum of the funds available to such State under section 222, other than funds made available to the State advisory group under section 222(d), whether expended directly by the State, by the unit of general local government or combination thereof, or through grants and contracts with public or private agencies, shall be used for advanced techniques in developing, maintaining, and expanding programs and services designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, to provide community-based alternatives to confinement in secure detention facilities and secure correctional facilities; to encourage a diversity of alternatives within the juvenile justice system, to establish and adopt juvenile justice standards, and to provide programs for juveniles who have committed serious crimes, particularly programs which are designed to improve sentencing procedures, provide resources necessary for informed dispositions, and provide for effective rehabilitation. These advanced techniques include—

(A) community-based programs and services for the prevention and treatment of juvenile delinquency through the development of foster-care and shelter-care homes, group homes, half-way houses, homemaker and home health services, twenty-four hour intake screening, volunteer and crisis home programs, education, special education, day
treatment, and home probation, and any other designated community-based diagnostic, treatment, or rehabilitative service;
(B) community-based programs and services to work with parents and other family members to maintain and strengthen the family unit so that the juvenile may be retained in his home;
(C) youth service bureaus and other community-based programs to divert youth from the juvenile court or to support, counsel, or provide work and recreational opportunities for delinquents and other youth to help prevent delinquency;
(D) projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting the rights of youth impacted by the juvenile justice system;
(E) educational programs or supportive services designed to encourage delinquent youth and other youth to remain in elementary and secondary schools or in alternative learning situations;
(F) expanded use of probation and recruitment and training of probation officers, other professional and paraprofessional personnel and volunteers to work effectively with youth;
(G) youth initiated programs and outreach programs designed to assist youth who otherwise would not be reached by traditional youth assistance programs;
(H) statewide programs through the use of subsidies or other financial incentives to units of local government designed to—
(i) remove juveniles from jails and lockups for adults;
(ii) replicate juvenile programs designated as exemplary by the National Institute of Justice;
(iii) establish and adopt, based upon the recommendations of the Advisory Committee, standards for the improvement of juvenile justice within the State; or
(iv) increase the use of nonsecure community-based facilities and discourage the use of secure incarceration and detention;
(I) programs designed to develop and implement projects relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist law enforcement and juvenile justice personnel to more effectively recognize and provide for learning disabled and other handicapped juveniles; and
(J) projects designed both to deter involvement in illegal activities and to promote involvement in lawful activities on the part of juvenile gangs and their members;
(11) provide for the development of an adequate research, training, and evaluation capacity within the State;
(12)(A) provide within three years after submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court orders, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities; and
(B) provide that the State shall submit annual reports to the Administrator containing a review of the progress made by the State to achieve the deinstitutionalization of juveniles described in subparagraph (A) and a review of the progress made by the State to provide that such juveniles, if placed in facilities are placed in facilities which (i) are the least restrictive alternatives appropriate to the needs of the child and the community; (ii) are in reasonable proximity to the family and the home communities of such juveniles; and (iii) provide the services described in section 108(1);
(13) provide that juveniles alleged to be or found to be delinquent and youths within the purview of paragraph (12) shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges;
(14) provide that, beginning after the 5-year period following the date of the enactment of the Juvenile Justice Amendments of 1980, no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall promulgate regulations which (A) recognize the special needs of areas characterized by low population density with respect to the detention of juveniles; and (B) shall permit the temporary detention in such adult facilities of juveniles accused of serious crimes against persons, subject to the provisions of paragraph (15), where no existing acceptable alternative placement is available;
(15) provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to insure that the requirements of paragraph (12)(A), paragraph (13), and paragraph (14) are met, and for annual reporting of the results of such monitoring to the Administrator, except that such reporting requirements shall not apply in the case of a State which is in compliance with the other requirements of this paragraph, which is in compliance with the requirements in paragraph (12)(A) and paragraph (13), and which has enacted legislation which conforms to such requirements and which contains, in the opinion of the Administrator, sufficient enforcement mechanisms to ensure that such legislation will be administered effectively;
(16) provide assurance that assistance will be available on an equitable basis to deal with disadvantaged youth including, but not limited to, females, minority youth, and mentally retarded and emotionally or physically handicapped youth;
(17) provide for procedures to be established for protecting the rights of recipients of services and for assuring appropriate privacy with regard to records relating to such services provided to any individual under the State plan;
(18) provide that fair and equitable arrangements are made to protect the interests of employees affected by assistance under this Act. Such protective arrangements shall, to the
maximum extent feasible, include, without being limited to, such provisions as may be necessary for—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements or otherwise;

(B) the continuation of collective-bargaining rights;

(C) the protection of individual employees against a worsening of their positions with respect to their employment;

(D) assurances of employment to employees of any State or political subdivision thereof who will be affected by any program funded in whole or in part under provisions of this Act;

(E) training or retraining programs.

The plan shall provide for the terms and conditions of the protection arrangements established pursuant to this section;

(19) provide for such fiscal control and fund accounting procedures necessary to assure prudent use, proper disbursement, and accurate accounting of funds received under this title;

(20) provide reasonable assurances that Federal funds made available under this part for any period will be so used as to supplement and increase (but not supplant) the level of the State, local, and other non-Federal funds that would be in the absence of such Federal funds made available for the programs described in this part, and will in no event replace such State, local, and other non-Federal funds;

(21) provide that the State criminal justice council will from time to time, but not less often than annually, review its plan and submit to the Administrator an analysis and evaluation of the effectiveness of the programs and activities carried out under the plan, and any modifications in the plan, including the survey of State and local needs, which it considers necessary; and

(22) contain such other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of the programs assisted under this title.

Such plan may at the discretion of the Administrator be incorporated into the plan specified in section 403 of the Omnibus Crime Control and Safe Streets Act. Such plan shall be modified by the State, as soon as practicable after the date of the enactment of the Juvenile Justice Amendments of 1980, in order to comply with the requirements of paragraph (14).

(b) The State criminal justice council designated pursuant to section 223(a), after receiving and considering the advice and recommendations of the advisory group referred to in section 223(a), shall approve the State plan and any modification thereof prior to submission to the Administrator.

(c) The Administrator shall approve any State plan and any modification thereof that meets the requirements of this section. Failure to achieve compliance with the subsection (a)(12)(A) requirement within the three-year time limitation shall terminate any State’s eligibility for funding under this subpart unless the Administrator determines that the State is in substantial compliance

with the requirement, through achievement of deinstitutionalization of not less than 75 percent of such juveniles by or through removal of 100 percent of such juveniles from secure correctional facilities, and has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time not exceeding two additional years. Failure to achieve compliance with the requirements of subsection (a)(14) within the 5-year time limitation shall terminate any State’s eligibility for funding under this subpart, unless the Administrator determines that (1) the State is in substantial compliance with such requirements through the achievement of not less than 75 percent removal of juveniles from jails and lockups for adults; and (2) the State has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time, not to exceed 2 additional years.

(d) In the event that any State chooses not to submit a plan, fails to submit a plan, or submits a plan or any modification thereof, which the Administrator, after reasonable notice and opportunity for hearing, in accordance with sections 505, 504, and 505 of title 1 of the Omnibus Crime Control and Safe Streets Act of 1968, determines does not meet the requirements of this section, the Administrator shall endeavor to make that State’s allotment under the provisions of section 222(a) available to local public and private non-profit agencies within such State for use in carrying out the purposes of subsection (a)(12)(A), subsection (a)(13), or subsection (a)(14).

The Administrator shall make funds which remain available after disbursements are made by the Administrator under the preceding sentence, and any other unobligated funds, available on an equitable basis to those States that have achieved full compliance with the requirements under subsection (a)(12)(A) and subsection (a)(13) within the initial three years of participation or have achieved full compliance within a reasonable time thereafter as provided by subsection (c). (42 U.S.C. 5633)

Subpart II—Special Emphasis Prevention and Treatment Programs

Sec. 224. (a) The Administrator is authorized to make grants to and enter into contracts with public and private agencies, organizations, institutions, or individuals to—

(1) develop and implement new approaches, techniques, and methods with respect to juvenile delinquency programs;

(2) develop and maintain community-based alternatives to traditional forms of institutionalization;

(3) develop and implement effective means of diverting juveniles from the traditional juvenile justice and correctional system, including restitution projects which test and validate selected arbitration models, such as neighborhood courts or panels, and increase victim satisfaction while providing alternatives to incarceration for detained or adjudicated delinquents;

(4) improve the capability of public and private agencies and organizations to provide services for delinquents and other youth to help prevent delinquency;

(5) develop statewide programs through the use of subsidies or other financial incentives designed to—
DEPARTMENT OF JUSTICE

Office of Juvenile Justice and
Delinquency Prevention

28 CFR Part 31

Implementation of Formula Grants
Program for Juvenile Justice

AGENCY: Office of Juvenile Justice and
Delinquency Prevention, Justice.

ACTION: Notice of final regulations.
SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing final regulations for the implementation of the formula grant program authorized by Part B, Subpart I, of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended. Formula grants are authorized to States which in turn make subgrants for use by State and local public and private agencies in carrying out juvenile justice and delinquency improvement programs.

DATE: These regulations are effective December 31, 1981.


SUPPLEMENTARY INFORMATION: Draft regulations were originally published in the Federal Register on June 1, 1981 for public comment. Substantive changes were recommended and the draft regulations were again published for public comment on September 3, 1981. Written comments from some 69 national, regional, and local organizations were received. All comments have been considered by the OJJDP in this publication. These regulations, with the exception of § 31.303(i)(3), Valid Court Order, are final.

Discussion of Comments

Several respondents commented favorably upon the streamlining of the formula grant application requirements, an effort to simplify program administration.

The following is a summary of substantive comments and the response of the OJJDP:

1. Comment: The serious and violent juvenile offender emphasis of § 31.303(e) indicates that States should allocate a minimum of 30% of their formula grant funds to programs designed for these populations. Is this allocation mandatory?

Response: No. This provision in the regulations was designed to encourage States to address the problem of serious and violent crimes committed by juveniles. This is a major concern to the Congress, as reflected in the 1980 Amendments to the JJDP Act, and to the American public. The wording of this section attempts to focus State action on a careful consideration of the need to allocate additional resources to this area of programming.

2. Comment: The serious and violent juvenile offender emphasis of § 31.303(e) should be redefined to clarify that serious crime includes property crime.

Response: It is Congress' finding that juvenile offenders and nonoffenders should not be placed in an adult jail or lockup for any period of time. However, for the purpose of monitoring and reporting compliance with the jail removal requirement, the House Committee on Education and Labor stated, in its Committee Report on the 1980 Amendments, that it would be permissible for OJJDP to permit States to exclude, for monitoring purposes, those juveniles alleged to have committed an act which would be a crime if committed by an adult (criminal-type offenders) and who are held in an adult jail or lockup for up to six hours. This six-hour period would be limited to the temporary holding in an adult jail or lockup by police for purposes of identification, processing, and transfer to juvenile court officials to juvenile shelter or detention facilities. Any such holding of a juvenile criminal-type offender should be limited to the absolute minimum time necessary to complete this action, not to exceed six hours, but in no case overnight. Even where such a temporary holding is permitted, the Section 223(a)(13) separation requirement would operate to prohibit the accused juvenile criminal-type offender from being in sight or sound contact with an adult offender during this brief holding period. Under no circumstances does the allowance of a six-hour "grace period" applicable to juvenile criminal-type offenders permit a juvenile status offender or nonoffender be detained, even temporarily, in an adult jail or lockup under Section 223(a)(14). In monitoring for compliance with Section 223(a)(14), the regulations require States to report the number of juvenile criminal-type offenders held in adult jails and lockups in excess of six hours (see § 31.303(j)(V)(C) and (H)).

7. Comment: The 48-hour limit on holding juveniles in adult jails or lockups under the Section 223(a)(14) "removal exception" is not sufficient to cover periods when court is not in session, such as weekends.

Response: Because this exception permits temporary incarceration in jails and lockups of juveniles accused of a serious crime against persons, a maximum 48-hour period is considered by OJJDP to be the outside limit and is intended to take into account weekends and other circumstances that would preclude the immediate transfer to an appropriate juvenile facility.

8. Comment: The guideline governing the "removal exception" to Section 223(a)(14), as promulgated in the draft regulations, § 31.303(j)(4), allows each
State to set specific criteria for determining "areas characterized by low population density" and to determine that "no alternative placement is available." These criteria should be established by OJJDP so that the criteria and standards are uniform for all States and can be reviewed by the public through the review and comment process of the Federal Register.

Response: The narrow "removal exception" of the law was designed to reflect "the special needs of areas characterized by low population density." OJJDP, in its rulemaking role, reviewed a number of possible criteria that could be imposed on States in defining the exception. However, we concluded that it was not feasible to establish uniform criteria applicable to all States that would be both fair and rational. OJJDP believes that the individual States are in a better position to determine the unique circumstances that warrant, subject to OJJDP's review and approval, the specific criteria to be applied in the States to implement the "removal exception" to the Section 223(a)(14) jail removal provision.

Comment: The regulations should define the term "not served by a local or regional juvenile detention facility" as used in the Section 223(a)(14) "removal exception."

Response: Agreed. A general definition of the term has now been added to regulations at § 31.303(i)(4)(iv). The definition provides that a county is not served by a local or regional juvenile detention facility when "there is no public or private juvenile detention facility operated within the county or there is no public or private juvenile facility which is in operation to provide secure detention for accused juvenile offenders from that county."

10 Comment: The 1980 Amendments to the JJJDP Act allow an alternative State agency, other than the State Criminal Justice Council, to be designated by the Governor as the responsible agency to supervise the administration of the State's formula grant program. Any such designation is subject to approval by the OJJDP Administrator. One commentator recommended that operating agencies be specifically excluded from consideration as an acceptable alternative State agency.

Response: OJJDP is aware of the potential problems with having an operating agency serving as the administering agency for the formula grant program. The Fiscal Year 1982 Application Kit addresses this issue, requiring that in any instance where the Governor requests approval for the designation of an operating agency as the alternative State agency, it must be clearly demonstrated that the agency's supervisory board will have full policymaking authority and will be independent of the administrative structure of the operating agency.

11. Comment: The definition of "secure" as used in the terms "secure detention facility" and "secure correctional facility" has been substantially changed by removing the use of "staff security measures" in addition to other architectural means for restricting the movements and activities of residents. This change is not warranted.

Response: The change noted in the draft regulations (§ 31.304(b)) reflects the revised definitions of "secure detention facility" and "secure correctional facility" in Section 103(12) and (13) of the Act, as amended.

12. Comment: One third of the required 66% pass through of funds to local government. § 31.301(b), should be required to be allocated to private nonprofit agencies.

Response: Such a requirement is beyond the authority of OJJDP as there is no statutory basis to support such a rule.

13. Comment: Because recent research has shown that there exists differential handling of minority youth in the juvenile justice system, it is recommended that a percentage of funds be set aside to further research this phenomenon and to generate specific proposals that may reduce the flow of minorities into the system.

Response: While OJJDP is aware of these research findings, the formula grant program is not the appropriate place for OJJDP to address funding for this purpose. Within the past six months, the National Institute for Juvenile Justice and Delinquency Prevention, the research arm of OJJDP, has awarded three research grants which address different aspects of this issue. It is expected that this research will provide the kinds of basic information needed to reduce the differential penetration of minority youth into the system.

Valid Court Order

There was substantial comment on and criticism of the revised valid court order guideline (§ 31.303(i)(3)). Fifteen of the commentators voiced the opinion that the revised provision failed to correctly reflect the Congressional intent underlying the valid court order amendment to Section 223(a)(12)(A) of the Juvenile Justice Act. These commentators generally favored retention of the initial implementing guideline published for comment in the Federal Register on June 1, 1981 (46 FR 29438, § 31.703(h)(3), at 29443).

Specifically, they called for reinstatement of the following features of that guideline:

(1) No secure detention under any circumstance of a juvenile status offender or nonoffender alleged to have violated a valid court order;
(2) Reinstate the requirement that the judge presiding over the violation hearing, in entering a dispositional order directing or authorizing placement in a secure facility, certify on the record (rather than determine) that all the elements of a valid court order have been met; and
(3) Reinstate the requirement that the judge in (2) above also certify on the record (rather than make no certification or determination) that there is no rational alternative to incarceration of the juvenile.

In addition, a variety of suggestions were offered by commentators seeking to increase or clarify the protections afforded juvenile status offenders and nonoffenders who may be subject to incarceration as a result of a court order violation. These suggestions are as follows:

(1) For a court order to be deemed valid the juvenile status offender or nonoffender should have had the right to counsel at the initial adjudication or other court proceeding in which the court order regulating future conduct was entered;
(2) For a court order to be deemed valid, the juvenile status offender or nonoffender should have received the full range of due process rights listed in § 31.303(i)(3)(iv)(A)-(H) at the initial adjudication or other court proceeding in which the court order regulating future conduct was entered;
(3) The warning to the juvenile of the consequences of violating the court order (§ 31.303(i)(3)(iii)) should be provided to the juvenile and to his attorney and/or to his parents or guardian;
(4) The warning referenced in (3) above should be in writing and (rather than "or") be reflected in the court record and proceedings;
(5) The term "court of competent jurisdiction" (§ 31.303(i)(3)(iv)) should be defined so that a juvenile would only be subject to valid court order violation proceedings before the same judge in the same court in which the order was entered;
(6) The "24-hour grace period" referenced in § 31.303(i)(3)(iv) should clearly specify that this means 24 hours exclusive of nonjudicial days (i.e.,
(7) The guideline should require that any judicial determination of probable cause, used as a basis for detaining a juvenile pending a violation hearing, must be held within the 24-hour grace period; (8) There should be no provision for a probable cause hearing. Rather, the guideline should require that the violation hearing be held within the 24-hour grace period or the juvenile released to an appropriate nonsecure placement pending the violation hearing; (9) A juvenile held in a secure detention facility, after a probable cause hearing pending a violation hearing, should be held for the minimum time necessary to schedule and hold a violation hearing, but in no event longer than: (a) 3 calendar days; or (b) 72 hours; or (c) 72 hours exclusive of nonjudicial days; or (d) 5 calendar days; or (e) 10 calendar days or the number of days that an alleged delinquent offender may be held under State law in secure detention prior to an adjudicatory hearing, whichever is less; (10) Where a judicial determination is made that there is probable cause to believe that a status offender or nonoffender violated a valid court order, placement in a secure detention facility pending a violation hearing should require, at a minimum, a judicial finding that: (a) There is a probability that the juvenile will not appear for further proceedings; or (b) The juvenile poses a danger to self or to community safety; (11) The authority to hold a juvenile status offender or nonoffender in a "secure detention facility" or a "secure correctional facility" should specify that such facilities include only those which are exclusively for juvenile offenders; (12) The full due process rights enumerated in § 31.303(1)(3)(v) should include a standard of proof beyond a reasonable doubt; and (13) OJJDP should establish maximum numbers of juvenile status offenders and nonoffenders who can be held for valid court order violations and establish a maximum length of secure incarceration for juveniles who violate valid court orders.

A lesser number of respondents believed that the guideline, rather than failing to provide adequate due process protections to juveniles, failed to provide sufficient judicial flexibility, offering the following suggestions to increase judicial discretion: (1) The determination of probable cause to believe a juvenile status offender or nonoffender violated a valid court order should be made by a judge or any duly authorized officer of the court acting on behalf of the judge; and (2) OJJDP should defer to State law in determining the maximum length of time a status offender or nonoffender alleged to have violated a valid court order may be held in secure detention pending a violation hearing. As can be seen, there is a wide divergence of views on valid court order amendment implementation. This stems in part from a legislative history that is inconclusive on certain points, differences in various State laws, policies and practices, and the complex legal issues that underlie the treatment of juvenile status offenders and nonoffenders who violate valid court orders. It is OJJDP's conclusion that publication of a final regulation governing implementation of the valid court order amendment at this time, given the expressed concerns and information available, would not further the proper implementation of the amendment. Consequently, OJJDP believes that further exploration and consideration of the issues raised above (and other relevant valid court order considerations) are desirable before a final rule is promulgated. Therefore, OJJDP plans to schedule at least two hearings to receive oral testimony and to give interested parties the opportunity to submit further written input on valid court order implementation. A notice will be placed in the Federal Register regarding the date and time for such hearings and providing for the receipt of written submissions. OJJDP anticipates that this notice will be published within 30 days. The notice will explain the rationale of the various positions and options presented in response to the Federal Register draft. OJJDP's primary objective is to fully implement the congressional intent, considering the input and experience of practitioners, and to provide for a workable regulation that does not create unrealistically high standards and does not, by implication, undermine State procedural law. OJJDP will reserve § 31.303(1)(3) of the final regulations. Pending the publication of a final regulation, States should continue to follow applicable State law and Constitutional principles of due process in their implementation and monitoring of the valid court order amendment. OJJDP urges States not to consider modification of existing State law or policies governing the secure incarceration of juvenile status and nonoffenders who violate the lawful orders of the court until a final regulation is published.

This announcement does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more; or (b) a major increase in any costs of prices; or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Finally, because this regulation will not have significant economic impact on a substantial number of small entities, no analyses of the impact of these rules on such entities is required by the Regulatory Flexibility Act, U.S.C. 601 et seq., 28 CFR Part 31 is accordingly revised to read as follows:

PART 31—FORMULA GRANTS

Subpart A—General Provisions

Sec. 31.1 General.
31.2 Statutory authority.
31.3 Submission date.

Subpart B—Eligible Applicants

31.100 Eligibility.
31.102 Membership.

Subpart C—General

31.200 General.
31.201 Audit.
31.202 Civil rights.
31.203 Open meetings and public access to records.

Subpart D—Juvenile Justice Act Requirements

31.300 General.
31.301 Funding.
31.302 Applicant State Agency.
31.303 Substantive requirements.
31.304 Definitions.

Subpart E—General Conditions and Assurances

31.400 Compliance with statute.
31.401 Compliance with other Federal laws, orders, circulars.
31.403 Non-discrimination.

Authority: Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (42 U.S.C. 5041 et seq.)

Subpart A—General Provisions

§ 31.1 General.

This Part defines eligibility and sets forth requirements for application for and administration of formula grants to State governments authorized by Part B, Subpart L of the Juvenile Justice and Delinquency Prevention Act.
§ 31.2 Statutory authority.
The statute establishing the Office of Juvenile Justice and Delinquency Prevention and giving authority to make grants for juvenile justice and delinquency prevention improvement programs is the Juvenile Justice and Delinquency Prevention Act of 1974, as amended [(2 U.S.C. 5601 et seq.).]

§ 31.3 Submission date.
Juvenile Justice Plans for Fiscal Year 1982 shall be submitted to the OJJDP within 60 days after States are notified of fiscal year 1982 Formula Grant allocations.

Subpart B—Eligible Applicants

§ 31.100 Eligibility.
All States as defined by Section 103(7) of the JJDPA Act.

§ 31.101 Establishment of State Criminal Justice Council.

Each state which chooses to apply for a formula grant shall establish or designate by law a State Criminal Justice Council unless an alternative State agency is designated by the Chief Executive and approved by the OJJDP Administrator pursuant to Section 261(c) of the JJDPA Act. States must assure they have available for review a copy of the State law establishing the Council, and a current list of Council membership.

§ 31.102 Membership of Council.
Pursuant to Section 1301(i) of the Justice System Improvement Act (JSIA) of 1979, States participating in the formula grant program of the Juvenile Justice and Delinquency Prevention Act, in addition to statutory membership requirements, must include on the State Criminal Justice Council the chairperson and at least two additional citizen members of that Act. For purposes of this requirement a citizen member is defined as any person who is not a full-time government employee or elected official. Any executive committee of the Council must include the same proportion of juvenile justice advisory group members as are included in the total Council membership.

Subpart C—General Requirements

§ 31.200 General.
This subpart sets forth general requirements applicable to formula grant recipients under the JJDPA Act of 1974, as amended. Applicants must assure compliance or submit necessary information on these requirements.

§ 31.201 Audit.
The State must assure that it adheres to the audit requirements enumerated in the "Financial and Administrative Guide for Grants” OJARS Guideline Manual 7100.1B, October 20, 1980. Chapter 8 of the Manual contains a comprehensive statement of audit policies and requirements relative to grantees and subcontractors.

§ 31.202 Civil rights.
(a) To carry out the State's Federal civil rights responsibilities the plan must:
(1) Designate a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements, assurances, and conditions are met and who shall act as liaison in all civil rights matters with OJJDP and the OJARS' Office of Civil Rights Compliance (OCRC).
(2) Contain the Council's Equal Employment Opportunity Program (EEOP), if required to maintain one under 28 CFR 42.301, et seq., where the application is for $500,000 or more.
(b) The application must provide assurance that the State will:
(1) Require that every applicant required to formulate an EEOP in accordance with 28 CFR 42.301 et seq., submit a certification to the State that it has a current EEOP on file, which meets the requirement therein.
(2) Require that every criminal or juvenile justice agency applying for a grant of $500,000 or more submit a copy of its EEOP (or if required to maintain one under 28 CFR 42.301, et seq.) to OCRC at the time it submits its application to the State;
(3) Inform the public and subgrantees of affected persons' rights to file a complaint of discrimination with OCRC for investigation;
(4) Cooperate with OCRC during compliance reviews of recipients located within the State, and
(5) Comply, and that its subgrantees and contractors will comply with the requirement that a Federal or State court or administration agency makes a finding of discrimination on the basis of race, color, religion, national origin, or sex (after a due process hearing) against a State or a subgrantee or contractor, the affected recipient or contractor will forward a copy of the finding to OCRC.

§ 31.203 Open meetings and public access to records.
The State must assure that it will comply with the requirements of Section 402(c)(2) of the Justice System Improvement Act.

Subpart D—Juvenile Justice Act Requirements

§ 31.300 General.
This subpart sets forth specific JJDPA Act requirements for application and receipt of formula grants.

§ 31.301 Funding.
(a) Allocation to States. Each State receives a base allotment of $225,000 except for the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Mariana Islands where the base amount is $50,250. Funds are allocated among the States on the basis of relative population under 18 years of age.
(b) Funds for Local Use. At least two-thirds of the formula grant allocation to the State must be used for programs by local government, or local private agencies unless the State applies for and is granted a waiver by the Office of Juvenile Justice and Delinquency Prevention.
(c) Match. Formula grants under the JJDPA Act shall be 100% of approved costs, with the exception of planning and administration funds, which require a 100% cash match (dollor for dollar), and construction projects funded under Section 227(a)(2) which require a 50% cash match.
(d) Funds for Administration. Not more than 7.5% of the total annual formula grant award may be utilized to develop the annual juvenile justice plan and pay for administrative expenses, including project monitoring evaluation. These funds are to be matched on a dollar for dollar basis. The State shall make available needed funds for planning and administration to units of local government or combinations on an equitable basis. Each annual application must identify uses of such funds.

§ 31.302 Applicant State Agency.
(a) Pursuant to Section 223(a)(2) and Section 261(c) of the JJDPA Act, the State assures that a State Criminal Justice Council or other State agency approved under Section 261(c) has been designated as the sole agency for supervising the preparation and administration of the plan and has the authority to implement the plan.
(b) The Chief Executive shall establish a Juvenile Advisory Group pursuant to Section 225(a)(3) of the JJDPA Act. The State shall provide a list of all current advisory group members, indicating their respective dates of appointment and how each member meets the membership requirements specified in this Section of the Act.
(4) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with Section 223(a)(12)(A) may, in lieu of addressing paragraphs (f)(1), (2), and (3) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.  

(5) Submit the report required under Section 223(a)(12)(B) of the Act as part of the annual monitoring report required by Section 223(a)(15) of the Act.

(g) Contact with Incarcerated Adults.  
(i) Pursuant to Section 223(a)(13) of the JJDPA the State shall:

(ii) Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met.  The term regular contact is defined as sight and sound contact with incarcerated adults, including inmate trustees.  This prohibition seeks to ensure a separation as possible and permits no more than haphazard or accidental contact between juveniles and incarcerated adults.  In addition, include a timetable for compliance and justify any deviation from a previously approved timetable.

(iii) In those isolated instances where juvenile criminal-type offenders remain confined in adult facilities or facilities in which adults are confined, the State must set forth the procedures for assuring regular sight and sound contact between such juveniles and adults.

(iv) Those States which, based upon the most recently submitted monitoring report, have been found to be in compliance with Section 223(a)(13) may, in lieu of addressing paragraphs (g)(1)(i), (ii), and (iii) of this section, provide an assurance that adequate plans and resources are available to maintain compliance.

(v) Assure that adjudicated offenders are not reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of segregating adults and juveniles in correctional facilities.  This does not prohibit or restrict waiver of juveniles to criminal court for prosecution, according to State law.  It does, however, preclude a State from administratively transferring a juvenile offender to an adult correctional authority or a transfer within a mixed juvenile and adult facility for placement with adult criminals either before or after a juvenile reaches the statutory age of majority.  It also precludes a State from transferring adult offenders to a juvenile correctional authority for placement.

(2) Implementation.  The requirement of this provision is to be planned and implemented immediately by each state in light of identified constraints on immediate implementation.  Immediate compliance is required where no constraints exist.  Where constraints exist, the designated date of compliance in the latest approved plan is the compliance deadline.  Those states not in compliance must show annual progress toward achieving compliance until compliance is reached.

(h) Removal of Juveniles from Adult Jails and Lock-ups.  Pursuant to Section 223(a)(14) of the JJDPA, the State shall:

(i) Describe its plan, procedure, and timetable for assuring that requirements of this section will be met by December 15, 1995.  Refer to § 31.303(i)(4) to determine the "exceptional circumstances" which have to exist to permit, in areas characterized by low population density with respect to the detention of juveniles and where no existing acceptable alternative placement is available, the temporary detention of juveniles accused of serious crimes against persons.

(ii) Describe the barriers which the State faces in removing all juveniles from adult jails and lock-ups.  This requirement excepts only those juveniles formally waived or transferred to criminal court and criminal charges have been filed, or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been involved through the filing of criminal charges.

(iii) For those States that have achieved "substantial compliance" with Section 223(a)(14) as specified in Section 223(c) of the Act, indicate the unequivocal commitment to achieving full compliance.  Attach documentation.

(3) For those States that have achieved "substantial compliance" as outlined in Section 223(c) of the Act, indicate the unequivocal commitment to achieving full compliance.  Attach documentation.
(i) Indicate how it will annually identify and survey all secure detention or correctional facilities, jails, lock-ups, and other facilities usable for the detention and confinement of juveniles.

(ii) Provide a plan for an annual on-site inspection of all such facilities identified in paragraph (d)(1) of this section. Such plan shall include a procedure for reporting and investigating compliance complaints in accordance with Section 223(a)(12)(A), (13), and (14).

(iii) Include a description of the barriers which the State faces in developing a monitoring system to establish and report the level of compliance with Sections 223(a)(12), (13), and (14).

(2) For the purpose of monitoring for compliance with Section 223(a)(12)(A) of the Act a secure detention or correctional facility is:

(i) Any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or non-offenders; or

(ii) Any secure public or private facility, which is also used for the lawful custody of accused or convicted adult criminal offenders.

(3) Valid Court Order [Reserved].

(4) Removal Exception (Section 223(a)(14)). The following conditions must be met in order for an accused juvenile criminal-type offender to be temporarily detained (for up to 48 hours) in an adult jail or lock-up:

(i) The geographic area which has jurisdiction over the juvenile has been certified as having a low population density, based upon specific criteria developed by the State and approved by OJJDP. The criteria developed must take into account total county population per square mile. The State must provide rationale for the criteria proposed.

(ii) The juvenile must be accused of a serious crime against persons to include: Criminal homicide, forcible rape, mayhem, kidnapping, aggravated assault, robbery, and extortion accompanied by threats of violence.

(iii) A determination must be made that there is no existing acceptable alternative placement available for the juvenile pursuant to criteria developed by the State and approved by OJJDP.

(iv) The county is not served by a local or regional juvenile detention facility. Generally, this phrase means that there is no public or private juvenile detention facility operated within the county or there is no public or private juvenile facility which is in operation to provide secure detention for accused juvenile offenders from that county.

(5) Reporting Requirement. The State shall report annually to the Administrator of OJJDP on the results of monitoring for Sections 223(a)(12), (13), and (14) of the JJJDP Act. Three copies of the report shall be submitted to the Administrator of OJJDP no later than December 31 of each year.

(i) To demonstrate the extent of compliance with Section 223(a)(12)(A) of the JJJDP Act, the report must at least include the following information for both the baseline and the current reporting periods:

(A) Dates of baseline and current reporting period.

(B) Total number of public and private juvenile detention and correctional facilities AND the number inspected on-site.

(C) Total number of accused status offenders and non-offenders held in any secure detention or correctional facility as defined in § 31.303(i)(2) for longer than 24 hours exclusive of non-judicial days, excluding those held pursuant to a judicial determination that the juvenile violated a valid court order.

(D) Total number of adjudicated status offenders and non-offenders held in any secure detention or correctional facility as defined in § 31.303(i)(2), excluding those held pursuant to a judicial determination that the juvenile violated a valid court order.

(E) Total number of status offenders held in any secure detention or correctional facilities pursuant to a judicial determination that the juvenile violated a valid court order.

(ii) To demonstrate the extent to which the provisions of Section 223(a)(12)(B) of the JJJDP Act are being met, the report must include the total number of accused and adjudicated status offenders and non-offenders placed in facilities that are:

(A) Not more than 5 miles from their home community;

(B) Not the least restrictive appropriate alternative; and

(C) Not community-based.

(iii) To demonstrate the progress toward and extent of compliance with Section 223(a)(13) of the JJJDP Act, the report must at least include the following information for both the baseline and the current reporting periods:

(A) Designated date for achieving full compliance.

(B) The total number of facilities that can be used for the secure detention and confinement of both juvenile offenders and adult criminal offenders.

(C) The total number of facilities used for the secure detention and confinement of both juvenile offenders and adult criminal offenders during the past 12 months AND the number inspected on-site.

(D) The total number of facilities used for secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide adequate separation.

(E) The total number of juvenile offenders and non-offenders NOT adequately separated in facilities used for the secure detention and confinement of both juveniles and adults.

(iv) To demonstrate the progress toward and extent of compliance with Section 223(a)(14) of the JJJDP Act the report must at least include the following information for the baseline and current reporting periods:

(A) Dates of baseline and current reporting period.

(B) Total number of adult jails in the State AND the number inspected on-site.

(C) Total number of adult lock-ups in the State AND the number inspected on-site.

(D) Total number of adult jails holding juveniles during the past twelve months.

(E) Total number of adult lock-ups holding juveniles during the past twelve months.

(F) Total number of adult jails and lock-ups in areas meeting the "removal exceptions" as noted in subparagraph 4 above, including a list of such counties.

(G) Total number of juvenile-criminal-type offenders held in adult jails in excess of six hours.

(H) Total number of juvenile-criminal-type offenders held in adult lock-ups in excess of six hours.

(i) Total number of accused and adjudicated status offenders and non-offenders held in any adult jail or lock-up as defined in Section 31.304.

(j) Total number of juveniles accused of a serious crime against persons held for less than 48 hours in adult jails and lock-ups in areas meeting the "removal exception" as noted in subparagraph 4 above.

(k) Compliance. The State must demonstrate the extent to which the requirements of Section 223(a)(12)(A), (13), and (14) of the Act are met. Should the State fail to demonstrate compliance with the requirements of these Sections within designated time frames, eligibility for formula grant funding shall terminate. The compliance levels are:

(i) Substantial compliance with Section 223(a)(12)(A) requires within three years of initial plan submission achievement of a 75% reduction in the aggregate number of status offenders and non-offenders held in secure detention or correctional facilities or removal of 100% of such offenders from secure correctional facilities only. In
addition, the State must make an unequivocal commitment, through appropriate executive and legislative action, to achieving full compliance within two additional years. Full compliance is achieved when a State has removed 100% of such juveniles from secure detention and correctional facilities or can demonstrate full compliance with de minimis exceptions pursuant to the policy criteria contained in the Federal Register of January 3, 1981 (46 FR 2566-2568).

(ii) Compliance with Section 223(a)(13) has been achieved when a State can demonstrate that:
(A) The last submitted monitoring report, covering a full 12 months of data, demonstrates that no juveniles were incarcerated in circumstances that were in violation of Section 223(a)(13); or
(B)(j) State law, regulation, court rule, or other established executive or judicial policy clearly prohibits the incarceration of all juvenile offenders in circumstances that would be in violation of Section 223(a)(13);
(2) All instances of noncompliance reported in the last submitted monitoring report were in violation of, or departures from, the State law, rule, or policy referred to in paragraph (i)(6)(ii)(B)(j) of this section;
(3) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances; and
(4) Existing mechanisms for the enforcement of the State law, rule, or policy referred to in paragraph (i)(6)(ii)(B)(j) of this section are such that the instances of noncompliance are unlikely to recur in the future.

(iii) Substantial compliance with Section 223(a)(14) requires the achievement of a 75% reduction in the number of juveniles held in adult jails and lock-ups by December 3, 1985 and that the State has made an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance within two additional years.

(7) Monitoring Report Exceptions. States which have been determined by the OJJDP Administrator to have achieved full compliance with Section 223(a)(12)(A) and compliance with Section 223(a)(13) of the Juvenile Justice Act and which wish to be exempted from the annual monitoring report requirements must submit a written request to the OJJDP Administrator which demonstrates that:
(i) The State provides for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to enable an annual determination of State compliance with Sections 223(a)(12)(A), (13), and (14) of the JDP Act;
(ii) State legislation has been enacted which conforms to the requirements of Sections 223(a)(12)(A) and (13) of the Juvenile Justice Act; and
(iii) The enforcement of the legislation is statutorily or administratively prescribed, specifically providing that:
(A) Authority for enforcement of the statute is assigned;
(B) Timeframes for monitoring compliance with the statute are specified; and
(C) Adequate sanctions and penalties that will result in enforcement of the statute and procedures for remediating violations are set forth.

(j) Juvenile Crime Analysis. Pursuant to Section 223(a)(9)(A) and (B) the State shall conduct an analysis of juvenile crime problems and juvenile justice and delinquency prevention needs.

(1) Analysis. The analysis must be provided in the manner of application. A suggested format for the analysis is provided in the Formula Grant Application Kit.

(2) Product. The product of the analysis is a series of brief written problem statements set forth in the application that define and describe the priority problems.

(3) Projects. Applications are to include descriptions of programs to be supported with Juvenile Justice Act formula grant funds. A suggested format for these programs is included in the application kit.

(k) Performance Indicators. A list of performance indicators must be developed and set forth for each program. These indicators show what data will be collected at the program level to measure whether objectives and performance goals have been achieved and should relate to the measures used in the problem statement and statement of program objectives.

(l) Concentration of State Effort. Pursuant to Section 223(a)(9)(C) the State shall assure that it has on file a plan for the concentration of State efforts as they relate to the coordination of all State juvenile delinquency programs with respect to overall policy and development of objectives and priorities for all State juvenile delinquency programs and activities.

(1) Annual Performance Report. Pursuant to Section 223(a) and Section 223(a)(21) the State Plan shall provide for submission of an annual performance report. The State shall report on its progress in the implementation of the approved programs, described in the three-year plan. The performance indicators will serve as the objective criteria for a meaningful assessment of progress toward achievement of measurable goals.

(m) Equitable Distribution of Juvenile Justice Funds and Assistance to Disadvantaged Youth. The State shall assure that it complies with Sections 223(a)(7) and (16) of the JDP Act.

(a) Advanced Techniques. The State shall assure that it complies with Section 223(a)(10) of the JDP Act.

(o) Analytical and Training Capacity. The State shall assure that it complies with Sections 223(a)(11) and (12) of the JDP Act.

(p) Equitable Arrangements for Employees Affected by Assistance Under the Act. Pursuant to Section 223(a)(18) the State shall assure that fair and equitable arrangements are made to protect the interests of employees affected by assistance under the Act.

(q) Non-Substitution. The State shall assure that it complies with Section 223(a)(20) of the JDP Act.

(r) Technical Assistance. States shall include, within their plan, a description of technical assistance needs. Specific direction regarding the development and inclusion of all Technical Assistance needs and priorities will be provided in the "Application Kit for Formula Grants under the JDDPA."

(e) Other Terms and Conditions. Pursuant to Section 223(a)(22) of the JJPDA Act, States shall agree to other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of programs assisted under the formula grant.

§ 31.304 Definitions.

(a) Private agency. A private non-profit agency, organization or institution is:

(1) Any corporation, foundation, trust, association, cooperative, or accredited institution of higher education not under public supervision or control; and

(2) Any other agency, organization or institution which operates primarily for scientific, educational, service, charitable, or similar public purposes, but which is not under public supervision or control, and not part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by IRS to be tax-exempt under the provisions of Section 501(c)(3) of the 1954 Internal Revenue Code.

(b) Secure. As used to define a detention or correctional facility this term includes residential facilities which have fixtures designated to physically restrict the movements and activities of persons in custody such as locked rooms
and buildings, fences, or other physical structures.

(c) Facility. A place, an institution, a building or part thereof, set of buildings or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned and/or operated by public and private agencies.

(d) Juvenile who is accused of having committed an offense. A juvenile with respect to whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court.

(e) Juvenile who has been adjudicated as having committed an offense. A juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender.

(f) Juvenile offender. An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law, i.e., a criminal-type offender or a status offender.

(g) Criminal-type offender. A juvenile offender who has been charged with or adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

(h) Status offender. A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

(i) Non-offender. A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes for reasons other than legally prohibited conduct of the juvenile.

(j) Lawful custody. The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law or of a judicial order or decree.

(k) Other individual accused of having committed a criminal offense. An individual, adult or juvenile, who has been charged with committing a criminal offense in a court exercising criminal jurisdiction.

(l) Other individual convicted of a criminal offense. An individual, adult or juvenile, who has been convicted of a criminal offense in a court exercising criminal jurisdiction.

(m) Adult jail. A locked facility, administered by State, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than one year.

(n) Adult lockup. Similar to an adult jail except that an adult lock-up is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

Subpart E—General Conditions and Assurances

§ 31.400 Compliance with statute.


§ 31.401 Compliance with other Federal laws, orders, circulars.

The applicant State must further assure and certify that the State and its subgrantees and contractors will adhere to regulations of the Department and other applicable Federal laws, orders and circulars. These general Federal laws and regulations are described in greater detail in the "Fiscal Year 1982 Application Kit for Formula Grants under the JJPDP Act."

§ 31.402 Application file.

Any Federal funds awarded pursuant to an application must be distributed and expended pursuant to and in accordance with the programs contained in the applicant State’s current approved application and any advance funds will not be awarded for any program not specifically approved and clearly set forth in the current comprehensive application. Any departures therefrom, other than to the extent permitted by current program and fiscal regulations and guidelines, must be submitted for advance approval by the Administration or of OJJDP.

§ 31.403 Non-discrimination.

The State assures that it will comply, and that subgrantees and contractors will comply, with all applicable Federal nondiscrimination requirements, including:

(a) Section 515(c)(1) of the Justice System Improvement Act of 1979, as made applicable by Section 282(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended;

(b) Title VI of the Civil Rights Act of 1964;

(c) Section 504 of the Rehabilitation Act of 1973, as amended;

(d) Title IX of the Education Amendments of 1972;

(e) The Age Discrimination Act of 1975; and

(f) The Department of Justice Nondiscrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and F.
DEPARTMENT OF JUSTICE
Office of Juvenile Justice and Delinquency Prevention

34 C.F.R. Part 3

Subparts A and B

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is giving notice that its final rule, published in the Federal Register of May 17, 1982, will be effective July 1, 1982, with the exception of a portion of § 31.303(i)(3)(iv)(B), which is stayed pending additional comments. OJJDP is requesting further comments on this specific clause of the regulation. The regulation implements the Violent Child Act of 1977 (Public Law 95-211) and the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322) as amended, establishing a basic framework within which States law procedures and practices may be examined. The rule provides for the implementation of the Violent Crime Control and Law Enforcement Act of 1994. OJJDP is requesting further comments on this specific clause of the rule. The rule provides for the implementation of the Violent Crime Control and Law Enforcement Act of 1994. OJJDP is requesting further comments on this specific clause of the rule.

DATES: All comments on § 31.303(i)(3)(iv)(B) (first clause) of the regulation due are on or before July 30, 1982. Unless comments on this clause result in its modification through further notice in the Federal Register by August 12, 1982, then the reserved clause of the final rule, as published in the Federal Register of May 17, 1982, shall become effective on August 13, 1982.

ADDRESS: Send all comments to David D. West, Director, Office of Juvenile Justice and Delinquency Prevention, 200 Constitution Avenue, N.W., Washington, D.C. 20531.


SUPPLEMENTARY INFORMATION: On May 17, 1982, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) published in the Federal Register a Notice of Final Rule with Request for Comments” (47 FR 21226). OJJDP requested comment on its regulation to implement the Violent Child Act and Delinquency Prevention Act of 1994, as amended. The regulation is § 31.303(i)(3) of 28 CFR Part 31 (Appendix A), which implements the formula grant program established by the Act.

In its May 17, 1982 Federal Register publication, OJJDP stated that unless final comments raised major issues not already considered by OJJDP which resulted in modification of the regulation, it would become effective on July 1, 1982.

During the comment period, such an issue was raised by the National Council of Juvenile and Family Court Judges, by individual members of the Council, and by other judges and judicial system representatives. This issue involves the clause of § 31.303(i)(3)(iv)(B) which establishes the conditions under which a juvenile accused of violating a valid court order may be held in secure detention after a judicial determination has been made, based on a hearing, that there is probable cause to believe the youth violated the court order. In such case, the first clause of § 31.303(i)(3)(iv)(B) provides the following two circumstances under which detention pending a violation hearing would be sanctioned:

"(B) the juvenile has a demonstrable recent record of willful failure to appear at family court proceedings or a demonstrable recent record of violent conduct resulting in physical injury to self or others."

The commentators raised the following issues related to this clause:

1. The proposed limitation on judicial authority to place a status offender charged with a violation of a valid court order in secure detention is inconsistent with the plain language of § 223(a)(12)(A), which places no limit on this authority;

2. The proposed limitation fails to provide States with the ability to authorize detention where needed to comply with the State's responsibility to detain and return runaway children under the Interstate Compact on Juveniles;

3. The proposed limitation fails to provide States with the ability to authorize detention for other protective purposes such as when a parent, guardian, or custodian cannot be found for the juvenile, when a juvenile requests that he or she be held in secure detention, or when the juvenile is a chronic or habitual runaway; and

4. The requirement for a "demonstrable recent record" in the proposed regulation provides interpretation problems in the matter of quantum of proof required, particularly in view of the 24 hour limitation on secure custody prior to a probable cause hearing.

The cited clause of § 31.303(i)(3)(iv)(B) of the regulation, limiting pre-violent hearing detention to the two circumstances, was the subject of commentary under Paragraph 2 of the Explanation of Changes section of the May 17, 1982 Federal Register announcement. Commentators should also refer to Paragraph 15 of the Discussion of Other Comments section of the May 17, 1982 Federal Register which discusses the out-of-State runaway issue. These paragraphs are set forth at Appendix B.

No other comments received in response to the May 17, 1982 Federal Register announcement are considered to have raised major issues not already considered by OJJDP. Therefore, as provided in that announcement, 28 CFR 31.303(i)(3) printed in the Federal Register of May 17, 1982, is effective July 1, 1982 with the exception of the portion of § 31.303(i)(3)(iv)(B) set forth below, which is stayed until further notice pending additional comments:

"(B) the juvenile has a demonstrable recent record of willful failure to appear at family court proceedings or a demonstrable recent record of violent conduct resulting in physical injury to self or others."

Charles A. Lauer,
Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

Appendix A to Preamble

For the convenience of the user, we are reprinting the final rule promulgated on May 17, 1982 (47 FR 21230).

PART 31—FORMULA GRANTS

§ 31.303 Substantive requirements.

(1)...

(2) Valid Court Order. For the purpose of determining whether a valid court order exists and a juvenile has been found to be in violation of that valid order all of the following conditions must be present prior to secure incarceration:

(i) The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to a proper authority. The order must be one which regulates future conduct of the juvenile;

(ii) The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures;

(iii) The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile and to his attorney and/or to his legal guardian in writing and be reflected in the court record and all judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction.
judicial. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, only if (A) the juvenile has a demonstrable recent record of willful failure to appear at family court proceedings or a demonstrable recent record of violent conduct resulting in physical injury to self or others. In such case the juvenile may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed 72 hours exclusive of nonjudicial days. A juvenile found in a violation hearing to have violated a court order may be held in a secure detention or correctional facility.

(v) Prior to and during the violation hearing the following full due process rights must be provided:

(A) The right to have the charges against the juvenile in writing served upon him a reasonable time before the hearing;

(B) The right to a hearing before a court;

(C) The right to an explanation of the nature and consequences of the proceedings;

(D) The right to legal counsel, and the right to have such counsel appointed by the court if indigent;

(E) The right to confront witnesses;

(F) The right to present witnesses;

(G) The right to have a transcript or record of the proceedings; and

(H) The right of appeal to an appropriate court.

(vi) In entering any order that directs or authorizes disposition of placement in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine on the record that all the elements of a valid court order (paragraphs (i)(3), (i), (ii), (iii) of this section) and the applicable due process rights (paragraph (ii)(3), (v) of this section) were afforded the juvenile and the judge must determine on the record that there is no less restrictive alternative appropriate to the needs of the juvenile and the community.

(vii) A non-offender such as a dependent or neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.

Appendix B to Preamble

For the convenience of the user, we are reprinting pro portions of the preamble to the final rule promulgated May 17, 1982 (47 FR 21226). The following excerpt reviews the rationale for the clause we are staying

[§ 31.303(i)(3)(iv)(B)];

OJJDP's position, strongly supported by the comment and testimony, is that status offenders, including those accused or found to have violated a valid court order, will seldom need to be detained in secure detention or correctional facilities. Such juveniles should, whenever possible, be released to a parent or legal guardian or be placed in a foster home or shelter facility pending an adjudicatory violation or dispositional hearing or as a dispositional alternative.

The legislative history of the "valid court order" amendment reflects the fact that this exception was intended by the Congress to give the juvenile or family court judge the ability to enforce valid court orders by authorizing secure incarceration of those status offenders who "continually flout the will of the court," who "chronically refuse voluntary treatment," or who are considered "chronic offenders" as the result of a pattern of continued violations of the court's orders. The legislative history also states that the judicial discretion to securely detain a status offender for violating a valid court order "would be rarely used as far as a juvenile judge would go." Thus, consistent with NAC Standard 31.52, Criteria for Detention in Secure Facilities, and the legislative history, the regulation was modified.

The regulation now provides that, where it has been judicially determined that there is probable cause to believe a status offender violated a valid court order, secure detention pending the violation hearing may be authorized if the juvenile has a demonstrable recent record of willful failure to appear in court or a demonstrable recent record of violent conduct resulting in physical injury to self or others. This provision of the regulation is consistent with the basic principles regarding the use of short-term secure settings pending adjudication or disposition. Secure detention prior to a violation hearing should only be used when it is needed to assure appearance in court or for protective purposes and should not be used as a punitive measure. If a juvenile accused of violating a valid court order has no recent history of failing to appear, then there is no need to securely hold the juvenile to assure court appearance. Similarly, if the juvenile has no recent record of violent conduct resulting in physical harm to self or others, there is no need to securely detain the juvenile for protective purposes. The term "demonstrable record" is not intended to require introduction of a certified copy of a prior adjudication order or certified documents that the juvenile has recently and willfully failed to appear at family court proceedings, but should include more than mere allegations of prior failure to appear or violent conduct.

- - - -

The following excerpt reviews the rationale for the clause we are staying today [86 CFR 31.303(i)(3)(iv)(B)];

15. Recommendation: The OJJDP regulations should address the time limits on secure detention of out-of-state runaways.

OJJDP Response: This issue is beyond the scope of the valid court order provision. The experience of the States has shown that there are few instances where the out-of-state runaway needs to be held beyond the 24-hour grace period. For those instances when it is necessary, the criteria for de minimis exceptions to full compliance with Section 223(a)(12)(A) [See 46 FR 2565-2589] has a provision to consider the holding of out-of-state runaways an exceptional circumstance when such holding meets specified criteria.

[FR Doc. 82-17505 Filed 6-29-82; 8:45 am]
APPENDIX E

- ARCHITECTURAL RENDERINGS
  AND RECOMMENDATIONS
ARCHITECTURAL RECOMMENDATIONS

The plan presented is designed using a liberal approach to area required for each function.

The plan is presented as a basis for space relationships only and not as mandatory by code or regulation.

Some functions are duplicated and may be reduced in number.

Some spaces have multi-use capability.

Facilities to be shared with Regional Jail would be:
- Food Preparation
- Storage
- Transportation
- Administration

BUILDING COST AND SQUARE FOOTAGE

Heated Space 9936 square feet

\[ \times 40 \text{ dollars per square foot} \]

Estimated Cost 397,440.00
SPACE DESCRIPTION

VISITOR PARKING
One per secured bed plus two for staff
SALLY PORT
Secured or Non-secured loading and unloading
VISITOR WAITING
For families awaiting hearing
CONFERENCE
Multi-use area for attorney, case worker, probation officer, visiting
VISITOR TOILETS
For use with unsecured area
BOOKING
Initial contact, records and sub-administration
BOOKING DESK
Staff area
HOLDING
Temporary initial restraint and visiting
REFEREE HEARING
Status determination accommodating attorneys and families, etc.
TOILETS
For use with Conference and Referee areas
BOY'S CLEAN UP
Initial processing
BOY'S POSSESSIONS
Lockers for personal belongings and storage of in-house clothing
OUTSIDE STORAGE
PROTECTIVE RESTRAINT
Padded lock-up
BOY'S TOILET
Secured area
SUPERVISOR'S TOILET
GIRL'S TOILET
Secured area
SUPERVISION
Raised barrier between secured areas
GIRL'S CLEAN UP
Initial processing
GIRL'S POSSESSIONS
Lockers for personal belongings and storage of in-house clothing
OUTSIDE STORAGE
PROTECTIVE RESTRAINT
Padded lock-up
GIRL'S DAY ROOM
Dining and indoor activity
GIRL'S SLEEPING ROOM
Bed, desk and chair, combination toilet and lavatory
BOY'S DAY ROOM
Dining and indoor activity
BOY'S SLEEPING ROOM
Bed, desk and chair, combination toilet and lavatory
BOY'S OUTSIDE ACTIVITY
GIRL'S OUTSIDE ACTIVITY

HOUSE PARENTS AREA
This area could function as non-secure personnel care and protection.

BASIC MECHANICAL RECOMMENDATIONS
Structure to be as maintenance free and durable as possible
Carpeting is recommended for acoustics
Heating-Ventilation-Air Conditioning should be centralized
Sprinkler type fire protection throughout
APPENDIX F

OTHER

ARKANSAS PROGRAM INITIATIVES TO REMOVE JUVENILES FROM JAIL
Brief description of programs operating in Arkansas to remove juveniles from jail.

Two pilot projects funded under the Jail Removal Initiative through the OJJDP are operating in north eastern Arkansas. The Western Arkansas County Judges Youth Shelter Association provides services to the 6 rural counties of Franklin, Johnson, Logan, Yell, Scott and Polk. The program is directed by Mr. Larry Hart and offers 24-hour intake in each county, a 14-bed shelter facility, and transportation services.

The intake officer and probation officer positions have been combined and their salary and expenses/supplies is $16,727 ($12,000 of which is for salary). The police officer contacts the intake officer when a juvenile (anyone under 18 except felons) is arrested. The policy is that juveniles are not permitted beyond the office of the jail and that the intake officer or director is to go to the jail within 6 hours of the call to decide whether to return home or send to the shelter.

The Ozark Mountain, Arkansas Rural Region Commission (OMARR) provides services to the 5 counties of Baxter, Boone, Marion, Newton, and Searcy. Mr. Gay Rory, a retired county judge and juvenile referee, is the director. Funding is used for an intake/probation officer position in each county and a 2-bed detoxification center at the central office in Yellville. (This service is used infrequently, says the director as police are permitted to jail those arrested for being drunk or DWI.) The program contracts for shelter beds at Johnson Brother's Youth Ranch, the North Arkansas Youth Shelter in Magnus and the Assembly of God home in Hot Springs. A network of foster homes is currently being developed.

Both directors would be willing to discuss their programs with you.

Mr. Larry Hart, Cecil, Ark. - 501-667-2946
Mr. Gay Rory, Yellville, Ark. - 501-449-5242
Jail Removal
Cost Study
Volume 2
SCENARIO OF OZARK MOUNTAIN ARKANSAS RURAL REGION (OMARR)