

**A PRACTITIONER'S  
GUIDE TO  
JUVENILE DETENTION  
IN KENTUCKY**

*The Children's Law Center, Inc.*



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# Index

## A

Adair Regional Juvenile Detention Center .....	III-7
Administrative Office of the Courts (AOC) .....	I-7
Admissions Release Committee (ARC).....	VII-5, 13
Alternatives to Detention .....	I-1, 8; III-8
Types of Alternatives to Detention.....	I-10, III-9
Juvenile Detention Alternatives Initiative (JDAI) .....	I-1
<i>Pathways to Juvenile Detention Reform</i> .....	I-1
Sanctions for Violating Alternatives to Detention.....	I-12
Americans with Disabilities Act (ADA).....	VII-2, 12
Annie E. Casey Foundation .....	I-1
Attention Deficit Hyperactivity Disorder .....	F-3

## B

Beyond Control of Parents.....	B-1
Beyond Control of School .....	B-1
<i>Beyond In re Gault: The Status of Juvenile Defense in</i>	
Kentucky .....	II-12
Bipolar Disorder.....	F-4
Boyd Regional Juvenile Detention Center.....	III-7
Breathitt Regional Juvenile Detention Center .....	III-7
Building Blocks for Youth Initiative: <i>And Justice for Some:</i>	
<i>Differential Treatment of Minority Youth in the Justice</i>	
<i>System</i> .....	II-8

## C

Campbell Regional Juvenile Detention Center.....	III-7
Case Processing, Delays .....	I-13
Certified Juvenile Facility Staff .....	B-1
Challenge Grant Funds .....	II-4
Child Find Obligation .....	VII-3
Commissioner's Warrant .....	IV-11
Conditions of Confinement	
Checklist .....	D-1
Classification by:	
Age.....	VI-4
Propensity for Violent Behavior .....	VI-5
Sex.....	VI-5
Clothing and Personal Items .....	VI-12
Constitutional Challenges to.....	VI-1
Diet .....	VI-10
Education .....	VI-8
Environmental Hazards.....	VI-11
Exercise.....	VI-8

Fire Safety.....	VI-11
Health Care Issues.....	VI-5; D-2
Minimum Standards for Care.....	VI-5
Isolation.....	VI-12
<i>Juvenile Detention and Corrections Facilities</i> .....	VI-1
Lighting.....	VI-11
Mail .....	VI-6
Overcrowding .....	VI-11
Punishment.....	VI-13
Religion.....	VI-9
Restraints.....	VI-12; D-4
Safety .....	VI-13; D-4
Sanitation .....	VI-10; D-3
Telephone.....	VI-7
Ventilation.....	VI-10
Visitation.....	VI-7
Work .....	VI-9
Conduct Disorder .....	F-2
Contempt of Court, Violation of Court Order	
By Status Offenders .....	IV-6
Valid Court Order Requirement.....	IV-6
Counsel	
Right to.....	V-2; C-1
Waiver of .....	V-2
Court Designated Worker (CDW) .....	I-7; III-3; IV-2, 5
Intake .....	III-4
Court Findings .....	V-5; C-1
<b>D</b>	
Decision to Detain	
Appeal of.....	V-11
Judicial Review of.....	V-12
Department of Corrections.....	III-1
Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP).....	II-1
Department of Juvenile Justice (DJJ) .....	II-5, 6, 12; III-2;
	IV-2
Commissioner’s Warrant .....	IV-11
Kentucky’s Statewide Detention Plan .....	III-6
Notification, When Juvenile Detained.....	IV-2
Detention	
By Police, Taking into Custody .....	IV-2
Definition of.....	IV-1; B-1
For Motor Vehicle Offenses .....	IV-7
Length of.....	V-4
Of Public Offenders by District Court.....	IV-3

Of Status Offenders by District and Family Court .....	IV-4
Types of Detention.....	IV-1
Detention Alternatives Coordinator.....	III-8
Detention Centers	
Kentucky’s Regional Centers .....	III-7
Training and Supervision of Employees.....	VI-9
Detention Facilities	
Types of .....	III-4
Detention Hearing	
Definition of.....	B-1
Timing of .....	V-4; C-1
Detention Resources .....	A-1
Detention Subsidy Payments .....	III-10
Disabilities, Juveniles With	
Educational Disabilities .....	VIII-5
Prevalence of.....	VIII-5
Emotional Disturbance.....	VIII-7
Evaluation of.....	VII-4
Identification of.....	VII-4
Learning .....	VIII-7
Mental Health.....	VIII-3
Placement of.....	VII-13
Disproportionate Minority Confinement (DMC).....	II-3, 6
<i>Beyond In re Gault: The Status of Juvenile Defense</i>	
<i>In Kentucky</i> .....	II-12
<i>Building Blocks for Youth Initiative: And Justice for</i>	
<i>Some: Differential Treatment of Minority Youth</i>	
<i>in the Justice System</i> .....	II-8
<i>DMC Technical Assistance Manual</i> .....	II-12
<i>Kentucky Disproportionate Minority Confinement</i>	
<i>Initiative Interim Report</i> .....	II-10
Kentucky Juvenile Justice Advisory Committee (JJAC).....	II-13
<i>Minorities in the Juvenile Justice System</i> .....	II-7
Subcommittee on Equity and Justice for All	
Youth (SEJAY).....	II-13
Diversion of Juvenile by Peace Officer .....	IV-3
<i>DMC Technical Assistance Manual</i> .....	II-12
Due Process Protections	
Education .....	VII-9
Dysthymia.....	F-1
<b>E</b>	
Education	
Due Process Protections.....	VII-9
Hearings .....	VII-10
Free Appropriate Public Education.....	VII-2



Individualized Education Program (IEP).....	VII-5
Individuals with Disabilities Education Act (IDEA).....	VII-2
Due Process Hearings .....	VII-10
Mediation .....	VII-10
Proposed Juvenile Detention Education Standards.....	E-1
Emergency Shelter .....	B-2

**F**

Fayette Regional Juvenile Detention Center.....	III-7
Felony: Class A or B.....	III-9; IV-1
Free Appropriate Public Education.....	VII-2
Formula Grants Program: Title II of JJDPA.....	II-1, 4

**G**

Girls in the Juvenile Justice System	
Interpersonal Relationships.....	VIII-14
Mental Health Problems .....	VIII-13
Special Needs of .....	VIII-12
Substance Abuse Problems .....	VIII-13
Trauma .....	VIII-13

**H**

Habeas Corpus	
Writ of.....	V-10
Habitual Runaway.....	B-2
Habitual Truant .....	B-2
Hardin Regional Juvenile Detention Center .....	III-7
House Bill 296 .....	II-6; V-4

**I**

Individualized Education Program (IEP).....	VII-5
Individuals with Disabilities Education Act (IDEA).....	VII-2
Due Process Hearings .....	VII-10
Emotional Disturbance	
Definition of.....	VIII-7
Manifestation Determination .....	VII-15
Expedited Appeal of .....	VII-16
Mediation .....	VII-10
Intermittent Holding Facilities.....	II-3, 6; III-5; IV-2; B-2

**J**

Jail and Lockup Removal.....	II-3
Six-Hour Hold Exception .....	II-3
Rural Exception .....	II-3
Jefferson County Juvenile Detention Center .....	III-7

Juvenile Detention Alternatives Initiative (JDAI) .....	I-1; III-6
Administrative Office of the Courts .....	I-7
Court Designated Workers.....	I-7
<i>Pathways to Juvenile Detention Reform</i> .....	I-1
Juvenile Detention Facilities	
For Public Offenders.....	IV-1
For Status Offenders .....	IV-1
Types of .....	III-4; IV-1
Juvenile Holding Facility.....	III-5; B-2
Juvenile Justice Advisory Committee (JJAC) .....	II-4, 13
Juvenile Justice and Delinquency Prevention Act (JJDP A) .....	II-1, 3; III-1; VI-4
Challenge Grant Funds .....	II-4
Disproportionate Minority Confinement .....	II-3, 7
Title II Formula Grants Program .....	II-1, 4

## K

<i>Kentucky Disproportionate Minority Confinement Initiative</i>	
<i>Interim Report</i> .....	II-10
Kentucky Education Reform Act (KERA) .....	VII-1
Kentucky Program of Studies .....	VII-4
Kentucky’s Statewide Detention Plan .....	III-6
Regional Juvenile Detention Facilities .....	III-7
Kentucky Unified Juvenile Code of 1980.....	III-2

## L

Laurel Regional Juvenile Detention Center.....	III-7
Least Restrictive Alternative.....	B-2
Least Restrictive Environment.....	VII-3

## M

Major Depressive Disorder .....	F-1
Mandamus	
Writ of.....	V-11
Manic Depressive Disorder.....	F-4
Manifestation Determination .....	VII-15
Expedited Appeal of .....	VII-16
McCracken Regional Juvenile Detention Center.....	III-8
Mental Health Disorders .....	VIII-3
Minorities in the Juvenile Justice System.....	II-7; V-9
Motor Vehicle Offenses.....	V-9; B-3
Detention for .....	IV-7

## N

National Council on Crime and Delinquency (NCCD) .....	VIII-13
National Mental Health Association.....	VIII-11

Non-Offenders  
    Detention of .....V-8; C-3

**O**

Office of Juvenile Justice and Delinquency Prevention (OJJDP) .....II-1, 3, 5  
Oppositional Defiant Disorder .....F-2

**P**

*Pathways to Juvenile Detention Reform* .....I-1  
Physically Secure Facility .....B-4  
Post Traumatic Stress Disorder .....F-4  
Prison Litigation Reform Act of 1995 .....VI-3  
Prohibition  
    Writ of .....V-11  
Proposed Juvenile Detention Education Standards .....E-1  
Public Offenders .....IV-1, 3  
    Detention of .....IV-3; V-7, 8; C-2  
    Limitations on Detention .....IV-3; C-2  
Public Offense .....B-3

**Q/R**

Regional Juvenile Detention Plan .....III-5  
Rehabilitation Act of 1974 .....VII-2, 12  
Retain in Custody .....B-3  
Risk Assessment Instrument .....III-8

**S**

Secure Juvenile Detention Facility .....III-4; B-3  
Separation of Juveniles from Adult Offenders .....II-2  
Special Education .....VII-8  
*Statistical Manual of Mental Disorders* .....VIII-1  
Status Offenders  
    Contempt of Court/Valid Court Order Requirement .....IV-6  
    Detention of .....IV-4, V-6, 8; C-2  
    Deinstitutionalization of .....II-1  
    Jail and Lockup Removal .....II-3  
    Limitation on Detention .....IV-4  
    Secure Detention, Prohibited .....II-6  
    Separation of Juveniles from Adult Offenders .....II-2  
    Twenty-four-hour Hold Exception .....II-1  
    Valid Court Order Exception .....II-2; C-2  
Status Offenses .....IV-1; B-3  
    Types of .....IV-5  
Subcommittee on Equity and Justice for All Youth (SEJAY) .....II-13

**T**

Taking into Custody, Detention by Police.....IV-2; B-3  
    Status Offenders.....IV-4  
Title II, Juvenile Justice and Delinquency Prevention Act.....II-1, 4  
    Formula Grants Program.....II-1, 5  
Twenty-Four-Hour Hold Exception.....II-1

**U/V**

Valid Court Order .....II-2; V-6; B-4  
Violation of Court Order, Contempt of Court .....IV-6

**W**

Warren Regional Juvenile Detention Center .....III-8  
Writ of Habeas Corpus.....V-10  
Writ of Mandamus .....V-11  
Writ of Prohibition.....V-11

**X/Y/Z**

Youthful Offenders .....IV-8  
    Committing to Department of Corrections .....IV-10  
    Definition of .....IV-8; B-4  
    Parole .....IV-10  
    Sentencing of .....IV-9  
    Transfer to Circuit Court.....IV-8

## **FOREWARD**

Kentucky's juvenile detention practices have historically been marked with controversy, divergent philosophical goals, and even litigation. A county operated system of detention, mostly consisting of a wing or unit in an adult jail, housed the majority of juveniles who were securely detained by judges. While the passage of the Kentucky Unified Juvenile Code in 1988 initially called for juveniles to be housed in separate juvenile detention facilities, and established the Court Designated Worker (CDW) program and detention intake criteria, the state lacked an overall detention system which included adequate facilities, alternatives to detention, and a system of regulating the intake and processing of cases.

While the Commonwealth was a long time participant in the Juvenile Justice and Delinquency Prevention Act (JJDP) formula grant program, years of non-compliance eventually resulted in the state's removal from this formula grant program. The state's non-compliance included significant numbers of juveniles being housed in adult jail facilities, and high numbers of status offenders being detained in violation of the Act. As such, the state lost millions of dollars in JJDP funding from 1992-1996.

Conditions in individual jail facilities also brought about a rash of class action lawsuits, including suits against the facilities in Kenton, Daviess and Franklin Counties. These suits challenged conditions in local jails that held juveniles, including claims of improper supervision, poor environmental conditions, lack of education and other programming and inadequately trained staff.

With the creation of the Department of Juvenile Justice in 1996, as well as legislative changes to comport with the JJDP, Kentucky has made significant strides in creating a state operated detention system based on a set of guiding principles and effective practices. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has restored Kentucky as a participating state in the formula grant program, making it once again eligible for JJDP funds.

While Kentucky has made great strides in juvenile detention in the last five (5) years, these reforms are still in their infancy. In support of these reform efforts, this manual was produced to fill a void in the literature and resource materials available to judges, CDWs, prosecutors, defense attorneys and others involved in the juvenile justice system. This manual provides a summary and analysis of various state and federal laws and regulations pertaining to detention, as well as providing the reader with an understanding of the special needs of youth who are detained, along with "best practices" to be considered throughout the state.

The compilation of this manual involved a multi-disciplinary group of professionals dedicated to juvenile justice who agreed to serve in an advisory capacity. This included several judges from both the circuit and district courts, the clerk of the Kentucky Supreme Court, prosecutors, defense attorneys, juvenile advocates, court designated workers, department of juvenile justice personnel, juvenile detention center personnel, department of education personnel, law enforcement personnel and others involved with juvenile issues. These individuals dedicated a great deal of time and expertise to the formation of this manual. The

diversity of disciplines made it necessary for the individual members of the Advisory Board to consider various, and sometimes conflicting, points of view. The Board strived to present a balanced view of the issues presented in this manual.

Staffing for this publication has been provided by the Children's Law Center, Inc., an organization that has had a lengthy involvement in issues concerning detention practices throughout the state. It is made available free of cost to judges, attorneys, CDWs and others throughout the state in hopes that it will bring about continued improvement in the detention of juveniles in the Commonwealth.

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# **CHAPTER I**

## **THE ELEMENTS FOR A SUCCESSFUL JUVENILE DETENTION SYSTEM**

In 1992, the Annie E. Casey Foundation launched a multi-year, multi-site project known as the Juvenile Detention Alternatives Initiative (JDAI).<sup>1</sup> The purpose of the initiative was to demonstrate that jurisdictions can establish more effective and efficient systems to accomplish the purposes of juvenile detention. The JDAI invested millions of dollars and considerable staff time in response to data that revealed a rapidly emerging national crisis in juvenile detention.<sup>2</sup> As the numbers of juveniles being held in detention increased from 1985-1995, many juvenile detention facilities became overcrowded, producing unsafe, unhealthy conditions for both the detainees and staff. In addition, crowding also placed additional financial pressure on already expensive public services.<sup>3</sup>

The JDAI developed an alternative to these trends, and demonstrated that jurisdictions could effectively control their detention problems.

### **I. THE PROJECT'S FOUR OBJECTIVES WERE**

- A. To eliminate the inappropriate or unnecessary use of secure detention;**
- B. To minimize failures to appear and the incidence of delinquent behavior;**
- C. To redirect public finances from building new facility capacity to responsible alternative strategies; and,**
- D. To improve conditions in secure detention facilities.<sup>4</sup>**

The JDAI project has generated a twelve-volume publication entitled *Pathways to Juvenile Detention Reform*, available through the Annie E. Casey Foundation.<sup>5</sup> While this chapter does not purport to fully examine all of the JDAI components and findings, it nonetheless highlights portions of this extensive report as a foundation for a good detention

system. First, it examines the “guiding principles” that should be evident in good detention planning. Next, it provides mechanisms to document and describe a juvenile detention system. Third, the project attempts to identify local detention goals, and to define problems needed to create or reform a detention system. And finally, JDAI provides a mechanism to identify costs of reform efforts, the resources needed, and the barriers to reform.

While Kentucky’s detention system is not analyzed here in terms of necessary reform, the JDAI report is important to consider when looking at the key elements of an effective detention system. It is in this light that the remainder of this chapter examines the findings and recommendations of JDAI as relevant to Kentucky’s detention system.

## **II. GUIDING PRINCIPLES REGARDING DETENTION PLANNING**

The JDAI report establishes a number of important principles that have emerged from its work and should be considered when planning any detention system, or the reform of an existing detention system.<sup>6</sup>

### **A. These principles include:**

1. Detention planning must be based on adequate data. Current caseloads and operations must be collected to build an accurate factual foundation.
2. Detention planning must be collaborative and include multiple public and private agencies and stakeholders who can give input into the detention process. Collaboration helps to increase common understanding about detention problems and generates broader acceptance of proposed actions. Collaboration is also central to resolve interagency differences that can stand in the way of good detention practices.
3. Detention planning should maintain a thematic focus on creating a continuum of detention practices, including a rational set of alternatives to secure, pre-trial custody. This process is designed not only to help identify juveniles who are suitable for non-secure care, but helps planners to implement a suitable array of programmatic alternatives to secure custody.
4. Planning should be guided by the objectives of improving system efficiency from both operational and cost perspectives. While the structured planning process is



designed to streamline the processing of cases through the juvenile courts, and to reduce unnecessarily long stays in detention, it also serves to minimize the need for construction and future operating costs that would be generated by adding new, and perhaps unnecessary, detention capacity.

5. Planning should be comprehensive in scope, and should address a variety of issues such as detention bed use, conditions of confinement, case processing delays, the relationship of the juvenile justice stakeholders, and minority over-representation in confinement. This helps to lay the best foundation for an informed assessment of local detention problems and for the selection of prudent implementation priorities.
6. Planning must be oriented toward action and practical results. Planners must be prepared to prioritize their recommendations for improvement and to move from discussion to action.<sup>7</sup>

### **III. DESCRIBING THE CURRENT DETENTION SYSTEM**

With these guiding principles in mind, it is important that any detention system collect and maintain accurate information about the system that will provide a detailed picture of detention caseloads, procedures, policies and costs. In order to provide an accurate quantitative analysis, a process for accumulating aggregate, system-wide data on juvenile justice clients, caseloads, and facilities is important. This should include the following:

#### **A. Arrest, Referral and Demographic Data**

1. Demographic data on the at-risk juvenile population (e.g., age, gender, projected growth).
2. Juvenile arrest data by major offense groups and other elements (e.g., age, ethnicity).
3. Probation or detention intake data showing referrals to detention by as many characteristics as may be available (e.g., race, age, gender, offense, jurisdiction).
4. Petition data showing the number and types of cases petitioned, with related dispositions.<sup>8</sup>

#### **B. Facility Population Counts**

1. Number of juveniles by offense groups, court or processing status (e.g. post-disposition status) and other categories suspected of imposing high detention loads.<sup>9</sup>

### **C. Individual Case Data**

1. Referral and admission characteristics, including such personal identifiers as age, race, gender, ethnicity, offense history, probation status, school status, and family status.
2. Detention exit characteristics, including the length of stay, why and to whom the juvenile was released, and the legal status of the juvenile when released (i.e., awaiting adjudication, post-disposition).
3. Outcomes for detained and non-detained juveniles that can determine whether current detention and release policies are working to protect the public and to assure the juvenile's appearance in court.
4. Data to support case processing reforms (i.e., data to support the need to reduce case processing time).
5. Data needed to project future detention capacity needs.<sup>10</sup>

## **IV. REVIEWING THE POLICIES AND PRACTICES OF THE DETENTION SYSTEM**

A review of detention policies and procedures is vital to good detention planning because it can help shorten case processing time, reduce detention utilization, and improve outcomes for detained minors. Likewise, the process can help to better identify roles and responsibilities of the agencies involved in the detention process, and as such, help to resolve confusion over the purpose of or causes of delays and better streamline the flow of cases through detention facilities and courts.<sup>11</sup>

### **A. A "Systems Analysis" Should Include at a Minimum, the Following:**

1. A case processing flow chart that can identify the agencies (e.g., police, probation, judiciary, detention staff) responsible for decision making at each critical point, and that indicates time lines for decisions made by each stakeholder, from initial referral to final disposition of the case.

2. Case processing time should be reviewed from a qualitative perspective to identify delays in detention that result from backlogged court calendars, attorney continuances, and other processing delays.<sup>12</sup>
3. Detention laws and practices should be identified to the extent that they have an effect on local juvenile detention. For example, attention should be focused on the impact of laws that provide for the transfer of juveniles to adult court and the effect this has on a facility's long-term detention rates.
4. Detention and release procedures should be subject to special scrutiny. Important factors to consider include: a) police policies and decision making; b) the role of the intake workers, such as Court Designated Workers; and, c) the nature and type of release criteria and its application.
5. Post-disposition caseloads may occupy a large number of detention beds, and as such, may contribute to high detention numbers.
6. Developing detention alternatives is a critical element of any detention plan. A good "systems analysis" should include a description of alternatives currently available, their levels of use, target population, waiting lists (if any) and success rates.
7. The roles and policies of individual detention decision makers should be scrutinized to determine any gaps in communication or areas of dysfunction among the key players.
8. Finally, a "systems analysis" provides an opportunity to review the issue of disproportionate minority confinement from a qualitative perspective. This will enable policy makers to take a deeper look at community-wide factors that may contribute to excessive contacts with the justice system for particular ethnic groups.<sup>13</sup>

## **V. CONDUCTING A CONDITIONS ANALYSIS**

The JDAI report recommends that policy makers recognize that secure juvenile detention carries with it a set of governmental obligations rooted in constitutional law concerning the safe and humane care of juveniles in these facilities. It suggests that all facilities, including those that are not overcrowded and are generally well run, can benefit from a conditions analysis to identify key areas of improvement.<sup>14</sup> For a more detailed discussion of conditions of confinement, see Chapter VI.

## **VI. A WORKING SYSTEM OF DETENTION: ADDRESSING INTAKE, ALTERNATIVES AND UNNECESSARY DELAYS**

For an effective system of detention to adequately address community concerns as well as the needs of individual juveniles, the JDAI report details three important aspects of decision making regarding detention practices: 1) effective intake practices; 2) appropriate alternatives to detention; and, 3) methods for countering delays in case processing that result in unnecessary detention. A summary of each of these three areas is provided.

### **A. Controlling the Front Gates: Effective Admissions**

The JDAI report enumerates a number of contributing factors that may result in uncontrolled detention admissions practices. Often, the intended purpose of detention is unclear from the statutory language, so detention may be used improperly, or in some cases, in violation of the intent of the law.<sup>15</sup> Likewise, many jurisdictions lack reliable standardized techniques for making the determination as to whether or not to detain, or the criteria set forth are too subjective.<sup>16</sup> Finally, many juvenile justice systems utilize detention without routine supervisory reviews of detention decisions, without sufficient defense capacity to ensure the letter of the law is upheld, or without data that clarifies the effectiveness of the jurisdiction's practices.<sup>17</sup> In response to these matters, JDAI has identified several policies and practices essential to overcome problems of ineffective admissions practices. It begins with the following principles for effective admissions, and defines the elements of a structured, objective admissions process.

### **B. Guiding Principles for Effective Detention Admissions**

1. Admissions policies, practices and instruments must be based upon a clear understanding of the purpose of detention, and should be based upon using the least restrictive alternative necessary to ensure that the juveniles appear in court and remain arrest-free pending adjudication.
2. Effective admissions policies and practices rely on objective criteria to distinguish between juveniles who are likely to flee or commit new crimes and those who are

not. Otherwise, high-risk offenders may be released and low-risk offenders detained, a practice that endangers public safety, wastes public resources, and undermines confidence in the justice system.

3. Good admissions practices rely on a structured decision-making process to ensure timely, consistent screening.
4. Data are essential to the design, implementation and sustainability of effective admissions practices.
5. Effective implementation of objective admissions practices requires the support of the system's key stakeholders and line staff.
6. An objective admissions system requires constant monitoring and quality control.<sup>18</sup>

### **C. Elements of a Structured, Objective Admissions Process:**

While eligibility for secure juvenile detention is generally defined by state law, most states use very broad and subjective criteria that allow admission of almost any juvenile for almost any infraction or offense.<sup>19</sup> According to the JDAI, the result of this subjectivity is that as many as 71% of juveniles on a given day in detention are charged with nonviolent acts or technical probation violations.<sup>20</sup>

The JDAI identifies two basic ways in which improvements in detention eligibility criteria occur: 1) through statutory criteria that are objective and restrict the placement of juveniles in secure detention; and, 2) through judicially-ordered criteria that refine state statutory criteria.<sup>21</sup> In Kentucky, the Administrative Office of the Courts (AOC) has established criteria for its Court Designated Workers (CDWs) to review. While this has moved the state forward in creating a more consistent decision making process regarding detention admissions, the criteria still include broad language that can be used as a "catch-all" to incarcerate juveniles who otherwise do not fit the more objective criteria. As such, the practice of refining local judicially ordered criteria as it relates to the subjective aspects of the AOC criteria, is advisable.

For the AOC criteria to be objectified further, however, several critical dilemmas for local stakeholders must be addressed. For example, juveniles who can no longer be detained after being picked up by the police need to go somewhere. Rather than becoming an inappropriate admission to detention, constructive alternatives available to police must be considered. Another dilemma stems from the fact that juveniles who are not detained often are not assessed for appropriate case processing within the same period of time as those detained. As such, cases that should demand a high priority for services may not receive these services in a timely manner since the child is not confined.<sup>22</sup> Finally, a shift in detention criteria may result in backlash from the community, or from various parts of the justice system. As such, it is necessary for jurisdictions to recognize that political climates can shift quickly, and that changes in detention criteria should have the support of public stakeholders and be backed by credible data.<sup>23</sup>

## **VII. THE CASE FOR ALTERNATIVES TO DETENTION**

The need for various options to supervise juveniles pending the outcome of their cases in juvenile court is essential in order to keep detention beds available for those juveniles who are truly a threat to the community, while at the same time reducing unnecessary expense for local or state jurisdictions. As such, the JDAI suggests several “guiding principles” for jurisdictions to follow regarding effective detention alternatives.<sup>24</sup> Likewise, JDAI suggests several essential elements of a good alternative to detention program.

### **A. Guiding Principles for Effective Detention Alternatives**

1. Detention should be viewed as a legal status, with varying levels of custody supervision, rather than as a building. Detention systems are more likely to be effective when policymakers and practitioners think of detention as a continuum of options ranging from secure custody to various types and levels of non-custodial supervisions like home incarceration or day reporting. With these options in place, juveniles are more likely to end up in detention options

consistent with the risks they pose, rather than being securely detained because there are no other alternatives.

2. For detention alternatives to be effective, agreement is needed on the purpose of secure detention and of alternatives. Developing the alternatives does not in and of itself reduce the population in secure detention. A common understanding among stakeholders as to how these alternatives can be most successful and why they are necessary is also needed.
3. Detention alternatives should be planned, implemented, managed and monitored using accurate data. This will help to document, among other matters: a) the numbers and type of juveniles placed in the programs; b) whether the program is displacing juveniles from the secure facility; and, c) how well the juveniles perform while in the alternatives.
4. A detention system should include a continuum of detention alternatives with various programs and degrees of supervision matched to the risks of detained juveniles.
5. Detention alternatives should be culturally competent, relevant and accessible to the juveniles they serve. This includes being sensitive to the needs of minority juveniles, females, and special needs populations. When possible, alternatives should be located in the juvenile's home neighborhood, both for the ease of participation, and because community context is important to program outcomes.
6. Detention alternatives should be designed and operated on the principle of using the least restrictive alternative possible. As such, they should: a) match the degree of restriction to the risks posed by the juvenile; b) increase or decrease restrictiveness according to the juvenile's performance; and, c) ensure cost-efficiency by "reserving" costly secure detention beds for juveniles who represent a danger to public safety.
7. Detention alternatives should reduce secure detention and avoid widening the net. As such, they should not be used to place more juveniles in the detention system.<sup>25</sup>

## **B. Elements of a Successful Alternative to Detention Program**

A continuum of detention alternatives generally includes various models for juveniles held in secure detention prior to a disposition hearing, including: 1) home or community detention (non-residential, non-facility based); 2) day or evening reporting centers (non-

residential, facility based supervision); and, 3) shelter or foster care (non-secure, residential placement).<sup>26</sup> These programs are described further below.

### **1. Home or Community Detention**

Home or community detention programs are designed for juveniles who can be supervised safely in their own homes or with relatives. They are cost-effective alternatives that include frequent, random, unannounced, face-to-face community supervision (and/or telephone contacts) to minimize the chances that juveniles are engaged in ongoing delinquent behavior and to ensure their future appearance in court.<sup>27</sup>

### **2. Day or Evening Reporting**

Programs that have day or evening reporting provide a non-secure community alternative for several hours per day at a facility where a higher level of supervision and structured activities are required. Juveniles in these programs are often not enrolled in school at the time of their release from detention, making routine monitoring difficult and leaving the juveniles with too much unfilled time. Reporting centers offer several benefits, including lower program costs, and intensive daily supervision. The juveniles in these programs may also be monitored with electronic devices.<sup>28</sup>

### **3. Residential Alternatives**

For those juveniles who cannot return home for various reasons, and for whom relative placement is not possible, residential alternatives such as shelter programs and emergency foster homes can provide a good option. In addition to being more cost-efficient than secure detention, non-secure alternative settings can provide “normal” age-specific services such as education, recreation, tutoring and life skills training in a family environment. Shelter programs generally offer consistent and structured programming, and generally employ professional staff who may



provide case management, and/or counseling and advocacy services. Likewise, foster care homes may be available as a separate program, or to complement a shelter program. These programs are particularly effective with younger juveniles whose developmental needs can best be met by an individual family.<sup>29</sup>

#### **4. Intensive Supervision Programs**

In addition to detention alternative programs, another approach has been developed in many jurisdictions that combines case advocacy and intensive case management. This approach is used as an alternative to detention, but targets juveniles with histories of multiple system contacts who are likely to otherwise be detained pending adjudication. The model not only creates a case plan that must be presented to the court upon its completion, it also provides intensive case management by monitoring compliance and providing support to assist juveniles in overcoming adversity and patterns that lead to recidivism and/or failure to appear in court.<sup>30</sup>

#### **5. Special Challenges: Contemptors, Probation Violators and Juveniles Transferred as Adults**

In addition to developing detention alternatives for juveniles awaiting juvenile court processing, the JDAI report suggests other specific program responses for juveniles held as probation violators and for juveniles held for adult court processing.

Probation violators and juveniles who are held in contempt of court for disobedience of court orders present special problems to juvenile court judges, probation officers and other stakeholders in the juvenile justice system. The JDAI report addresses this issue by first examining the extent to which a jurisdiction uses secure detention as a sanction for juveniles who violate the terms and conditions of court orders, or of their probation.<sup>31</sup> Based on an analysis of the JDAI sites, the report recommends the development and implementation of “graduated sanctions” for juveniles who violate such conditions, using detention as a last resort.

Sanctions of short duration were more effective in motivating juveniles to follow the terms of their probation. These sanctions may include:

- Warnings
- Problem solving
- Written assignments
- Community Service
- Mediation
- Office reporting
- Home confinement/parent supervision
- Day reporting
- Electronic monitoring
- House arrest
- Extended probation
- Detention<sup>32</sup>

For juveniles facing transfer or trial in the adult system, long-term detention stays can create substantial problems in terms of programming and behavior management. Juvenile detention facilities are not typically designed for long-term stays. As such, the increasing number of these “transferred” juveniles present significant challenges to detention center staff.<sup>33</sup> The JDAI report notes in Cook County, Illinois, one of the JDAI sites, nearly 40% of the “waived” juveniles were transferred for drug or weapons offenses, and nearly half of those cases were dismissed or placed on probation by the adult court.<sup>34</sup> As such, the JDAI report recommends that local juvenile justice officials gather accurate data on transferred juveniles in their own jurisdiction before strategies can be developed and pursued with the support of juvenile and adult

justice officials. These strategies might include facilitating bail (and bail reduction) hearings in selected cases, and working to ensure faster adult trials.<sup>35</sup>

## **VIII. REDUCING UNNECESSARY DELAYS IN CASE PROCESSING**

While maintaining objective admissions criteria and effective alternative programming is critical to facilitating an effective system of detention, it is likewise essential for a detention system to sustain efforts to reduce unnecessary case processing time. Delays in juvenile and criminal court case processing can greatly increase the use of juvenile detention beds even though the number of admissions remain stable or even drop.<sup>36</sup> Such delays are apparent not only in those cases where juveniles are detained, but are often systematic of a particular juvenile court jurisdiction. As such, case processing delays may also effect juveniles released pending adjudication by increasing their rates of failure to appear, may significantly increase the length of time juveniles spend in alternative programs, and may lessen the correlation the juvenile perceives between his actions and the ultimate disposition of his case.<sup>37</sup>

### **A. Guiding Principles to Reduce Unnecessary Delays**

1. The end goal is not speed in case processing, but rather an improved justice system. The key to more efficient case processing is often eliminating wasted time, whether time between events, court hearings generally, or the time taken for the events themselves.
2. Custody levels alone should not drive case processing changes. Success in improving case processing should decrease the unnecessary use of detention beds while also providing other benefits to the courts, judges, victims, defense, prosecution and juveniles.
3. The use of every detention facility bed is worth scrutinizing; every bed day is worth saving.
4. No court hearing should be scheduled without a purpose. Many hearings are scheduled that have an unclear purpose, or the purpose is not accomplished. Efforts should focus not only on reducing unnecessary time between scheduled court events, but also scrutinizing the substantive purposes of each hearing.<sup>38</sup>

While a number of models are available to jurisdictions that wish to better manage their case processing, the JDAI report enumerates several important factors to consider.

First, while the defense bar has a critical role in case processing speed, effective defense advocacy and improving case processing are not antithetical.<sup>39</sup> Although other system participants may focus on time and dollar savings, the defense bar is ambivalent about the first, and has little interest in the second. Rather, the focus of the defense bar is on the interest of the client. Participation by the defense bar in any systemic attempt to improve case processing is important, and can ensure that proposed changes will be focused on benefits for the juvenile population first and foremost.<sup>40</sup>

Local collaboratives that include all of the system participants are critical for bringing about case processing changes. System participants, while they may be extremely knowledgeable about their respective functions, may know little about how case processing actually works on a larger scale. With collaboration, key stakeholders can share credit, and blame, for resulting delays, and/or for improvements.<sup>41</sup>

For any collaborative effort to improve case processing, however, judicial leadership is imperative. Judges are key in managing and improving case processing; however, effective changes are most likely when they come through discussion, analysis and consensus building among the key players, rather than by court order.<sup>42</sup>

Finally, a key element to improving case processing is producing and analyzing data that can determine the nature and extent of problem areas. Often, the data is incomplete or conflicting. The JDAI report stresses the need for key participants to first establish trust and common purpose, and then to begin the process of posing questions that can help determine the areas for improvement.<sup>43</sup>

For a listing of juvenile detention resources, see Appendix A.

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<sup>1</sup> Steinhart, David, *Pathways to Juvenile Detention Reform: A Structured Approach*, (Annie E. Casey Foundation, 2000) Vol. I.

<sup>2</sup> The Census of Public and Private Juvenile Detention, Correctional and Shelter Facilities (1985-1995) showed an increase in detention population nationally by 72%. The report also noted that less than 1/3 of the juveniles in secure custody were charged with violent offenses, and that the increase in numbers of juveniles held in secure detention were severely disproportionate across race.

<sup>3</sup> *Id.*, Total Operating Expenditures in U.S. Public Detention Centers, 1985-1995.

<sup>4</sup> Steinhart, *supra*, at 6.

<sup>5</sup> Requests for copies of this complete publication can be made to the Annie E. Casey Foundation, 701 St. Paul Street, Baltimore, MD 21202.

<sup>6</sup> Steinhart, *supra*, at 13-14.

<sup>7</sup> *Id.* at 13-14.

<sup>8</sup> *Id.* at 20-22.

<sup>9</sup> *Id.* at 22.

<sup>10</sup> *Id.* at 23-27.

<sup>11</sup> *Id.* at 28.

<sup>12</sup> The report recommends that delays affecting both detained and non-detained juveniles be examined. It notes that non-detained juveniles often experience much longer times waiting for court hearings than detained juveniles, a factor which can contribute to high failure to appear (FTA) rates and to bench warrants resulting in arrest and mandatory detention. *Id.* at 29.

<sup>13</sup> *Id.* at 32.

<sup>14</sup> *Id.* at 32-35.

<sup>15</sup> Frank Orlando, "Controlling the Front Gates: Effective Admissions," *Pathways to Juvenile Detention Reform* (Annie E. Casey Foundation, 2000) Vol. 3.

<sup>16</sup> *Id.* at 11.

<sup>17</sup> *Id.* at 10-12.

<sup>18</sup> *Id.* at 13-15.

<sup>19</sup> *Id.* at 16.

<sup>20</sup> Census of Public and Private Juvenile Detention, Correctional and Shelter Facilities 1985-1995. One Day Counts of Detention Facilities by Offense Category, 1995.

<sup>21</sup> Orlando, *supra*, n. 15 at 16-20.

<sup>22</sup> *Id.* at 21.

<sup>23</sup> *Id.* at 23-24.

<sup>24</sup> Paul DeMuro, "Consider the Alternatives: Planning and Implementing Detention Alternatives," *Pathways to Juvenile Detention Reform*, (Annie E. Casey Foundation, 2000), Vol. 4.

<sup>25</sup> *Id.* at 11-14.

<sup>26</sup> *Id.* at 13.

<sup>27</sup> *Id.* at 15.

<sup>28</sup> *Id.* at 19.

<sup>29</sup> *Id.* at 23-24.

<sup>30</sup> *Id.* at 24-26.

<sup>31</sup> *Id.* at 27.

<sup>32</sup> *Id.* at 27-28.

<sup>33</sup> *Id.* at 23-24.

<sup>34</sup> *Id.* at 29.

<sup>35</sup> *Id.* at 29-30.

<sup>36</sup> D. Alan Henry, "Reducing Unnecessary Delay: Innovations in Case Processing," *Pathways to Juvenile Detention Reform*, (Annie E. Casey Foundation, 2000) Vol. 5.

<sup>37</sup> *Id.* at 11-12.

<sup>38</sup> *Id.* at 14-15.

<sup>39</sup> *Id.* at 37.

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 37-38.

<sup>42</sup> *Id.* at 38.

<sup>43</sup> *Id.* at 39.

## **CHAPTER II**

### **FEDERAL MANDATES REGARDING JUVENILE DETENTION: THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974**

#### **I HISTORY OF THE ACT**

The Juvenile Justice and Delinquency Prevention Act (JJDP) was enacted by Congress in 1974.<sup>i</sup> The JJDP is administered by Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), in Washington, D.C.<sup>ii</sup> The JJDP includes several juvenile justice and delinquency prevention initiatives, including funding initiatives available to establish alternatives to secure detention, specifically under the Title II Formula Grants Program.

#### **II. TITLE II FORMULA GRANTS PROGRAM**

The primary purpose of Title II of the JJDP is to encourage states to meet the following four core requirements in operating their juvenile detention systems.

##### **A. Deinstitutionalization of Status Offenders**

As a general rule, status offenders (juveniles who are charged with committing an offense that would not be criminal if it had been committed by an adult),<sup>iii</sup> alien juveniles in custody, or dependent or neglected children shall not be placed in secure detention facilities.<sup>iv</sup>

##### **1. Exceptions:**

##### **a. Twenty-Four-Hour Hold Exception**

The regulations issued by the OJJDP provide a temporary hold exception that permits accused status offenders or non-offenders to be securely held for up to 24 hours, excluding weekends and holidays, for purposes of identification, investigation, release to parents, or transfer to a non-secure program or the court.

A second 24-hour grace period may follow a court appearance. There is also a statutory exception for “valid court orders.”<sup>v</sup>

b. Valid Court Order Exception

A status offender accused of violating a valid court order may be securely detained for longer than 24 hours if the court has met certain requirements in its order to detain. A valid court order is an order issued by a court of competent jurisdiction as a result of a hearing during which the juvenile received all constitutional due process protections. If a juvenile violates a valid court order, the court can invoke the valid court order exception and order the juvenile securely detained as punishment, if the court:<sup>vi</sup>

- i. Affirms that the requirements for a valid court order were met at the time of the issuance of the original order finding the juvenile to be a status offender;
- ii. Makes a determination at the detention hearing that there is probable cause to believe that the juvenile violated the valid court order; and
- iii. Within 72 hours of the juvenile’s initial detention, exclusive of weekends and holidays, receives a report from a public agency, other than a court or law enforcement agency, stating that all other dispositions other than secure detention have already been tried or are inappropriate.

**B. Separation**

Juveniles shall not be detained or confined in any secure institution in which they have contact with incarcerated adults.<sup>vii</sup> If juveniles are incarcerated in the same facility as adults, they must be sight and sound separated from the adults.<sup>viii</sup>



### **C. Jail and Lockup Removal**

As a general rule, any juvenile subject to the original jurisdiction of the juvenile court, based upon age and offense as established by the state, may not be detained in jails or lockups in which adults may be detained or confined.<sup>ix</sup>

1. Exceptions:

a. Six-Hour Hold Exception

The OJJDP regulations provide for a six-hour hold exception for accused public offenders for the limited purpose of identification, processing, interrogation, transfer to a juvenile facility or court, or pending release to parents.<sup>x</sup>

b. Rural Exception

The rural exception permits jails and lockups outside a Standard Metropolitan Statistical Area to hold accused public offenders for up to 24 hours, exclusive of weekends and holidays, while awaiting an initial court appearance, if state law requires a detention hearing within 24 hours and no alternative facility is available.<sup>xi</sup>

All of Kentucky's intermittent holding facilities have been certified by the OJJDP as eligible for the rural exception. Thus, the provisions relating to the use of intermittent facilities under state law are essentially the same as the JJDP requirements for jail removal.

### **D. Disproportionate Minority Confinement**

The disproportionate minority confinement (DMC) mandate requires states to determine if the proportion of minority juveniles in confinement exceeds the proportion of minority juveniles in the general population.<sup>xii</sup> If the state determines that minorities are

disproportionately confined, the state must conduct a study to determine the breadth of the issue, and then develop programs and systems improvement initiatives to address the issue.<sup>xiii</sup>

### **E. Requirements for Participating in Title II**

States meeting the requirements described above are eligible to receive Title II formula grant funding to help them to meet the core requirements of the JJDPA, and to support a broad array of juvenile programs and services aimed at preventing juvenile delinquency once compliance with the four core requirements has been achieved.<sup>xiv</sup> Funding is made available to states under the JJDPA based upon the state's juvenile population.<sup>xv</sup>

To qualify for funding, a state must have a state advisory group, and it must meet at least one of the core requirements.<sup>xvi</sup> Each core requirement carries 25% of the available funding, so a state meeting three of the four core requirements would be eligible to receive 75% of the funding available to that state.<sup>xvii</sup> In Kentucky, the state advisory group is the Juvenile Justice Advisory Committee (JJAC), a statewide group of Kentucky citizens appointed by the Governor to oversee the expenditure of federal JJDPA funds, and to provide counsel and advice to the Department of Juvenile Justice, the Governor, and the legislature regarding juvenile justice policy.

The challenge grant program is another funding source available to states that receive Title II funds. Challenge grant funds provide resources to assist states in identifying and addressing systemic issues within the state juvenile justice system.

## **III. KENTUCKY'S HISTORY UNDER THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT**

### **A. Creation of the Department of Juvenile Justice**

In 1996, the Kentucky General Assembly enacted legislation to reform Kentucky's juvenile justice system. The Department of Juvenile Justice (DJJ) was created and all services from prevention to aftercare for juvenile offenders were consolidated into one department. Ralph

E. Kelly, Ed.D., was appointed to serve as Kentucky's first Commissioner of Juvenile Justice. The Department of Juvenile Justice assumed responsibility for program operations in December of 1996.

At that time, Kentucky was one of only two states in the nation out of compliance with the provisions of the JJDP. Thus, Kentucky was not eligible to receive JJDP funding. Kentucky was out of compliance because too many juveniles were being housed in adult jails, and Kentucky's law permitted the secure detention of status offenders. Because of the creation of the new Department of Juvenile Justice, the OJJDP agreed to hold Kentucky's formula grant funds for fiscal years 1997 and 1998 to give Kentucky a chance to come back into compliance with the requirements of the JJDP.

#### **B. Achieving Compliance with the Juvenile Justice and Delinquency Prevention Act**

The Department of Juvenile Justice was required to gather statistical information regarding the secure detention of juveniles so that a monitoring report could be filed with OJJDP. That report showed that Kentucky met the requirements for compliance with three of the four core requirements. Kentucky remained out of compliance with the jail removal core requirement primarily because juveniles were being detained in Kentucky's intermittent holding facilities beyond the time permitted by federal law. Intermittent holding facilities are facilities that are co-located in adult jails where juveniles can be securely detained for up to 24 hours, exclusive of weekends and holidays.

In November 1998, Kentucky filed a three-year plan with OJJDP requesting 1997 Title II funds. The OJJDP announced on February 8, 1999, that Kentucky was once again a participating state. Therefore, the state was entitled to receive Title II formula grant funding to assist in the creation of alternatives to secure detention. Total Title II funding received in the first year was

\$847,000. The Juvenile Justice Advisory Committee (JJAC) used the 1997 funding to establish alternative detention programs statewide. Funding and programs were focused on areas where the most JJDPA violations were recorded. The JJAC continues to use Title II funds to support programming and to educate individuals involved in the court system about the JJDPA and its requirements.

As of January 2001 all but four of the original thirteen intermittent holding facilities in Kentucky had closed. The Kentucky Department of Juvenile Justice has continued its construction of regional secure detention facilities. Because of these actions, Kentucky was able to report full compliance with the JJDPA in its 1998 update to the three-year plan and was awarded 100% of the available JJDPA funds.

### **C. State Application of Federal Requirements**

One of the primary reasons for Kentucky's lack of compliance with the JJDPA was that the Kentucky statutes permitted the secure detention of status offenders for up to 43 days prior to disposition. To address this issue, the JJAC proposed legislation (HB 296) before the 2000 General Assembly to bring Kentucky's law into compliance with the JJDPA. With the passage of HB 296, Kentucky is experiencing a significant change in the way that status offenders may be dealt with in the juvenile justice system. For a more detailed discussion of the provisions of HB 296, see Chapter IV.

## **IV. ADDRESSING DISPROPORTIONATE MINORITY CONFINEMENT**

Congress added the disproportionate minority confinement (DMC) mandate in 1988 after several studies indicated that significant overrepresentation of minority juveniles being confined nationally. Essentially, disproportionality exists when the percentage of incarcerated minority juveniles exceeds the percentage of minority juveniles in the general population. For example,

the U.S. Department of Justice noted in its December 1999 report *Minorities in the Juvenile Justice System* that:

[I]n 1997, minorities made up about one-third of the juvenile population nationwide but accounted for nearly two-thirds of the detained and committed population in secure juvenile facilities. For black juveniles, the disparities were most evident. While black juveniles age 10 to 17 made up about 15% of the juvenile population, they accounted for 26% of juveniles arrested and 45% of delinquency cases involving detention. About one-third of adjudicated cases involved black juveniles, yet 40% of juveniles in secure residential placements were black.<sup>xviii</sup>

#### **A. Required Procedure for Addressing Disproportionate Minority Confinement**

The JJDPa specifically outlines the process each state must follow when it addresses DMC. States must “address efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population.”<sup>xix</sup> This assessment involves three steps:

1. Identification

States must compare the number of minority juveniles in detention to the number of minority juveniles in the population. If the percentage of those in detention is greater than the population, then the state has determined that DMC may exist.<sup>xx</sup>

2. Assessment

Once overrepresentation is realized, then the state must “identify and explain differences in arrest, diversion and adjudication rates, court dispositions other than incarceration, the rates and periods of pre-hearing detention and dispositional commitments to secure facilities of minority juveniles in the juvenile justice system, and transfers to adult court.”<sup>xxi</sup>

### 3. Intervention

If the state determines that DMC exists, it “must develop a plan of action for reducing the disproportionate confinement rate of minorities in secure facilities.”<sup>xxii</sup> No specific guidelines exist to determine when this step has been satisfied, but the following five activities must be part of the state’s plan:

- a. Diversion: States must increase the number and quality of diversion programs provided for minority juveniles within the juvenile justice system.<sup>xxiii</sup>
- b. Prevention: States must aid minority communities in creating and applying prevention programs.<sup>xxiv</sup>
- c. Reintegration: States must address recidivism by creating and applying programs that will help minority juveniles reintegrate themselves into society after incarceration.<sup>xxv</sup>
- d. Policies and Procedures: States must induce “necessary changes in statewide and local executive, judicial, and legal representation policies, and procedures” by providing financial and technical assistance when needed; and,<sup>xxvi</sup>
- e. Staffing and Training: States must provide “financial and/or technical assistance that addresses staffing and training needs that will positively impact the disproportionate confinement of minority juveniles in secure facilities.”<sup>xxvii</sup>

#### **B. Building Blocks for Youth Initiative: *And Justice for Some***

Disproportionate minority confinement is an issue that has and will continue to generate considerable national attention. On April 25, 2000, the Building Blocks for Youth initiative, a nationwide project sponsored by the Youth Law Center, released *And Justice for Some: Differential Treatment of Minority Youth in the Justice System*, an extensive study that revealed “sharp racial disparities in nation’s juvenile justice system.”<sup>xxviii</sup> This nationwide study examined each step of the juvenile justice process and found that minority juveniles were overrepresented at virtually every stage. Information in this report reveals a “cumulative disadvantage” of minority juveniles across the nation. Below are some of the key findings of this report at each phase of the juvenile justice process:

1. Arrest

The report found that in 1998, the majority of arrests of juveniles involved white juveniles, while African American juveniles were overrepresented as a proportion of arrests in 26 of 29 offense categories documented by the FBI.<sup>xxix</sup>

2. Referral to Juvenile Court

In 1997, while the majority of cases referred to juvenile court involved white juveniles, minority juveniles were overrepresented in the referral court.<sup>xxx</sup>

3. Detention

While white juveniles comprised 66% of the juvenile court referral population, they comprised 53% of the detained population. In contrast, African American juveniles made up 31% of the referral population and 44% of the detained population. In every offense category (person, property, drug, public order) a substantially greater percentage of African American juveniles were detained than white juveniles.<sup>xxxi</sup>

4. Formal Processing

African American juveniles are more likely than white juveniles to be formally charged in juvenile court, even when referred for the same type of offense. Minority juveniles were overrepresented in the detained population in 43 of 44 states.<sup>xxxii</sup>

5. Waiver to Adult Court

Minority juveniles were much more likely to be waived to adult criminal court than white juveniles in all offense categories.<sup>xxxiii</sup>

6. Disposition

In every offense category, minority juveniles were more likely than white juveniles to be placed out of the home (e.g., commitment to a locked institution).

In all offense categories, white juveniles were more likely than minority juveniles to be placed on probation.<sup>xxxiv</sup>

7. Incarceration in Juvenile Facilities

Although minority juveniles are one-third of the adolescent population in the United States, minority juveniles are two-thirds of the over 100,000 juveniles confined in local detention and state correctional systems.<sup>xxxv</sup>

8. Incarceration in Adult Prisons

In 1997, 7400 new admissions to adult prisons involved juveniles under the age of 18. Three out of four of these juveniles were minorities.<sup>xxxvi</sup>

**C. Kentucky's Approach to Addressing Disproportionate Minority Confinement**

*The Kentucky Disproportionate Minority Confinement Initiative Interim Report*, released in March 2000, reported that 43 states and territories found DMC after completing the first “identification” stage mandated by the JJDP. <sup>xxxvii</sup> These states and territories had already begun addressing these issues in the second “assessment” stage. Some states, like Kentucky, are not this far along. In fact, before February of 1999, Kentucky had not received federal funds allocated by the JJDP since 1993 because it had not met the Act’s four core requirements. By complying with the Act, Kentucky finally began receiving those funds allocated by the Act for the improvement of their juvenile justice system and for the creation and maintenance of services offered to at-risk and already delinquent juveniles. <sup>xxxviii</sup>



## 1. Kentucky's Statistics

Using data from OJJDP's 1999 report, *And Justice for Some* revealed that minority juveniles in custody in Kentucky were overrepresented in accordance with their percentage of the overall population in 1997.<sup>xxxix</sup> *The Kentucky Disproportionate Minority Confinement Initiative Interim Report* found that minority overrepresentation exists in the state juvenile justice system, but the data systems in Kentucky were inadequate to provide a meaningful analysis of this overrepresentation.<sup>xi</sup>

The Kentucky report found that while Kentucky's overall minority population is 10%, in 1999 41% of juveniles admitted to detention were minorities.<sup>xli</sup> Thus, the rate of minority juveniles in detention in Kentucky was over four times their percentage of the general population. Further, the report found that African American males were the most overrepresented group of juveniles with a detention rate seven times greater than their proportion of the general population.<sup>xlii</sup> Consistent with the national study, the Kentucky report found that over half (56%) of juveniles transferred to adult criminal court were minorities.<sup>xliii</sup>

Among those juveniles who were committed to Kentucky's Department of Juvenile Justice in 1999, minority juveniles comprised more than one-fourth (27%) of this population, with 93% of these juveniles being black males. Of the total court commitments, black males represented 21%, over five times their representation of the general juvenile population.<sup>xliv</sup>

## 2. Kentucky's Assessment of Disproportionate Minority Confinement

The interim report suggested that intervention activities follow the guidelines of the *DMC Technical Assistance Manual*, which broke them down into three basic categories:

- a. Direct services.
- b. Training and education.
- c. System change.<sup>xlv</sup>

Specifically, the report recommends a qualitative and quantitative analysis of the issue to better understand the social and political context in which decisions are made. The report also recommends a causal study of DMC which can examine multiple processing stages controlled for important variables, and which can provide findings to pinpoint “hot spots” within the decision to target and prioritize initiatives.<sup>xlvi</sup>

### **D. Disparity Beyond Disproportionate Confinement**

While not included in either the state or national reports, the question of whether disparity exists as to the availability and quality of legal representation among minority juveniles could also be explored. In 1996, the Children's Law Center, Inc., published *Beyond In Re Gault: The Status of Juvenile Defense in Kentucky*, a critical analysis of Kentucky's indigent juvenile defense system. The report noted that lawyers reported nearly one-fourth of juveniles in their districts waive counsel for detention hearings, and nearly one-third waive counsel at other stages of the proceedings often or very often. Of particular concern was the number of juveniles being represented by “contract” attorneys with little training or experience in juvenile court, and who often did not understand their role in relationship to the clients they represented.

While the findings of extensive interviewing of confined juveniles were incorporated into the report, neither race nor gender were considered in making any findings or recommendations. The fact remains, however, that questions continue to arise regarding whether or not disparity may exist in the access to counsel, or quality of counsel, provided to minority juveniles in the juvenile justice system.

Kentucky's efforts have primarily focused on the development of a comprehensive data collection system, as well as the development of resources in order to complete this system. The Kentucky Juvenile Justice Advisory Committee (JJAC) created the Subcommittee on Equity and Justice for All Youth (SEJAY) to promote better data collections systems, and foster education on DMC issues. The SEJAY recently created the position of statewide coordinator to help implement DMC initiatives.

Jurisdictions need to consider a more hands-on approach to pinpoint critical stages in the juvenile justice system where overrepresentation is present, develop more specific research findings regarding likely disparities, and begin to generate community-based solutions aimed at reducing disparities. The Building Blocks project and other national and state initiatives can provide jurisdictions with model programs that have been used throughout the country in an effort to address DMC issues.

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<sup>i</sup> Juvenile Justice and Delinquency Prevention Act of 1974, 42 USC 5601 et seq.

<sup>ii</sup> 42 USC 5611.

<sup>iii</sup> Juvenile Justice Act Requirements, 28 CFR 31.304(h) (2000).

<sup>iv</sup> 42 USC 5633(a)(12)(A).

<sup>v</sup> 28 CFR 31.303(f)(2) (2000).

<sup>vi</sup> 28 CFR 31.303(f)(3) (2000).

<sup>vii</sup> 42 USC 5633(a)(13).

<sup>viii</sup> 28 CFR 31.303(d)(ii) (2000). See also 28 CFR 31.303(e)(3)(C) (2000).

<sup>ix</sup> 42 USC 5633(a)(13).

<sup>x</sup> 28 CFR 31.303(e)(2) (2000).

<sup>xi</sup> 42 USC 5633(a)(14).

<sup>xii</sup> 42 USC 5633(a)(23).

<sup>xiii</sup> 28 CFR 31.303(j) (2000).

<sup>xiv</sup> 42 USC 5633(a).

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- <sup>xv</sup> 42 USC 5632(a)(1).
- <sup>xvi</sup> 42 USC 5633 (a)(3).
- <sup>xvii</sup> 42 USC 5633 (c)(3).
- <sup>xviii</sup> Randy S. Thomas, Kentucky Disproportionate Minority Confinement Initiative: Interim Report 3, 3 (2000).
- <sup>xix</sup> *Id.* at 4.
- <sup>xx</sup> *Id.* at 4.
- <sup>xxi</sup> *See id.* at 4-5 (citing 28 CFR 3.303(j), OJJDP Formula Grants Regulation).
- <sup>xxii</sup> Thomas, *supra* note 18, at 5.
- <sup>xxiii</sup> *See id.*
- <sup>xxiv</sup> *See id.*
- <sup>xxv</sup> *See id.*
- <sup>xxvi</sup> *See id.*
- <sup>xxvii</sup> *See id.*
- <sup>xxviii</sup> Eileen Poe-Yamagata & Michael A. Jones, Building Blocks for Youth, And Justice for Some: Differential Treatment of Minority Youth in the Justice System (2000).
- <sup>xxix</sup> *See id.* at 1.
- <sup>xxx</sup> *See id.*
- <sup>xxxi</sup> *See id.* at 2.
- <sup>xxxii</sup> *See id.*
- <sup>xxxiii</sup> *See id.*
- <sup>xxxiv</sup> *See id.*
- <sup>xxxv</sup> *See id.* at 2-3.
- <sup>xxxvi</sup> *See id.*
- <sup>xxxvii</sup> Thomas, *supra* note 18, at 6.
- <sup>xxxviii</sup> *See id.* at 5-6.
- <sup>xxxix</sup> Justice, *supra* note 28, at 22.
- <sup>xl</sup> Thomas, *supra* note 18, at 21-25.
- <sup>xli</sup> *See id.* at 28.
- <sup>xlii</sup> *See id.*
- <sup>xliii</sup> *See id.* at 31.
- <sup>xliv</sup> *See id.* at 30.
- <sup>xlv</sup> *See id.* at 33-34.
- <sup>xlvi</sup> *See id.* at 35.

## **CHAPTER III**

### **AN OVERVIEW OF KENTUCKY'S JUVENILE DETENTION SYSTEM**

#### **I. KENTUCKY'S JUVENILE DETENTION SYSTEM**

Juvenile detention in Kentucky has historically been a function statutorily delegated to the counties. Historically, juveniles were primarily held in county-operated juvenile holding facilities, run by jailers who charged other "sending" counties as much as one hundred dollars per day to house their juveniles.<sup>1</sup> Most county juvenile facilities were separate portions of the adult jail where the juveniles were required to remain sight and sound separated from adults housed in the same facility. Juvenile facilities were regulated and inspected by the Department of Corrections.

During the early 1990's, counties experienced a dramatic increase in the costs associated with securely detaining juveniles. Juvenile detention facilities were becoming overcrowded, and without a coordinated system, juvenile courts in counties without juvenile detention facilities often had a difficult time finding detention space for their juveniles. It was sometimes necessary to transport a juvenile for up to six hours from home for detention.

Other juvenile detention problems also plagued the Commonwealth during this time. Conditions in individual jail facilities brought about a rash of class action lawsuits, including lawsuits against the facilities in Kenton, Daviess and Franklin Counties. These lawsuits challenged conditions in local jails that held juveniles, including claims of improper supervision, poor environmental conditions, lack of education and other programming, along with inadequately trained staff.

Finally, the crisis in juvenile detention in the state culminated in the loss of funding from the Juvenile Justice and Delinquency Prevention Act (JJDP) formula grant program. The

state's years of non-compliance with the Act's mandates resulted in the state's removal from this formula grant program and placement on "non-participating state" status. The state's non-compliance included significant numbers of juveniles being housed in adult jail facilities, and high numbers of status offenders being detained in violation of the JJDP. As such, the state lost millions of dollars in JJDP funding from 1992-1996

The Department of Juvenile Justice (DJJ) was established in 1996, and among its other duties, was charged with the responsibility for developing a statewide juvenile detention system that would relieve the counties of both the fiscal and operational responsibilities for the detention of juveniles. The Department of Juvenile Justice was also assigned the responsibility of inspecting and regulating all juvenile detention facilities, and sought to bring the state back into compliance with the JJDP.

This chapter provides an overview of the juvenile detention system in Kentucky, including the statutory authority and responsibilities delegated to respective state agencies concerning juvenile detention, and an explanation of Kentucky's system of intake decision making for placement in detention, the operation of local and regional facilities, and the system of alternatives to detention.

#### **A. The Kentucky Unified Juvenile Code**

Kentucky's legislature created the Kentucky Unified Juvenile Code in 1980.<sup>2</sup> Due to a lack of funding and revenues, the Code was not fully implemented until July 1, 1987.<sup>3</sup> The Code was created to overhaul the entire juvenile justice system in Kentucky, with its purpose "to make Kentucky laws concerning juveniles comprehensive, predictable, consistent, systematic, logical, balanced, and fair."<sup>4</sup> The Code was specifically created to unify "virtually all the laws concerning children and [it] places jurisdiction of most matters involving children in the juvenile

session of district court.”<sup>5</sup> Kentucky created this Code to ensure that certain fundamental juvenile rights would be fairly and uniformly protected throughout the Commonwealth.

Under the current juvenile code, there are three categories of juveniles that may end up in detention. These are 1) juveniles in predisposition status that are awaiting further court action; 2) juveniles sentenced to detention as a disposition, either under the statutes permitting such disposition or for contempt of court; and, 3) juveniles committed to DJJ awaiting placement.<sup>6</sup> A more detailed discussion of the current provisions of the juvenile code relating to detention can be found in Chapter IV.

The Kentucky Unified Juvenile Code also sets forth the responsibilities and authority of the Court Designated Worker (CDW) program, and the Kentucky Department of Juvenile Justice as described in more detail below. Taken in combination, these two entities, along with the district court, provide the system for decision-making regarding intake of juveniles into detention, the place of detention, and the system of detention alternatives available in local communities.

### **B. The Court Designated Worker Program**

One program created by the Kentucky Unified Juvenile Code is the Court Designated Worker (CDW) program, which plays an important role in juvenile detention.<sup>7</sup> Essentially, CDWs provide intake and diversion services, and process public and status complaints on juveniles outside of the formal court system.<sup>8</sup> When a juvenile is taken into custody by a peace officer, unless the juvenile is subject to trial as an adult or the nature of the offense or other circumstances warrant retaining the juvenile in custody, the officer may release the juvenile to a parent, guardian, or other responsible person or agency approved by the court.<sup>9</sup> Unless the juvenile is subject to trial as an adult, if the juvenile is not released, the peace officer must

contact the CDW, who, upon consulting with the court, informs the peace officer of the juvenile's immediate placement.<sup>10</sup> At this point, the following placement options are available:

- a. Release the juvenile to his parents;
- b. Release the juvenile to another person or organization as authorized by law;
- c. Release the juvenile to either of the above subject to stated conditions; or,
- d. Authorize the peace officer to retain custody of the juvenile for a maximum of an additional 12 hours so that the peace officer may transport the juvenile to a secure juvenile detention facility or holding facility. The CDW must notify the juvenile's parent or guardian regarding the juvenile's detention.<sup>11</sup>

As such, the CDW plays a critical role at this early stage in assisting courts in making the decision as to whether a juvenile should be detained. A sample of the Pre-Adjudicative Detention Criteria worksheet used by CDWs can be found at the end of this chapter.

### **C. County Operated Detention Facilities**

The Department of Juvenile Justice is currently in a transition phase as it pertains to the operation of juvenile detention facilities. Until DJJ assumes full fiscal and operational responsibility for juvenile detention, a few county-operated facilities continue to exist. Several county-operated facilities have closed over the past four years as DJJ-operated regional juvenile detention facilities have opened in areas previously served by county jails. It is anticipated that this trend will continue as DJJ opens more facilities across the state.

Under Kentucky law, there are three types of facilities that are specifically authorized to securely detain juveniles. Those facilities are defined as follows:

1. A secure juvenile detention facility is "any physically secure facility used for the secure detention of children other than any facility in which adult prisoners are confined."<sup>12</sup> A "physically secure facility" is a facility that "relies primarily on the use of construction and hardware such as locks, bars and fences to restrict freedom."<sup>13</sup> These facilities are separate, stand alone juvenile facilities. These facilities are regulated and inspected by DJJ. All new DJJ facilities are secure juvenile detention facilities.



2. A *juvenile holding facility* is a “physically secure facility, approved by DJJ, which is an entirely separate portion or wing of a building containing an adult jail, which provides total sight and sound separation between juvenile and adult facility spatial areas, and which is staffed by sufficient certified juvenile facility staff to provide twenty-four (24) hour per day supervision.”<sup>14</sup> These facilities are inspected and regulated by the Department of Corrections (the adult side and physical plant) and DJJ (juvenile side).
3. An *intermittent holding facility* is a “physically secure setting, which is entirely sight and sound separated from all other portions of a jail containing adult prisoners, in which a juvenile accused of a public offense may be detained for a period not to exceed twenty-four (24) hours, exclusive of weekends and holidays, prior to a detention hearing as provided in KRS 265.265 in which juveniles are supervised and observed on a regular basis by certified juvenile facility staff.”<sup>15</sup> These facilities are inspected and regulated by the Department of Corrections (the adult side and physical plant) and DJJ (juvenile side).

For regulatory and monitoring purposes, secure juvenile detention and juvenile holding facilities are comparable as they both may hold juveniles for an extended period of time, and must have a full range of programs for juveniles as determined pursuant to the Kentucky Revised Statutes and regulations promulgated by the Department of Juvenile Justice.<sup>16</sup> Juvenile holding facilities have additional requirements that must be met relating to sight and sound separation of juveniles from co-located adults.<sup>17</sup> Intermittent holding facilities are treated differently because of the restrictions on the types of juveniles that may be held (public offenders only), the purpose for which they can be held (only prior to an initial detention hearing), and the time for which they can be held (up to 24 hours exclusive of weekends and holidays).

As a part of the plan to assume full responsibility for juvenile detention, the Department of Juvenile Justice pays a subsidy to the counties to offset the detention of public offenders.<sup>18</sup>

#### **D. The Department of Juvenile Justice and Kentucky's Statewide Detention Plan**

The Department of Juvenile Justice first developed its statewide detention plan in 1996. The theory and philosophy behind the DJJ detention plan has been to develop detention as a process rather than a secure custody environment. As suggested by the Juvenile Detention Alternatives Initiative (discussed in Chapter I), the goal of a good detention system is to create a continuum of detention services in which the juvenile is matched with an appropriate level of supervision and restriction.<sup>19</sup> Accordingly, DJJ's plan for the development of statewide detention services includes both secure detention and non-secure detention alternatives. The objectives of this custody continuum include the following:

- To provide community-based programming for non-violent, at-risk juveniles that will effectively protect the community and reserve secure detention resources for violent, serious offenders.
- To ensure the juvenile's crime-free return to court using a less restrictive form of community supervision that is comparably as effective as secure detention.
- To prevent unnecessary disruptions of the juvenile's school and family life.
- To prevent non-violent juveniles from exposure to more sophisticated, delinquent juveniles.
- To begin assessments/interventions that will facilitate a successful disposition of the juvenile's case if he is later adjudicated on the charges.
- To eliminate the use of secure detention for reasons other than public safety, such as, when the juvenile has an unstable home environment, the parents refuse to assume responsibility, or the parents cannot be located.<sup>20</sup>

The Department of Juvenile Justice statewide detention plan contemplates that DJJ will assume full responsibility of juvenile detention services across the state by mid-2003, although construction delays and other unforeseen circumstances may result in an extended time period for complete implementation of the plan. Under the plan, DJJ will operate ten secure regional

juvenile detention facilities that will be located, in most cases, within 60 miles of the counties that will be the primary users of the facility.<sup>21</sup>

### **1. Regional Juvenile Detention Facilities**

The statewide detention plan is subject to modification. As facilities are constructed, their coverage areas may change as the needs of the particular area change. As of March 2001, the ten regional facilities, the number of beds provided, their opening or anticipated opening dates, along with the counties they will service, are as follows:

**Adair Regional Juvenile Detention Center**, with 10 beds, opened in February 2001 and serves Adair, Casey, Clinton, Cumberland, Green, Metcalfe, Monroe, Russell, Taylor and Wayne counties.

**Boyd Regional Juvenile Detention Center**, with 48 beds projected, is scheduled to open in Summer 2003 and will serve Bath, Boyd, Carter, Elliott, Fleming, Greenup, Johnson, Lawrence, Lewis, Mason, Martin, Nicholas and Rowan counties.

**Breathitt Regional Juvenile Detention Center**, with 64 beds, opened in November 1997 and serves Breathitt, Estill, Floyd, Knott, Lee, Leslie, Letcher, Magoffin, Menifee, Montgomery, Morgan, Owsley, Perry, Pike, Powell and Wolfe counties.

**Campbell Regional Juvenile Detention Center**, with 52 beds, opened in August 1999 and serves Boone, Bracken, Campbell, Carroll, Gallatin, Grant, Harrison, Henry, Kenton, Oldham, Owen, Pendleton, Robertson and Trimble counties.

**Fayette Regional Juvenile Detention Center**, with 65 beds projected, is scheduled to open in Summer 2003 and will serve Bourbon, Clark, Fayette, Jessamine, Scott and Woodford counties.

**Hardin Regional Juvenile Detention Center**, with 48 beds projected, is scheduled to open in Summer 2003 and will serve Anderson, Breckinridge, Bullitt, Franklin, Grayson, Hardin, Hart, Larue, Marion, Meade, Nelson, Shelby, Spencer and Washington counties.

**Jefferson County Juvenile Detention Center**, with 96 beds to be contracted, is projected to contract with DJJ beginning July 2002 and will serve Jefferson county.

**Laurel Regional Juvenile Detention Center**, with 48 beds projected, is scheduled to open in Fall 2001 and will serve Bell, Boyle, Clay, Garrard, Harlan, Jackson, Knox, Laurel, Lincoln, Madison, McCreary, Mercer, Pulaski, Rockcastle and Whitley counties.

**McCracken Regional Juvenile Detention Center**, with 48 beds, opened in August 1999 and serves Ballard, Caldwell, Calloway, Carlisle, Christian, Crittenden, Graves, Fulton, Hickman, Hopkins, Livingston, Lyon, Marshall, Trigg, McCracken, Union and Webster counties.

**Warren Regional Juvenile Detention Center**, with 48 beds projected, is scheduled to open in Summer 2001 and will serve Allen, Barren, Butler, Daviess, Edmonson, Hancock, Henderson, Logan, McLean, Muhlenburg, Ohio, Simpson, Todd and Warren counties.<sup>22</sup>

While it is subject to revision, a statewide map outlining these detention regions can be found at the end of this chapter.

## **2. Alternatives to Secure Detention**

Many times both the juvenile and the community are better served by placing a juvenile in an alternative to secure detention rather than in a secure detention facility. Given the overall philosophy of the juvenile justice system as being more rehabilitative and treatment oriented than punitive in nature, alternatives to secure detention serve as valuable tools to assist the juvenile with some of the problems he may be facing in his personal life. The philosophy and benefits of alternatives to detention are also discussed in Chapter I.

To assist in assuring that each juvenile is placed appropriately while in the detention continuum, each DJJ operated secure juvenile detention center has a Detention Alternatives Coordinator (DAC). The DAC is responsible for screening most juveniles who are admitted to the facility. In this screening process, an objective risk assessment instrument is used to determine the most appropriate, least restrictive detention placement for each juvenile. The risk assessment evaluation is an objective questionnaire that assesses a juvenile's danger to himself and the community, the likelihood that he will appear for subsequent court hearings, the severity of the offense with which he is charged, the juvenile's risk of re-offending prior to disposition, gang involvement, substance abuse, family problems and history of court involvement.<sup>23</sup> While

it is subject to revision, a sample of the Risk Assessment instrument currently being used is found at the end of this chapter.

The placement options available to the DAC depend in part on the charges levied against the juvenile and the reasons the juvenile is in detention. The law requires that all juveniles charged with a capital offense, Class A felony or Class B felony be securely detained.<sup>24</sup> For all other pre-dispositional public offenders, the juvenile code grants DJJ the authority to determine the appropriate detention continuum placement without judicial permission.<sup>25</sup> The law prohibits secure detention of a status offender after the initial detention hearing so the DAC must place these juveniles in a non-secure alternative.<sup>26</sup> The Department of Juvenile Justice does not have the statutory authority to move sentenced juveniles to a non-secure alternative. Therefore, the DAC must obtain judicial permission to place sentenced juveniles anywhere except secure detention.

The Department of Juvenile Justice also employs DACs to serve some regions where DJJ facilities are not yet open. These DACs work with county-operated detention centers and with local providers to ensure that detention is used appropriately, and that juveniles are placed in the most appropriate, least restrictive environment possible to ensure the continued safety of the juvenile and protection of the community. These DACs, however, do not have any legal authority to place juveniles and therefore must rely upon a judicial order authorizing alternative placement to effectively implement the detention continuum.

### **3. Specific Types of Alternative Programs**

If the juvenile is determined to be suitable for a detention alternative, there are usually several types of programs in place within the community to serve as an alternative to detention. The exact type of program utilized will depend upon its availability within the

community, the juvenile's individual circumstances and other considerations. An example of the general types of programs used would include the following:

**Community Supervision:** The juvenile remains in his own home and a juvenile "tracker" is assigned to monitor the juvenile's compliance with curfew, school attendance and other rules or court orders. The juvenile is visited at school on weekdays and at home on evenings and weekends.

**Home Incarceration:** This is "house arrest" using electronic monitoring. The juvenile remains in his home and is only allowed to leave for school or other specified activities. A juvenile "tracker" monitors the juvenile's compliance through electronic monitoring as well as home and school visits.

**Staff Secure Shelter:** Shelters provide 24-hour custodial care to juveniles who do not have adequate family support systems to accommodate some type of in-home care. Shelters are also appropriate if there are abuse/neglect concerns or if the juvenile refuses to return home. Shelters offer a group home staff secure setting for juveniles where they may either attend school in their home district or the facility's school.

**Foster Homes:** Foster homes are family home settings that provide a more nurturing family environment to juveniles whose family support systems do not adequately meet their needs. Foster homes provide 24-hour custodial care for juveniles in a home setting. Foster homes are also appropriate if there are abuse/neglect concerns or the juvenile refuses to return home.<sup>27</sup>

#### **E. Detention Subsidy Payments**

Beginning in fiscal year 1999, the DJJ detention plan called for partial reimbursement to counties to offset the cost of the secure detention for public offenders. The subsidy has been increased each year through additional funding from the General Assembly and will continue to increase until the full cost for the operation of juvenile detention rests with DJJ. For fiscal year 2001, the subsidy is \$60 per day. The subsidy will increase to \$80 per day on July 1, 2001. The Department of Juvenile Justice facilities charge \$94 per day, thus the net cost per day to counties for the secure detention of public offenders is currently \$34, and will decrease to \$14 in July 2001. The subsidy does not cover the cost for the detention of status offenders, or juveniles in

detention for contempt of court on an underlying status offense. These costs will remain the responsibility of the counties.

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<sup>1</sup> Several other counties operated intermittent holding facilities, which, by law, were only permitted to hold juveniles up to 24 hours, exclusive of weekends and holidays.

<sup>2</sup> Kentucky Youth Advocates, Inc., *A Resource Manual to the New Kentucky Unified Juvenile Code*, at 4 (1987).

<sup>3</sup> *See id.* at 4-6.

<sup>4</sup> *See id.* at 6.

<sup>5</sup> *See id.*

<sup>6</sup> KRS 635.060

<sup>7</sup> Deborah Williamson, *An Analysis of Juvenile Waiver in the Commonwealth of Kentucky*, 10-11 (2000) (unpublished Ph.D. dissertation, University of Kentucky Department of Sociology) (on file with author) (*citing generally* J. O'Daniel & J. Birmingham, *Juvenile Service Officer Pilot Projects: Court Designated Worker Program Summary 1982-1984* (1984)).

<sup>8</sup> Williamson, *supra*, at 22.

<sup>9</sup> KRS 610.200(2)

<sup>10</sup> KRS 610.200(5)

<sup>11</sup> KRS 610.200(5)(a-d)

<sup>12</sup> KRS 600.020(52).

<sup>13</sup> KRS 600.020(45).

<sup>14</sup> KRS 600.020 (34)

<sup>15</sup> KRS 600.020(33)

<sup>16</sup> KRS 15A.210.

<sup>17</sup> 505 KAR 2:230.

<sup>18</sup> See generally, KRS 15A.305 and KRS 635.060.

<sup>19</sup> Department of Juvenile Justice, *Kentucky Juvenile Detention System* (2001).

<sup>20</sup> *See id.* at 4.

<sup>21</sup> *Id.*

<sup>22</sup> *See id.* at 8-10.

<sup>23</sup> *Supra*, n. 19 at 3-4.

<sup>24</sup> KRS 610.265(2)(b)1.

<sup>25</sup> KRS 610.265

<sup>26</sup> KRS 610.265(2)(b)2.

<sup>27</sup> *Supra*, n. 19 at 6-7.

## CHAPTER IV

### **KENTUCKY STATUTORY PROVISIONS REGARDING JUVENILE DETENTION**

#### **I. INTRODUCTION**

While the rehabilitative goals of the Kentucky Juvenile Code do not consider detention a first resort, juveniles who break laws in the Commonwealth may be detained under certain circumstances. Pursuant to both state and federal law, juveniles may not be confined in adult facilities, and they must remain sight and sound separated from adult inmates at all times. Mentally ill juveniles may not be placed in detention of any kind merely for the convenience of the police or public, but they may be detained if charged with a legitimate public offense.<sup>1</sup>

Detention is the safe and temporary custody of a juvenile who is accused of conduct subject to the jurisdiction of the court who requires a restricted environment for his own, *or* the community's, protection.<sup>2</sup> That restrictive environment may vary from emergency shelters, youth alternative centers, group homes, foster homes, nonsecure juvenile facilities to jail-like, secure juvenile detention centers.<sup>3</sup> The level of restriction depends, primarily, on the type of offense the juvenile is charged with, that is, status or public offense, (see below) and, secondarily, on the juvenile's individual circumstances, that is, the seriousness of the offense and any previous record.

<u>Offense Charged</u>	<u>Appropriate facility</u>
•Capital offense, class A or B felony	•Secure juvenile detention facility, juvenile holding facility
•Status offense	•Non-secure juvenile setting
•Violation of court order based on status offense	•Non-secure juvenile setting, unless other conditions are met allowing secure detention
•Public offense, contempt of court on underlying public offense	•Secure juvenile detention facility, juvenile holding facility, or nonsecure setting <sup>4</sup>



Juveniles may be detained only upon the order of a judge, who is contacted by the Court Designated Worker (CDW) when police take the juvenile into custody. Before making the decision to detain, the judge is provided with certain information by the CDW, such as a summary of the allegations, the juvenile's prior record, and if any viable release options exist. Thus, a judge may detain a juvenile only after thorough consideration of all relevant information.

## **II. DETENTION BY POLICE (TAKING INTO CUSTODY)**

The peace officer must inform the juvenile of his constitutional rights when the juvenile is taken into custody.<sup>5</sup> The juvenile has a right to counsel during every step of the trial process, and his parent(s) have the right to be present during all questioning and hearings.<sup>6</sup> When a juvenile is taken into custody, the peace officer must notify the juvenile's parent, guardian, relative, the Department of Juvenile Justice (DJJ), or other appropriate custodian, that the juvenile has been taken into custody and the specific reasons why he has been taken into custody.<sup>7</sup> Any person whose rights are aggrieved under this section may seek habeas corpus relief from the circuit court.<sup>8</sup> For a more detailed discussion of habeas corpus relief, see Chapter V.

A juvenile taken into custody by a peace officer may be held at a police station, secure juvenile detention facility, nonsecure holding facility, or a hospital or clinic, as long as sight and sound separated from adults, for up to two hours for administrative purposes (fingerprinting, contacting parents, record checks, etc.).<sup>9</sup> If the peace officer believes the juvenile should remain in custody beyond the preliminary two hours, then the officer shall contact the CDW who may authorize the peace officer to release the juvenile or retain the juvenile in custody at any of the above locations, except an intermittent holding facility, for a maximum of ten additional hours.

During this ten-hour period, the judge shall determine if the juvenile should be transported to an appropriate juvenile facility for further detention, or released.<sup>10</sup>

A peace officer may divert the juvenile from the formal court process and take him to a court-approved center and release the juvenile without filing charges if the juvenile is not charged with a felony, the officer receives permission from the parent or other responsible adult, and the officer follows the court's guidelines regarding such placement.<sup>11</sup>

### **III. DETENTION BY DISTRICT COURTS – PUBLIC OFFENSES**

#### **A. Pre-Adjudication**

Juveniles charged with public offenses or with contempt for underlying public offenses may be detained, upon an order of the judge, in a nonsecure setting, in a secure juvenile detention facility, or juvenile holding facility, for up to 48 hours or in an intermittent holding facility for up to 24 hours, excluding holidays and weekends, before the court must conduct a detention hearing.<sup>12</sup> If no such hearing is held within the prescribed time, the juvenile must be released and notified of his next court date, as there is no provision for an extension of time within which to detain the juvenile.<sup>13</sup> The purpose of this detention hearing is for the court to make probable cause findings and determine if further detention of the juvenile is necessary. This decision is based on the seriousness of the offense, the juvenile's prior record, the possibility that the juvenile would commit a dangerous offense if released, and whether other charges are pending.<sup>14</sup>

#### **B. Post-Adjudication**

After being adjudicated as a public offender, the court may detain the juvenile pending disposition, even if the juvenile has not been detained up to that point, if it finds by a preponderance of the evidence that the circumstances are such that release would likely endanger

either the juvenile *or* the community.<sup>15</sup> If the juvenile is adjudicated delinquent based upon contempt for an underlying public offense, he shall not be committed as a public offender as a result of such finding and may be detained only in a nonsecure alternative to detention program, a secure juvenile detention facility, a juvenile holding facility, or youth alternative center.<sup>16</sup>

### **C. Disposition**

The district court has several dispositional options for juveniles who have committed public offenses. These options, such as restitution, detention, or commitment to DJJ, may be utilized in any combination.<sup>17</sup> If the court determines detention is appropriate, restrictions apply as to how long the juvenile may be detained. Juveniles between the ages of 14 and 16 may be detained after being convicted as a public offender for up to 45 days.<sup>18</sup> Older juveniles may be detained up to 90 days.<sup>19</sup> However, should a juvenile be committed and detained while waiting placement by DJJ, the juvenile may remain in detention no more than 35 days. After 35 days, DJJ must remove the juvenile from detention for placement in one of its facilities.<sup>20</sup>

## **IV. DETENTION BY DISTRICT AND FAMILY COURTS – STATUS OFFENSES**

### **A. Introduction**

A status offense is an offense that would not be a crime if it were committed by an adult.<sup>21</sup> For example, habitual truancy, runaway, beyond control of parents, beyond control of school, and possession of alcohol by a minor are common status offenses.<sup>22</sup> The general philosophy regarding status offenders is that they should not be punished. Rather, the court system should work with the juvenile and his family in order to remedy the problem that led to the status offense committed by the juvenile.<sup>23</sup>

## **B. Pre-Adjudication**

### **1. Taken into Custody by Peace Officer**

A status offender may be taken into custody by a peace officer, pursuant to court order, for not appearing in court for a previous status offense, or if the peace officer reasonably believes the juvenile is a habitual runaway, but only if no viable less restrictive alternative or release is available.<sup>24</sup> The judge may order the juvenile to be detained in a nonsecure facility, a secure juvenile detention facility, or a juvenile holding facility pending the detention hearing, which must be held within 24 hours, exclusive of holidays and weekends.<sup>25</sup>

### **2. Other Situations**

A complaint must be filed in order to begin an action against a juvenile.<sup>26</sup> The complaint sets out information regarding the alleged offense along with other information about the juvenile.<sup>27</sup> For example, with status offenses, the person filing the complaint may be the juvenile's school (for truancy matters and beyond control of school charges) the juvenile's parents (for beyond control of parent charges), or other individuals. Before judicial proceedings are commenced on a complaint involving an alleged status offense, the complainant must meet with the Court Designated Worker (CDW) in order to determine how to proceed with the matter. In this initial meeting, the determination will be made whether or not:

- a. To refer the matter to court;
- b. To refer the juvenile and his family to a public or private social service agency; or,
- c. To enter into a diversionary agreement.<sup>28</sup>

Usually, the parties enter into a diversionary agreement whereby the juvenile is required to do certain things in lieu of going to court. This can be as simple as going to school (for truancy charges) obeying parents (for beyond control of parent charges), etc. In these situations,

it is only after the juvenile has failed to adequately complete the terms of his diversionary agreement that he is referred to court. For further discussion of the CDW process see Chapter III.

### **C. Post-Adjudication**

Adjudicated status offenders may not be securely detained.<sup>29</sup> The only exceptions are when a juvenile is being held for transfer to another state under the interstate compact or for contempt of court.<sup>30</sup> After probable cause has been established and the juvenile is awaiting disposition, the court may detain the juvenile in a nonsecure facility if further detention is necessary to protect the juvenile or the community.<sup>31</sup>

### **D. Disposition**

At the dispositional hearing, the court shall review all relevant information to determine that all alternative methods of treatment have been considered and exhausted, and to ensure the least restrictive alternative method of treatment is utilized.<sup>32</sup> Such alternatives may be community-based, nonsecure residential or nonresidential treatment programs or an appropriate nonsecure public or private education agency.<sup>33</sup> Secure detention of any kind is not legally permitted. If these least restrictive treatment options have proven inadequate, the court may commit the juvenile to the Cabinet for Families and Children for further necessary services.<sup>34</sup>

### **E. Contempt and the Valid Court Order Requirement**

Status offenders may be detained in a secure juvenile detention facility or juvenile holding facility upon a finding that the juvenile has violated a valid court order.<sup>35</sup> Status offenders accused of, or found guilty of, violating a valid court order shall not be converted into public offenders by virtue of this conduct.<sup>36</sup>

Once taken into custody for contempt, the juvenile must first be afforded a detention hearing as described above. Unlike public offenders, status offenders cannot be securely detained for contempt of court unless certain requirements are met.

A status offender who is subject to a valid court order may be securely detained upon a finding that he violated the valid court order if the court does the following prior to ordering detention:

1. Affirms that the court order met the requirements of a valid court order at the time it was originally issued;
2. During the detention hearing, makes a determination that there is probable cause that the juvenile violated the valid court order; and,
3. Within 72 hours of the juvenile's initial detention (exclusive of weekends and holidays) receives a report delivered by an appropriate public agency, other than the court or a law enforcement agency, that reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court, determines the reasons for the juvenile's behavior, and determines whether all dispositions other than secure detention have been exhausted or are inappropriate.<sup>37</sup>

Within 24 hours of receiving the report, the court must conduct a violation hearing and make written findings for the detention order.<sup>38</sup> All of these requirements can be met contemporaneously with the initial detention hearing if appropriate documentation already exists in the juvenile's court file or is made available through oral testimony in court.<sup>39</sup>

## **V. DETENTION FOR MOTOR VEHICLE OFFENSES**

When a juvenile over the age of 16 is charged with a motor vehicle offense, he is treated as an adult in that he is prosecuted in the regular session of district court instead of the juvenile session. A juvenile may be held, pending the court appearance, in a nonsecure setting, in a secure juvenile detention facility, juvenile holding facility, or if necessary, an intermittent holding facility.<sup>40</sup> Offenders under the age of 16 are dealt with in the juvenile session of district court.

Those juveniles who plead guilty to or are convicted of a motor vehicle offense may be detained in a nonsecure setting, in a secure juvenile holding facility or a juvenile holding facility. This section applies to offenses involving the operation of a motor vehicle only and does not include those offenses of stealing or operating a vehicle without the owner's consent or any felony offense involving a motor vehicle.

## **VI. YOUTHFUL OFFENDERS**

### **A. Introduction**

A youthful offender is a juvenile who is alleged to have committed certain more serious crimes and is transferred to circuit court to be tried as an adult. Upon motion of the county attorney, the district court conducts a preliminary hearing to determine if the juvenile should be transferred to the circuit court as a youthful offender.<sup>41</sup> At the preliminary hearing, the court must determine if there is probable cause to believe that an offense has been committed and was committed by the juvenile; that the juvenile is of the required age and has the requisite number of prior adjudications to be a youthful offender.<sup>42</sup> If the district court determines that probable cause exists, then it shall consider the following factors in determining whether the case should be transferred to circuit court:

1. The seriousness of the alleged offense;
2. Whether the offense was against persons or property, with greater weight being given to offenses against persons;
3. The maturity of the juvenile as determined by his environment;
4. The juvenile's prior record;
5. The best interest of the juvenile and the community;
6. The prospects of adequate protection of the public;

7. The likelihood of reasonable rehabilitation of the juvenile by the use of procedures, services and facilities currently available to the juvenile justice system; and,
8. Evidence of the juvenile's participation in a gang.<sup>43</sup>

After considering all of the above factors, and determining that two (2) or more of the eight (8) factors favor transfer, the district court may issue an order, which states the reasons for the transfer, transferring the juvenile to circuit court.<sup>44</sup> Once the juvenile is transferred, the circuit court has jurisdiction over all offenses and violations related to the act for which the juvenile will be tried as a youthful offender.<sup>45</sup> Youthful offenders are juveniles who will be tried as adults, and they are subject to the same arrest, post-arrest, and criminal procedures as adults, including conditions of release and bail.<sup>46</sup> The one exception is that youthful offenders cannot be confined with adults, thus they must serve their sentence, while still a juvenile, with the Department of Juvenile Justice (DJJ).<sup>47</sup>

### **B. Sentencing**

Before a youthful offender may be sentenced by the circuit court, a DJJ representative must prepare a pre-sentence investigation report.<sup>48</sup> Youthful offenders must serve their sentence in a juvenile facility or other program operated by DJJ until one of the following occurs: 1) the sentence expires; 2) the juvenile is paroled; 3) the juvenile is probated; or, 4) the juvenile reaches the age of 18.<sup>49</sup> If a youthful offender reaches the age of 18 prior to the expiration of the sentence, then the sentencing court shall determine if the juvenile should be placed on probation or conditional discharge, returned to DJJ to complete a treatment program not to exceed six months, or incarcerated in an adult correctional facility.<sup>50</sup>

If a youthful offender is 18 prior to sentencing but is sentenced to placement or treatment in a juvenile facility or program, then the juvenile shall return to the sentencing court at the end



of a six-month period for the court to make a further determination regarding the juvenile's placement or conditional release.<sup>51</sup> Youthful offenders may not be held in a DJJ facility past the age of 19.<sup>52</sup>

### **C. Parole**

Youthful offenders are subject to the jurisdiction of the Kentucky Parole Board and may be placed on parole to the Department of Corrections.<sup>53</sup> If a youthful offender violates parole, then the juvenile may be incarcerated in a secure juvenile detention facility until he is 18, when the juvenile shall be transferred to the Department of Corrections until the expiration of his sentence.<sup>54</sup>

### **D. Committing Youthful Offenders to the Department of Corrections**

Upon the motion of DJJ, the circuit court may commit a youthful offender to an adult facility operated by the Department of Corrections if the youthful offender has:

1. Injured or endangered the life or health of other residents or staff members;
2. Escaped from the juvenile facility;
3. Caused a disruption in the facility by encouraging other juveniles to engage in violent behavior which injured or endangered the life or health of other residents or staff members;
4. Caused a disruption in the facility, smuggled, or caused to smuggle contraband into the facility; or,
5. Established a pattern of behavior not conducive to the policies and procedures of the facility.<sup>55</sup>

Youthful offenders must be advised of these rules upon admittance to the juvenile facility.<sup>56</sup> Once a youthful offender has violated any of these rules and is then committed to the Department of Corrections, the juvenile may not be placed in a DJJ facility at a later date.<sup>57</sup>

The sentencing court may also commit a youthful offender to the Department of Corrections if the evidence shows that the juvenile is mentally ill and dangerous to himself or others and that he cannot be properly treated in the youthful offender program.<sup>58</sup>

## **VII. DEPARTMENT OF JUVENILE JUSTICE COMMISSIONER'S WARRANT**

At the dispositional hearing, the district court may commit an adjudicated public offender to DJJ.<sup>59</sup> When commitment occurs, DJJ has legal custody of the juvenile and may physically place that juvenile in an appropriate setting, as determined by DJJ.<sup>60</sup> Because DJJ maintains legal custody over the juvenile, it is responsible for the juvenile's well-being and safety during this time.<sup>61</sup> Thus, if the juvenile flees from this setting or violates the terms of supervised placement, DJJ is responsible for bringing the juvenile back into its physical care.

For example, when a juvenile is committed to DJJ and in supervised placement (placement in a parent's, relative's, foster, or boarding home) the juvenile is required to follow a behavior contract known as "terms of supervised placement."<sup>62</sup> This document is signed by the juvenile, parent, and DJJ community worker. If the juvenile violates the contract, the community worker may impose a graduated sanction or initiate revocation of the supervised placement, depending on the severity of the violation.<sup>63</sup> This entails the execution of a commissioner's warrant.

Since DJJ employees are not peace officers, the Department has been granted the authority to direct peace officers to take physical custody of these juveniles in order to return them to the physical custody of DJJ.<sup>64</sup> Since peace officers require written authorization before taking physical custody of a juvenile, DJJ created the "commissioner's warrant."<sup>65</sup> This document changes the type of custody already in existence, and, unlike a criminal arrest warrant

or search warrant, it need not be supported by oath or affirmation.<sup>66</sup> When the peace officer delivers the juvenile to the physical custody of DJJ, the officer's involvement ends.

If a commissioner's warrant is executed for violation of the behavior contract and immediate physical custody of the juvenile is necessary, a probable cause hearing must be held within five days of the juvenile's apprehension and return to DJJ.<sup>67</sup> This hearing is to establish probable cause and to determine if a safety concern exists, justifying continued custody of the juvenile until the next hearing.<sup>68</sup> At the next hearing, DJJ must establish, by a preponderance of the evidence, that the juvenile violated the contract.<sup>69</sup> If DJJ does not do so, the juvenile returns to his prior placement, otherwise, a further determination must be made regarding placement or other modification.<sup>70</sup> This decision may be appealed to the Commissioner within ten days.<sup>71</sup>

For a listing of definitions regarding juvenile detention issues, see Appendix B.

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<sup>1</sup> KRS 645.280(1).

<sup>2</sup> KRS 600.020(20), *emphasis added*.

<sup>3</sup> For definitions of all types of facilities that courts may utilize when detaining juveniles see, KRS 600.020(33), (34), (39), (40), (45), (48), and (52).

<sup>4</sup> KRS 610.265(b)(1-4).

<sup>5</sup> KRS 610.200(1).

<sup>6</sup> KRS 610.290(1).

<sup>7</sup> KRS 610.200(1), 610.290(2).

<sup>8</sup> KRS 610.290(1).

<sup>9</sup> KRS 610.220(1)(a-i), (2), (3).

<sup>10</sup> KRS 610.200(5)(d).

<sup>11</sup> KRS 610.255(1-3).

<sup>12</sup> KRS 610.265(1).

<sup>13</sup> KRS 610.290(1).

<sup>14</sup> KRS 610.280(1)(a-b), 610.265(2)(a).

<sup>15</sup> KRS 635.050, *emphasis added*.

<sup>16</sup> KRS 635.055.

<sup>17</sup> KRS 635.060(1-6).

<sup>18</sup> KRS 635.060(4).

<sup>19</sup> KRS 635.060(5).

<sup>20</sup> KRS 635.060(3).

<sup>21</sup> KRS 600.020(58).

<sup>22</sup> KRS 600.020(3), (4), (27), (28).

<sup>23</sup> KRS 630.010(2).

<sup>24</sup> KRS 630.030(1), (2).

<sup>25</sup> KRS 630.010(3), 630.080(1), 630.040(3).

<sup>26</sup> KRS 610.020.

<sup>27</sup> *Id.*

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<sup>28</sup> KRS 630.050.  
<sup>29</sup> KRS 630.100, 630.070.  
<sup>30</sup> KRS 630.0080(2).  
<sup>31</sup> KRS 630.080(1).  
<sup>32</sup> KRS 630.120(3-4).  
<sup>33</sup> KRS 630.120(2)(a-b).  
<sup>34</sup> KRS 630.120(6).  
<sup>35</sup> KRS 630.070.  
<sup>36</sup> KRS 630.010(5).  
<sup>37</sup> KRS 630.080(3)(a-c).  
<sup>38</sup> KRS 630.080(3)(c).  
<sup>39</sup> KRS 610.265(2)(b)(4)(c).  
<sup>40</sup> KRS 610.010(1)(a).  
<sup>41</sup> KRS 640.010(2).  
<sup>42</sup> KRS 640.010(2)(a).  
<sup>43</sup> KRS 640.010(2)(b).  
<sup>44</sup> KRS 640.010(2)(c).  
<sup>45</sup> KRS 610.015(2).  
<sup>46</sup> KRS 640.020(1).  
<sup>47</sup> KRS 610.010(1).  
<sup>48</sup> KRS 640.030(1) as required by KRS 532.050.  
<sup>49</sup> KRS 640.030(2)(a-c).  
<sup>50</sup> KRS 640.030(3).  
<sup>51</sup> KRS 640.030(4).  
<sup>52</sup> KRS 640.030(4).  
<sup>53</sup> KRS 640.080(1).  
<sup>54</sup> KRS 640.080(2).  
<sup>55</sup> KRS 640.070(1)(a-e).  
<sup>56</sup> KRS 640.070(3).  
<sup>57</sup> KRS 640.070(5).  
<sup>58</sup> KRS 640.070(4).  
<sup>59</sup> KRS 635.060(3).  
<sup>60</sup> KRS 605.090(1)(a-f).  
<sup>61</sup> KRS 15A.065(3).  
<sup>62</sup> 505 KAR 605.090 Section 2(1)(b).  
<sup>63</sup> 505 KAR 1:090 Section 2(1)(a)(2).  
<sup>64</sup> KRS 635.100(1-2).  
<sup>65</sup> KRS 635.100(7); promulgated at 505 KAR 1:090.  
<sup>66</sup> 1981 WL 142511 (KY A.G.); *Connecticut v. Villafane*, 372 A.2d 82 (1976).  
<sup>67</sup> 505 KAR 1:090 Section 2(2)(d)(1).  
<sup>68</sup> 505 KAR 1:090 Section 2(2)(g)(1).  
<sup>69</sup> 505 KAR 1:090 Section 3(2)(i).  
<sup>70</sup> 505 KAR 1:090 Section 3(5).  
<sup>71</sup> 505 KAR 1:090 Section 3(8).

## **CHAPTER V**

### **LEGAL ISSUES CONCERNING JUVENILE CONFINEMENT**

#### **PART I: ADDRESSING CONCERNS REGARDING THE FACT OF, DURATION OF, AND PLACE OF CONFINEMENT**

When a juvenile is confined in a juvenile detention facility, juvenile holding facility, or an intermittent juvenile holding facility, it is incumbent upon practitioners to be aware of the legal issues which may arise as a result of the decision to initially detain, the decision to continue detention, and/or the place where the juvenile is being detained. Such issues generally arise based on the fact of or duration of confinement to which the juvenile is subjected. The legal challenges presented may arise as a result of violations of state or federal statutory law or constitutional law concerning the time and/or place of detention, or because of the juvenile's particular status.

This chapter will help practitioners identify circumstances that may result in the illegal or unconstitutional detention of juveniles. This chapter includes a synopsis of problems that may give rise to a claim of illegal confinement based on fact, duration, or placement issues, and it provides a discussion of the relevant statutes and/or case law that should be considered when such circumstances arise. Further, this chapter will identify remedies that courts and legal practitioners may consider to ensure that juveniles are not confined illegally as a result of time of detention, place of detention, or status of the juvenile.

#### **I. RESTRICTIONS ON JUVENILE DETENTION**

This section provides practitioners with a list of rules to remember regarding the fact of, duration of, or place of detention, along with the statutory or other authority upon which each is

based. While this list is not exhaustive, it does provide a quick reference identifying problem areas that may arise when the decision to detain is being made.

### **A. Representation of the Juvenile by Legal Counsel**

Juveniles who are detained must be represented by legal counsel and afforded basic due process rights as proscribed by the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment of the United States Constitution along with Sections 2, 10, and 11 of the Kentucky Constitution, as well as established by relevant federal and state case law. The opportunity for juveniles to be represented by counsel is a critical right in our adversarial system of justice. Kentucky courts have long recognized that “...a waiver of counsel...may not be permitted unless it appears that the waiver was intelligent, competently, understandingly, and voluntarily made by the defendant.”<sup>1</sup> This is particularly true with juveniles, who are generally less able to represent themselves in the judicial process. Indeed, it has been recommended by some standards that juveniles should not be permitted to waive counsel at all in pre-trial proceedings, including detention.<sup>2</sup>

Kentucky's Unified Juvenile Code, as enacted initially in 1986, codified the long standing principle enunciated by the United States Supreme Court in *In re Gault*, where the highest court recognized that juveniles have the right to be represented by counsel when accused of violating the law.<sup>3</sup> In particular, Chapter 610 of the Juvenile Code establishes the statutory right to counsel for a juvenile, and states:

...[T]he court shall, when the child is brought before the court:  
(1) Explain to the child and his parents...their respective rights to counsel and, if the child and his parents...are unable to obtain counsel, shall appoint counsel for the child...<sup>4</sup>

The right to counsel for juveniles is also explicitly required by KRS 610.290(1), which states “A child shall have a right to counsel at his detention hearing determining his right to

freedom pending the disposition of his case...”<sup>5</sup> The legislature deemed this right so important that it specifically provides habeas corpus relief to any person whose rights, as stated within in this subsection, are not upheld.<sup>6</sup>

Further, the U. S. Supreme Court, in *Schall v. Martin*, recognized that juveniles have a fundamental right to be free from institutional restraint.<sup>7</sup> The Court defined the liberty interest of a juvenile, however, more narrowly than that of an adult because in the Court’s reasoning, a juvenile is always in someone’s custody (either parent or state).<sup>8</sup> While reaching the conclusion that the juvenile’s right to liberty may in some cases be outweighed by the state’s *parens patriae* interest in preserving and promoting the juvenile’s welfare, the Court acknowledged that certain procedural Due Process rights were required in a state statutory scheme to protect a juvenile’s liberty interest once the juvenile is detained. According to *Schall*, these factors include: 1) an expeditious probable cause hearing; 2) findings regarding the need for detention once probable cause is established; 3) expedited fact finding hearings; and, 4) conditions of confinement which do not amount to punishment.<sup>9</sup>

Kentucky’s statutory scheme has important procedural safeguards that are designed to comport with the Due Process Clause of the Fourteenth Amendment and are consistent with *Schall*. Of particular importance are provisions related to specific times required for detention hearings, the right to counsel throughout these critical proceedings, an inquiry into the factors determining the need for continued detention, and the requirement of specific findings to justify a juvenile’s loss of liberty throughout every step of the judicial proceedings. Finally, practitioners should be cognizant of the place of detention and the conditions of confinement to which juveniles are subjected to ensure that the cautionary language of *Schall* regarding conditions amounting to punishment is followed.

## **B. Timing of Detention Hearing**

Juveniles must have a detention hearing within a given time period in order for the continued detention of the juvenile to be legal, even if the juvenile is released to a nonsecure setting, which still restricts the juvenile's liberty. Kentucky's Unified Juvenile Code sets forth restrictions on the amount of time juveniles can be held pending a detention hearing to determine probable cause and the need for further detention. These provisions have been somewhat modified by the passage of House Bill 296 during the 2000 General Assembly.<sup>10</sup> The key provisions include the following:

1. A police officer may only hold a juvenile in custody at a police station, secure juvenile detention facility, juvenile holding facility, intermittent holding facility, non-secure facility, or, as necessary, in a hospital or clinic for a period of time not to exceed two hours, and then only for administrative purposes as specified in KRS 610.220(1).<sup>11</sup>
2. An extension of the two hours can be granted, for up to a maximum of ten hours, by a court designated worker, except when a juvenile is being held in an intermittent holding facility.<sup>12</sup>
3. A juvenile alleged to be a status offender, or who is accused of being in contempt of court on an underlying finding that the child is a status offender, may be detained in a nonsecure facility, a secure juvenile detention facility, or a juvenile holding facility for a period not to exceed 24 hours, exclusive of weekends and holidays, pending a detention hearing.<sup>13</sup> A juvenile in this category may not be held in an intermittent juvenile holding facility.
4. A juvenile accused of committing a public offense or of being in contempt of court on an underlying public offense may be detained in a secure juvenile detention facility or juvenile holding facility for up to 48 hours, exclusive of weekends and holidays, pending a detention hearing, or if neither is reasonably available, an intermittent juvenile holding facility, but for a period not to exceed 24 hours, exclusive of weekends and holidays, pending a detention hearing.<sup>14</sup>
5. Juveniles who are non-offenders (i.e., dependent, neglected and/or abused children) cannot be detained in a secure juvenile detention facility, juvenile holding facility, or intermittent juvenile holding facility at all.<sup>15</sup>
6. Juveniles who are alleged to have violated a city ordinance, such as curfew, cannot be detained, as they do not meet the criteria as either status or public



offenders.<sup>16</sup> A juvenile under these circumstances who subsequently violates an ordinance such as curfew after having been placed under a court order, likewise, does not meet the definition of “valid court order” for purposes of detention because there is no underlying status or public offense.<sup>17</sup>

A juvenile must be released from custody if the detention hearing is not held within the statutorily mandated timeframes, regardless of the place of detention.<sup>18</sup> Even if the juvenile is placed on “house arrest” or under a curfew by a judge without first having a detention hearing, the detention hearing is still necessary. Detention has been construed by the Kentucky Attorney General’s office to include instances where the juvenile is “detained” through house arrest or a curfew, as well as placement outside of the juvenile’s home, not necessarily in a secure detention center. Less restrictive means are still considered detention because the juvenile is deprived of his liberty interest. Robert R. Stephens, serving as Attorney General at the time, noted that a detention hearing is still required under these less restrictive circumstances where the juvenile is detained in some manner.<sup>19</sup>

### **C. Necessity of Appropriate Court Findings**

Courts must make appropriate findings throughout the process in order for a juvenile to be detained. The Kentucky Unified Juvenile Code states that courts may not detain a juvenile unless “other less restrictive alternatives have been attempted or are not feasible in order to insure that children are not removed from families except when absolutely necessary.”<sup>20</sup> The Code also mandates that specific findings be made throughout the court process in order for the juvenile to be detained in any manner after a detention hearing, after adjudication, and after a disposition hearing. Juveniles fall into one of three categories for this purpose: 1) a juvenile alleged to be a status offender; 2) a juvenile alleged to be in contempt of court on an underlying finding that the juvenile is a status offender; and, 3) a juvenile accused of committing a public offense, or of being in contempt of court on an underlying public offense. Specifically,

practitioners should be cognizant of the following provisions, and ensure that findings are made to justify continued detention of a particular juvenile:

1. KRS 610.265 requires a determination of whether a juvenile should be further detained, with consideration given to the nature of the offense, the juvenile's background and history, and other information relevant to the juvenile's conduct or condition. An order to continue detention must state on the record the specific reasons for the detention, and that the need for detention was properly established.<sup>21</sup>
2. KRS 610.280 requires separate findings that:
  - a. Probable cause exists to believe that an offense has been committed and that the accused juvenile committed that offense, and<sup>22</sup>
  - b. That the court has considered the seriousness of the offense, the possibility that the juvenile will commit an offense dangerous to himself or the community pending disposition of the alleged offense, the juvenile's prior record, if any, and whether there are other pending charges against the juvenile.<sup>23</sup>
3. Status offenders cannot be securely detained after the initial detention hearing.<sup>24</sup>
4. A juvenile accused of, or who has been adjudicated as having violated a valid court order where the underlying offense was a status offense, may be securely detained for up to 72 hours, exclusive of weekends and holidays, and including any detention time prior to the detention hearing, pending receipt of a written report as detailed in KRS 630.080(3)(c). The court must also make findings that the requirements for a valid court order were met at the time the original order finding the juvenile to be a status offender was issued, and that there is probable cause that the child violated the valid court order.<sup>25</sup>
5. Before a public offender can be detained after a detention hearing, the court must make a finding by a preponderance of the evidence that the circumstances surrounding the juvenile are such as to endanger his safety or welfare or the safety of the community.<sup>26</sup>
6. A public offender may be detained after a disposition hearing in a juvenile detention facility or juvenile holding facility if:
  - a. The juvenile is between the ages of 14 and 16 and the court includes this as a disposition, but not for more than 45 days;<sup>27</sup>
  - b. The juvenile is 16 or older and the court includes this as a disposition, but not for more than 90 days;<sup>28</sup>

- c. The juvenile is committed to DJJ as a public offender and is awaiting placement, in which case DJJ shall move the juvenile to an appropriate placement as soon as possible, not more than 35 days from the time of commitment or re-commitment.<sup>29</sup>

#### **D. Appropriate Juvenile Detention Facilities**

Juveniles must be detained in an approved juvenile detention facility, juvenile holding facility, intermittent holding facility, or nonsecure setting in the manner and with the limitations required by state and federal law. Juveniles must be detained in an approved detention facility or program as prescribed by the Kentucky Unified Juvenile Code. Detaining a juvenile in an inappropriate facility as determined by statute may give rise to an immediate cause for relief through an action for habeas corpus in the circuit court in the county in which the child is detained. A quick reference follows:

##### **Status offenders:**

- Can be held in a nonsecure setting, a secure juvenile detention facility, or juvenile holding facility, but not for more than 24 hours, exclusive of weekends and holidays, pending a detention hearing.
- Cannot be held in an intermittent holding facility.
- Cannot be held in detention after the detention hearing.

##### **Public Offenders:**

- Can be detained up to 48 hours, exclusive of weekends and holidays, prior to a detention hearing in a non-secure environment, a secure juvenile facility or juvenile holding facility.
- Can be detained for 24 hours, exclusive of weekends and holidays, in an intermittent juvenile holding facility when a non-secure or juvenile holding facility is not reasonably available.
- Can be detained in a secure juvenile detention facility or juvenile holding facility after a detention hearing with the appropriate findings, after adjudication with appropriate findings, and after disposition within statutory time limits.

### **Non-Offenders:**

- Cannot be detained in any facility.

### **E. Determining the Legal Status of a Juvenile**

The legal status of a juvenile must be correctly determined to ensure the appropriate use of detention. In addition to those categories discussed above, other considerations must be remembered regarding the status of juveniles who come into custody. Special rules apply in the following cases:

1. Juveniles who violate a city ordinance (i.e., curfew) cannot be detained, as they are not specifically public or status offenders by law.<sup>30</sup>
2. A juvenile who is detained and who reaches the age of 18, and is being lodged as a public offender or youthful offender, can no longer be detained in a secure juvenile detention facility or juvenile holding facility.<sup>31</sup> However, if a juvenile is committed to DJJ, then he may be held in a DJJ detention facility once he reaches 18.
3. A juvenile who is being held pursuant to Chapter 645 of the Kentucky Unified Juvenile Code cannot be held in a secure juvenile detention facility or juvenile holding facility, unless a status offense action or public offense action is also pending.<sup>32</sup>
4. A juvenile over the age of 16 who is charged with a motor vehicle offense has the same conditions of release as that of an adult. However, these juveniles must be held pending release in a nonsecure setting, a secure juvenile detention facility or juvenile holding facility, or if none is reasonably available, in an intermittent holding facility.<sup>33</sup>
5. While there is no minimum age for detaining juveniles in any secure facility in Kentucky, a juvenile being detained pursuant to KRS 635.060(4) or (5) stemming from as a disposition on a public offense may only be held for up to 45 days if the child is at least 14-years-old, and up to 90 days if the child is at least 16-years-old. A court cannot “stack” dispositions imposing detention time in such a manner as will exceed this aggregate number.<sup>34</sup>

### **F. Conditions of Release from Detention**

Courts must establish conditions of release comparable to those of adults in certain circumstances under Kentucky’s statutory scheme. Juveniles who have been transferred to circuit

court after a transfer hearing conducted in accordance with KRS Chapter 640 are entitled to have bail set in the same manner as an adult, as found in KRS Chapter 431 and the Rules of Criminal Procedure.<sup>35</sup>

Juveniles over the age of 16 who are charged with motor vehicle offenses have the same conditions of release as that of adults; however, they must be held pending release in a nonsecure setting, a secure juvenile detention facility or juvenile holding facility, or if none is reasonably available, in an intermittent holding facility.<sup>36</sup>

### **G. Minority Overrepresentation and the Decision to Detain**

Courts should be aware of minority overrepresentation in secure detention facilities, and they should ensure that the policies and practices in their districts do not result in racial disparity. The Juvenile Justice and Delinquency Prevention Act (JJDP A) mandates that states examine the overrepresentation of minority juveniles in the juvenile justice system, particularly in confinement, and to address disparities that may exist. Of particular concern are policies and procedures that determine which juveniles get detained, and whether such policies, even if race-neutral on their face, may have a disparate impact on minority juveniles. Courts should continue to examine disparities that may exist in their particular districts, and address this through re-examining policies on detention and release, staff training, and other effective means of increasing sensitivity to this issue.

## **II. JUDICIAL REMEDIES FOR ILLEGAL DETENTION RESULTING FROM THE FACT OF, DURATION OF, OR PLACE OF DETENTION**

Juveniles who are being illegally detained by virtue of their legal status, or in violation of the state's statutory provisions regarding the purpose for detention, the place of detention, or the duration of detention, have judicial remedies to enable their release. In some instances these remedies are designed to assure the district court's compliance with the law.

## **A. Writ of Habeas Corpus**

A writ of habeas corpus is both a state expedited procedure of a summary nature and a state constitutional right.<sup>37</sup> Procedurally, the process is governed by statute.<sup>38</sup> The statutes emphasize the importance of an expedited procedure if it is clear that someone is being unlawfully detained.<sup>39</sup> Generally, a writ of habeas corpus is an appropriate remedy, and will be granted, only when the person is entitled to immediate relief. Specific examples of when habeas relief may be required include:

1. Any time the state has lost jurisdiction.<sup>40</sup>
2. To correct an illegal sentence.<sup>41</sup>
3. When the juvenile's status does not allow for detention by law, such as when the juvenile is a status offender, curfew violator, or dependent, neglected or abused juvenile.
4. When a juvenile for whom detention is otherwise allowable is held beyond the allowable statutory time.
5. When the place where the juvenile is detained is not permitted by law, such as a status offender held in an intermittent juvenile holding facility.
6. When the juvenile is not represented by counsel at the detention hearing or there has not been a detention hearing and proper findings made regarding the necessity for detention.<sup>42</sup>

Habeas relief is not available in circumstances where relief is available under Section 11.42 of the Kentucky Rules of Criminal Procedure for ineffective assistance of counsel and the person is not entitled to immediate relief.<sup>43</sup> A writ of habeas corpus is filed in the county where the juvenile is being held, which may not be the county that ordered the detention<sup>44</sup>

## **B. Appeal of Detention Decision**

Once a final disposition has been entered, a juvenile has the right to appeal all matters related to custody, detention, or court-ordered participation in programs, to the circuit court.<sup>45</sup>

With regard to youthful offenders, appeals would be to the Court of Appeals or Supreme Court, as appropriate.

### **C. Writs of Prohibition and Mandamus**

If the juvenile court fails to follow the statutes and case law governing juveniles, the filing of a writ of prohibition or a writ of mandamus may be appropriate.

Pursuant to the Kentucky Rules of Civil Procedure, relief available by the common law writs of mandamus and prohibition to reverse an intermediate trial court may be obtained by original action in the appropriate court.<sup>46</sup> A writ of mandamus orders a trial judge to do something, whereas a writ of prohibition forbids the doing of an act.<sup>47</sup> Technically, these writs are not an appeal, but are original proceedings in an appellate court seeking to direct a trial judge to enter or vacate a particular order. In general, they can be used in situations where a wrong needs an immediate remedy and no other remedy is available. Discretionary actions of the court are generally not subject to these writs.

A party seeking relief through a writ of mandamus must generally show that 1) a clear right to relief exists; 2) a duty on the part of the court to provide the relief exists; and, 3) no other relief is available.<sup>48</sup> Examples of situations in which these writs may be appropriate include:

1. Double jeopardy violations;<sup>49</sup>
2. Violations of interstate or intrastate detainer statutes;<sup>50</sup>
3. Erroneous discovery orders;<sup>51</sup>
4. Failure of trial court to follow appropriate detention procedures, but where immediate release is not necessarily warranted through habeas relief.

### **D. Judicial Review**

A juvenile court always has the authority to review its orders, and to terminate or continue them any time prior to expiration, on the court's own initiative or by motion of the

juvenile, the family, custodian, guardian or the juvenile’s legal representative, the county attorney, the Department of Juvenile Justice, or any other person having an interest in the juvenile’s welfare.<sup>52</sup>

For a quick-reference checklist and chart regarding legal issues surrounding juvenile detention, see Appendix C.

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<sup>1</sup> *Sizemore v. Commonwealth, Ky.*, 450 S.W. 2d 494, 497 (1970).

<sup>2</sup> IJA/ABA Standards Relating to Pretrial Proceedings, Standard 6.1 and Commentary (1981).

<sup>3</sup> *In re Gault*, 387 U.S. 1 (1967).

<sup>4</sup> KRS 610.060(1)(a).

<sup>5</sup> KRS 610.290(1).

<sup>6</sup> *Id.*

<sup>7</sup> *Schall v. Martin*, 467 U.S. 253 (1994).

<sup>8</sup> *Id.* at 265.

<sup>9</sup> *Id.* at 269.

<sup>10</sup> HB 296 (Ky. 2000).

<sup>11</sup> KRS 610.220(2).

<sup>12</sup> KRS 610.220(2).

<sup>13</sup> KRS 610.265(1).

<sup>14</sup> KRS 610.265(1).

<sup>15</sup> KRS 645.280.

<sup>16</sup> KRS 600.020(37) and (48); 610.010(1)(a). See also *City of Covington v. Court of Justice, ex rel. Administrative Office of the Courts*, 784 S.W. 2d 180 (1990).

<sup>17</sup> See KRS 600.020(59) for statute defining “valid court order.”

<sup>18</sup> KRS 610.265.

<sup>19</sup> OAG 78-677. Note: Although this provision was interpreted based on KRS 208.192(2), the comparable provisions regarding detention hearings found in the Kentucky Unified Juvenile Code would make this opinion applicable. Since KRS 600.020(19) now defines “detention” broadly, referring to the “safe and temporary custody of a juvenile who is accused of conduct subject to the jurisdiction of the court who required a restricted environment for his or her own or the community’s protection,” including “nonsecure setting” as defined in KRS 600.020(40). As such, a juvenile alleged to be a status or public offender and taken into custody, but placed in a nonsecure setting, is also entitled to a detention hearing within the prescribed time.

<sup>20</sup> KRS 600.010(2)(c).

<sup>21</sup> KRS 610.280(3).

<sup>22</sup> KRS 610.280(a) states that “[F]ailure to establish probable cause under this statutory section requires that the child be released and the complaint or petition dismissed unless the court determines further detention is necessary to assure the appearance of the child in court on another pending case.”

<sup>23</sup> KRS 610.280(b).

<sup>24</sup> KRS 630.010(3).

<sup>25</sup> See also KRS 630.120 for notice requirements pertaining to a valid court order at the time of a juvenile’s disposition hearing.

<sup>26</sup> KRS 635.050.

<sup>27</sup> KRS 635.060(4).

<sup>28</sup> KRS 635.060(5).

<sup>29</sup> KRS 635.060(3).

<sup>30</sup> *Supra*, note 7.

<sup>31</sup> KRS 640.020. See also *Jefferson County Department for Human Services v. Carter, Ky.*, 795 S.W.2d 59 (1990) regarding the prohibition against the juvenile court placing an 18-year-old public offender in a juvenile facility.



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<sup>32</sup> KRS 645.280(1). Note also that this provisions prohibits a peace officer or any other person from bringing a status or public offense action against a juvenile who is mentally ill and in need of hospitalization solely or primarily for the purpose of avoiding transporting the juvenile to a hospital, mental health facility, or other less restrictive alternative.

<sup>33</sup> KRS 610.010(1)(a).

<sup>34</sup> *Commonwealth of Kentucky v. W.E.B.*, 985 S.W. 2d 344 (1998).

<sup>35</sup> KRS 640.020(2).

<sup>36</sup> KRS 610.010(1)(a).

<sup>37</sup> *Commonwealth v. Marcum*, Ky., 873 S.W. 2d 207, 210 (1994).

<sup>38</sup> KRS 419.020 et seq; KRS 610.290(1).

<sup>39</sup> *Id.*, stating that KRS 410.030 specifies “[t]he writ must be made returnable as soon as possible.” KRS 410.110(1) specifies that “[t]he hearing on the writ shall be summary in nature.” KRS 419.130 likewise provides a method for an expedited appeal.

<sup>40</sup> *Herndon v. Wingo*, 399 S.W.2d 486 (Ky., 1966).

<sup>41</sup> *Polsgrove v. Kentucky Bureau of Corrections*, 599 S.W.2d 736 (Ky. 1977).

<sup>42</sup> KRS 610.290(1).

<sup>43</sup> *Richardson v. Howard*, Ky., 448 S.W. 2d 49 (1969). See also *Commonwealth v. Marcum*, *supra*, note 20.

<sup>44</sup> KRS 419.030.

<sup>45</sup> KRS 610.150.

<sup>46</sup> Ky. R. Civ. P. 81.

<sup>47</sup> Jack H. Friendenthal et. al, Civil Procedure § 13.3, at 597, & n. 28 (2nd ed. 1993).

<sup>48</sup> *Wise v. United States*, 369 F. Supp. 30 (W.D. Ky. 1973).

<sup>49</sup> *Crawley v. Kunzman*, Ky., 585 S.W. 2d 387 (1979).

<sup>50</sup> *Spivey v. Jackson*, Ky., 602 S.W. 2d 158 (1980).

<sup>51</sup> *Bender v. Eaton*, Ky., 343 S.W.2d 799 (1961).

<sup>52</sup> KRS 610.120.

## **CHAPTER VI**

### **LEGAL ISSUES CONCERNING JUVENILE CONFINEMENT**

#### **PART II: ISSUES CONCERNING THE CONDITIONS OF CONFINEMENT**

A good system of detention must include facilities that meet constitutional minimums, and which are designed and operated to meet the needs of the juveniles detained therein. The most comprehensive national study of detention conditions ever conducted, *Conditions of Confinement: Juvenile Detention and Corrections Facilities*, found substantial widespread deficiencies in living space, health care, security and control of suicidal behaviors.<sup>1</sup> The study suggested several other deficiencies, including educational programming, access to the community, and limits of staff discretion in such matters as the use of isolation, restraints, and searches.<sup>2</sup> Such deficiencies may be present for any number of reasons, including overcrowding, high turnover rates, poor administration, and/or lack of staff training. The end result, however, is that inadequate conditions of confinement in juvenile facilities may harm the very juveniles whose care is entrusted to the juvenile justice system. As such, institutional conditions are an important element to an overall system of detention, and one that will ultimately affect a jurisdiction's juvenile justice system in any number of ways.

This chapter addresses the minimal conditions required for juvenile detention facilities and discusses the relevant federal and state case law pertaining to such conditions, in order to ensure that juveniles are not detained in facilities with conditions that may be unconstitutional and/or pose a danger to the juvenile's welfare.

## **I. CONSTITUTIONAL CHALLENGES TO CONDITIONS IN JUVENILE FACILITIES**

### **A. The Appropriate Legal Standard**

As several courts faced with lawsuits of this nature have recognized, the U.S. Supreme Court has not definitively stated whether standards governing cases involving conditions of confinement for juveniles are to be derived from the Eighth Amendment to the U.S. Constitution, prohibiting cruel and unusual punishment, or from the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.<sup>3</sup> The majority of courts that have dealt with this question have employed the due process clause on the ground that those detained for juvenile offenses have not been convicted of any crime and the purpose of their confinement is rehabilitative rather than punitive. The U.S. District Court for the Eastern District of Kentucky dealt with this issue in the case of *Doe v. Younger*,<sup>4</sup> noting that like the state juvenile systems at issue in other cases, the Kentucky juvenile system also has rehabilitation as its objective.<sup>5</sup>

As pertinently observed by the court in *A.J. v. Kierst*:

In applying the due process standard to juveniles, we cannot ignore the reality that assessment of juvenile conditions of confinement are necessarily different from those relevant to assessment of adult conditions of confinement...Juveniles subject to pretrial detention have not yet had a judicial determination of probable cause which the Fourth Amendment requires as a prerequisite to extended restraint of liberty following arrest...[and] are, in some instances, before the court on charges in unverified petitions, e.g., delinquency petitions filed on information and belief...; and are in a system whose purpose is rehabilitative, not penal, in nature...In addition, juveniles are frequently detained for reasons entirely separate from those associated with adjudication of charges. Some are detained as a result of neglect or abusive home environments and are held in protective custody, e.g., are “status offenders”; some are runaways; some are simply undisciplined. For these reasons, we conclude that, as a general matter, the due process standard applied to juvenile pretrial detainees should be more liberally construed than that applied to adult detainees.<sup>6</sup>

Confined juveniles have the right pursuant to the Due Process Clause to reasonable personal safety, including protection from attacks of other juveniles, freedom from unreasonable

personal restraint, and the right to rehabilitative treatment and appropriate programming, at least in longer term institutions.<sup>7</sup> The flexibility of this Fourteenth Amendment standard is well suited to the juvenile context, where the special needs of juveniles must be weighed against the state's interest in dealing with disruptive individuals.<sup>8</sup>

When considering conditions of confinement cases, courts are not bound by the standards promulgated by professional organizations. As noted in *Alexander S. v. Boyd*, supra,:

In deciding minimum constitutional requirements for the institutions under challenge here, this court is not bound by standards promulgated by organizations such as the American Correctional Association. As noted by the United States Supreme Court in *Bell v. Wolfish*, 441 U.S. 520, 543 n.27, 99 S.Ct. 1861, 1876 n.27, 60 L. Ed. 2d 447 (1979), “[W]hile the recommendations of these various groups...may be instructive in certain cases, they simply do not establish the constitutional minima; rather, they establish goals recommended by the organization in question.” Lower courts have also rejected efforts to impose ACA standards as constitutional minima.<sup>9</sup>

Just as courts are not bound by professional standards advocating certain conditions of confinement, compliance with, or violation of, state statutes or regulations is not dispositive of the constitutionality of the conditions of confinement in a particular setting.

Furthermore, when considering cases of this kind, courts are also mandated by the Prison Litigation Reform Act of 1995 to give substantial weight to any adverse impact on public safety or operation of a criminal justice system caused by prospective injunctive relief.<sup>10</sup> This legislation, which is applicable to juvenile facilities such as detention centers, requires a number of procedural considerations both prior to and during the course of litigation concerning conditions of confinement issues.

## **II. OVERALL CONDITIONS OF CONFINEMENT IN JUVENILE FACILITIES**

The Supreme Court has not established minimum requirements for juvenile detention facilities. Therefore, states must interpret Supreme Court cases, such as *Youngberg v. Romeo*, to determine what minimum conditions are required to meet federal constitutional standards.<sup>11</sup>

When meeting federal Constitutional standards, Kentucky courts have recognized that the Fourteenth Amendment, rather than the Eighth Amendment, is applicable.<sup>12</sup> Thus, consideration of the juvenile's substantive due process rights must be made, rather than trying to determine if the conditions of the facility constitute cruel or unusual punishment.

Mark I. Soler's article Conditions of Confinement summarizes the federal guidelines that establish how a juvenile may be confined. In this article, Soler uses a mnemonic to describe these conditions, C.H.A.P.T.E.R.S., which he first introduced in *Representing the Child Client*.<sup>13</sup>

**C.H.A.P.T.E.R.S. stands for:**

Classification and separation issues;

Health care;

Access to counsel, the courts, and family;

Programming issues;

Training and supervision of institutional staff;

Environmental and sanitation issues;

Restraints, punishments, and due process; and

Safety.<sup>14</sup>

**A. Classification and Separation Issues**

1. Classification by Age: Juveniles may be classified in several ways, most commonly by offense, propensity for violent behavior, sex, prior post-adjudication, and in some instances, health. The classification that is most strictly regulated is age, in that juveniles cannot be confined with adults. The Juvenile Justice and Delinquency Prevention Act (JJDP A) mandates that dependent and neglected children, status offenders and delinquent children not be detained in a

facility in which they could have regular contact with adult offenders.<sup>15</sup> The JJDPa and Kentucky Revised Statutes (KRS) define this prohibited contact between juvenile and adult offenders as “sight and sound contact.”<sup>16</sup> This includes when juveniles are confined for a short period of time (24 to 48 hours) awaiting a hearing. Thus, if juveniles and adults are held in the same facility, the staff must make every effort to separate these groups so that the juveniles cannot see or hear the adults.<sup>17</sup>

2. Classification by Propensity for Violent Behavior: A second important classification is based on an incarcerated individual’s right to personal safety.<sup>18</sup> Courts have held that adult facilities have a responsibility to protect non-violent inmates from violent inmates,<sup>19</sup> therefore the facility may be held liable for damages if a violent inmate assaults a non-violent inmate.<sup>20</sup> Similar cases have occurred in the juvenile context, especially since juvenile institutions are supposed to provide 24-hour supervision to ensure each juvenile’s safety.<sup>21</sup>
3. Classification by Sex: “For obvious reasons, male and female inmates should be held in separate cells or rooms. However, this separation should not be confused with separation during programming and other activities within the institution.”<sup>22</sup>

## **B. Health Care Issues**

The U.S. Supreme Court has established only minimum standards relating to constitutionally required health care in penal institutions. The Court held that “deliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain’ proscribed by the Eighth Amendment.”<sup>23</sup>

1. Lower Court Minimum Standards for Medical and Psychiatric Care: The lower federal courts have been more specific in establishing minimum standards in cases challenging medical and psychiatric care. The courts have focused on six major areas:<sup>24</sup>
  - a. Initial medical screening: Medically trained personnel must complete a full medical screening within 24 hours of the juvenile's admission to an institution.<sup>25</sup> This exam should include: medical history; immunizations; alcohol or drug use; medication for any ongoing conditions; and screening for pregnancy, tuberculosis, genetic diseases, and venereal diseases. If the confinement is to be long term, then hearing and vision testing and urinalysis are appropriate.<sup>26</sup>
  - b. Medical services: Required medical services include 24-hour emergency medical and dental care;<sup>27</sup> daily sick call;<sup>28</sup> treatment for continuing medical needs;<sup>29</sup> adequate units for medical exams and juveniles with special needs;<sup>30</sup> no isolation from other juveniles without written order from a physician who examined the juvenile;<sup>31</sup> and, prompt notification of parents or guardians of medical or psychiatric problems (except for pregnancy or venereal disease, which both require written consent of the juvenile).<sup>32</sup>
  - c. Initial psychological screening: A complete psychological screening must be completed by trained staff upon admission or soon thereafter.<sup>33</sup> A qualified professional must see the juvenile within 48 hours if history or offense indicates potential or previous psychological problems.<sup>34</sup>
  - d. Psychological services: Qualified professionals must provide mental health services, emergency services,<sup>35</sup> development of a treatment plan, counseling, and periodic follow-up evaluations.<sup>36</sup>
  - e. Monitored dispersal of prescriptions: Those dispensing prescription medication or other psychotropic drugs must be trained to recognize adverse reactions,<sup>37</sup> and written policies for handling all drugs must be established.<sup>38</sup>
  - f. Right to treatment: Juveniles may refuse medical and psychological treatment, including medication, as long as he is not a danger to himself or others.<sup>39</sup>

### **C. Access Issues (mail, telephone, visitation, counsel)**

1. Mail: "The main issue relating to access through the mail is the inspection and censorship of incoming and outgoing mail."<sup>40</sup> The U.S. Supreme Court, in

*Procunier v. Martinez*, established the test to determine if the censorship of prisoner mail is constitutional. Such censorship is allowed if it furthers a substantial governmental interest of security, order, and rehabilitation; the purpose of the censorship is unrelated to the suppression of expression; and, the censorship is no greater than necessary to further that governmental interest.<sup>41</sup>

Blanket policies of limiting juveniles' correspondence or opening their mail have been held unconstitutional.<sup>42</sup> Generally, the courts have held that outgoing mail is not to be opened by institution personnel and incoming mail is to be opened only to inspect for contraband and then only in the presence of the juvenile.<sup>43</sup>

2. Telephone: Because many juveniles are detained in facilities far from home, the only contact the juvenile may have with family is by telephone.<sup>44</sup> The few courts that have dealt with this issue have held that juveniles should be given "reasonable access to make calls to parents, relatives, and attorneys upon request<sup>45</sup> and that such calls are not to be monitored by institution staff."<sup>46</sup>
3. Visitation: Generally, courts have required visitation for juveniles to be unmonitored by institution staff.<sup>47</sup> Further, visitation should be for one hour or more two days or evenings a week.<sup>48</sup> Courts have held that visitation with juvenile relatives and friends may be more regulated by institution staff.<sup>49</sup>
4. Court and Counsel: The U.S. Supreme Court held in *Bounds v. Smith*<sup>50</sup> that adult prisoners have a constitutional right of "meaningful access" to the court.<sup>51</sup> This includes "prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law."<sup>52</sup> The Sixth Circuit Court of



Appeals in *John L. v. Adams* held that the right of “meaningful access” to the court and counsel also applies to juveniles.<sup>53</sup> “The holding applies to matters concerning the fact of, duration of, or conditions of confinement which implicate constitutional violations, but does not extend to treatment and education issues which arise solely under state law.”<sup>54</sup>

#### **D. Programming**

Because juvenile institutions have different goals than adult institutions the programs provided to inmates differ greatly. “The courts have been particularly concerned with the provision of educational opportunities, including special education services, and opportunities for regular exercise for institutionalized children.”<sup>55</sup>

1. Education: “Federal and state courts have held that institutionalized children have a constitutional right to an adequate educational program.”<sup>56</sup> Unfortunately, most institutions do not have qualified teachers, especially in the special education area.<sup>57</sup> Each juvenile should undergo educational testing when admitted to the institution so that an appropriate program can be set up, and, if necessary, the institution must create an individualized program for any juvenile determined to need special education services.<sup>58</sup> Thus, each institution must have the teachers and other resources available to accomplish this goal.<sup>59</sup>
2. Exercise: Institutionalized juveniles have a constitutional right to regular exercise and recreation.<sup>60</sup> “Regular physical exercise is essential for proper growth and development of children and serves as an outlet for them to exhaust the tensions and frustrations associated with their confinement.”<sup>61</sup> The courts have generally required a minimum of one to three hours of exercise each day for juveniles in

institutions.<sup>62</sup> Also, such exercise is to be in an area spacious enough to exercise the large muscles and is to be outside, weather permitting.”<sup>63</sup>

3. Religion: The U.S. Supreme Court established in *Cruz v. Belo* “that a prisoner has the right...to pursue his religious faith in comparison to other prisoners who adhere to conventional religious precepts.”<sup>64</sup> Incarcerated juveniles “must be given reasonable opportunities to attend religious services and to read religious literature of their choice, except when they pose a security threat to the institution.”<sup>65</sup> The institution’s staff may not pressure a juvenile to participate in religious services.<sup>66</sup>
4. Work: “Work programs that are ‘excessive, unrelated to therapeutic programs or inmates’ personal needs, are unconstitutional under the Thirteenth Amendment.”<sup>67</sup> Juveniles may be required to perform simple “housekeeping tasks” that they might normally have to do in a home setting.<sup>68</sup> “Tasks that are clearly related to a child’s individualized therapy do not violate the Thirteenth Amendment.”<sup>69</sup>

#### **E. Training and Supervision of Employees**

Courts have held institution “supervisors and administrators liable for a wide range of conduct relating to hiring, training, supervision, assignment, direction, and retention of staff.”<sup>70</sup> In short, supervisors may be held liable for the hiring unqualified staff,<sup>71</sup> improper training,<sup>72</sup> inadequate supervision,<sup>73</sup> placing staff in positions they are not qualified for,<sup>74</sup> lack of direction regarding policies and procedures,<sup>75</sup> and retaining inadequate staff members.<sup>76</sup>

In *Daniels v. Williams*<sup>77</sup> and *Davidson v. Cannon*,<sup>78</sup> the U.S. Supreme Court held that supervisors could not be held liable for Fourteenth Amendment Due Process violations if the actions were merely negligent. The Court noted, however, that “...a deliberate, intentional, and

continuing course of conduct may constitute a ‘reckless or callous indifference’ to the rights or safety of others,” and may justify an award of punitive damages.<sup>79</sup> Courts have established varying requirements for the staff of juvenile facilities. “[M]ost courts have required ‘appropriate’ training and supervision of employees,<sup>80</sup> while other courts have required specific education, licensing, or experience for particular positions in the institutions,<sup>81</sup> as well as specific ratios of children to professional staff.”<sup>82</sup>

## **F. Environmental Issues**

1. Sanitation: Courts have established that juvenile institutions must maintain sanitation within the institution and give juveniles the opportunity to maintain their own personal hygiene. Specifically, courts have required that cells and rooms be cleaned on a regular basis;<sup>83</sup> bathrooms be kept clean and sanitary;<sup>84</sup> insects and rodents be exterminated and an adequate control program be maintained;<sup>85</sup> adequate supplies for personal hygiene be provided;<sup>86</sup> juveniles be allowed daily showers;<sup>87</sup> a weekly change of clean sheets and pillow cases be provided;<sup>88</sup> and, the institution comply with all local and state health and sanitation codes.<sup>89</sup>
2. Diet: Courts have directed that institutions consult dietitians or nutritionists in preparation of meal plans;<sup>90</sup> meals that meet appropriate nutritional standards; provisions for juveniles with special dietary requirements; and, the service of three meals per day plus second helpings and a snack.<sup>91</sup> Additionally, juveniles should be allowed to eat together, staff cannot withhold food as discipline, and staff must meet all public health standards.<sup>92</sup>

3. Ventilation, Heating, and Cooling: “The courts have found inadequate ventilation, heating, and cooling in adult jails and prisons as well as in juvenile institutions to violate inmates’ constitutional rights.”<sup>93</sup>
4. Exposure to Environmental Hazards: Incarcerated juveniles may have a claim against an institution for exposure to cigarette smoke, as it is a health hazard, under on the Fourteenth Amendment if they can show such exposure is “a departure from the societal norm as it relates to children’s exposure to cigarette smoke.”<sup>94</sup>
5. Fire Safety: The fire safety requirements that apply to adult facilities also apply to juvenile facilities. Thus, each juvenile facility should have “two clearly marked exits from the facility with each exit equipped with lights so as to be visible in the event of an area being filled with smoke.”<sup>95</sup> Facilities should also have regularly inspected and working smoke alarms, fire extinguishers, and air packs, as well as a specific evacuation plan, which must be explained to inmates and posted in accessible locations.<sup>96</sup>
6. Lighting: Incarcerated juveniles should have enough lighting in their room or cell so that they can read.<sup>97</sup>
7. Clothing and Personal Items: Courts have required that incarcerated juveniles be given regularly laundered clothing that “is similar to that worn by children out in the community...[and] appropriate for the season.”<sup>98</sup> Juveniles should also be given storage lockers large enough to store their personal items, such as clothing, gifts from their families, items bought in the canteen, and other appropriate personal items.<sup>99</sup>

8. Overcrowding, Adequate Living Space, and Privacy: The U.S. Supreme Court has held that overcrowding is a constitutional issue when “institutions were so overcrowded that inmates were extremely deprived of food, medical care, or sanitation, or safety from each other.”<sup>100</sup> Most courts have recognized that juveniles should have some privacy and adequate living space.<sup>101</sup> “Courts have generally required seventy to eighty feet of room space per child,<sup>102</sup> plus other areas where children may move about freely.”<sup>103</sup> As to the minimum level of privacy required, juveniles should be given privacy when showering and using the bathroom.<sup>104</sup>

#### **G. Restraints, Isolation, and Punishment**

1. Restraints: Incarcerated juveniles should not be put in restraints unless it is “absolutely necessary to protect the child from injury to himself or to others”<sup>105</sup> and not longer than thirty minutes without authorization of qualified professionals or institution administrators.<sup>106</sup> Juveniles cannot be restrained as “punishment, [for] convenience of staff, or as a substitute for programming.”<sup>107</sup> The restraints must be as comfortable for the juvenile as possible, and the juvenile must be monitored regularly.<sup>108</sup> Any use of restraints must be documented in the juvenile’s file.<sup>109</sup>
2. Isolation: Courts have placed similar limitations on the use of isolation in juvenile facilities, holding that isolation may be used only when juveniles “pose an immediate threat to the health and safety of themselves and to others.”<sup>110</sup> Courts have also required that juveniles should be released as soon as they are in control of themselves;<sup>111</sup> that they must be monitored regularly;<sup>112</sup> that they should be

placed in their own rooms, if possible; and that they should be allowed to wear their own clothing.<sup>113</sup> Juveniles should be allowed to have books, writing materials, and articles of personal hygiene.<sup>114</sup> Juveniles may be placed in isolation (except in emergency situations) only upon written orders by qualified professionals or institution administrators.<sup>115</sup> The reasons for isolation, length of isolation, and juvenile's behavior must be fully documented.<sup>116</sup> There must be a limit on the amount of time that juveniles may be placed in isolation.<sup>117</sup> Isolation is not to be used as punishment, for the convenience of staff, or as a substitute for programming.<sup>118</sup>

3. Punishment: “[C]ourts have consistently condemned the use of corporal punishment ranging from physical beatings<sup>119</sup> to intentional humiliation, and psychological or mental abuse.”<sup>120</sup>

## **H. Safety**

“The right to personal safety is the most basic right of children in institutions and it implicates all other aspects in the operation of an institution including classification procedures, health screening and services, access to family and friends, proper programming, the presence of properly trained staff, safe environments, and the proper use of restraints and isolation practices.”<sup>121</sup>

“In an excessive use of force case, the courts will apply the substantive due process standard generated in *Hudson v. McMillian* and *Whitley v. Albers* and ask (1) whether the actions taken inflicted unnecessary and wanton pain; and (2) whether force was applied in a good faith effort to maintain or restore discipline, or, maliciously and sadistically intended to cause harm.”<sup>122</sup>

### III. CONCLUSION

While detention is a necessary component in the juvenile justice system for protection of the community from the most serious and/or dangerous juveniles, it is likewise important that the conditions to which juveniles are exposed in detention facilities afford adequate protection to these juveniles. Local and state jurisdictions responsible for the operation and/or monitoring of detention facilities should not only be aware of the minimum constitutional requirements, but should strive to implement “best practices” where feasible. Failure to comport with legally adequate conditions may not only result in harm to juveniles or staff, but may also result in costly lawsuits.<sup>123</sup>

Detention facilities play an important role in helping juveniles to develop better decision-making skills, and as such, attitudes toward these juveniles, both from within and outside of the facility, help to set the climate for the facility and its operation.<sup>124</sup> Similarly, judges and other juvenile justice practitioners should be concerned with, and cognizant of, the conditions within local facilities to which juveniles are sent by the courts. Regular communication and data flow between juvenile detention providers, judges and other practitioners can bring about improved understanding of institutional constraints, and can help to facilitate better practices regarding intake, the use of alternatives, and case processing.

For a checklist regarding conditions of confinement in juvenile detention facilities, see Appendix D.

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<sup>1</sup> Parent, Dale G., et al., *Conditions of Confinement: Juvenile Detention and Corrections Facilities*. Research Report, Abt Associates, Inc., prepared for the U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (August 1994), Executive Summary at 7.

<sup>2</sup> *Id.* at 33-34.

<sup>3</sup> See *A.J. v. Kierst*, 56 F.3d 849, 854 (8th Cir. 1995)(citing *Ingraham v. Wright*, 430 U.S. 651, 669 n. 37 (1977)); *Gary H. v. Hegstrom*, 831 F.2d 1430, 1431 (9th Cir. 1987); *Alexander S. v. Boyd*, 876 F. Supp. 773, 795 D.S.C. 1995).

<sup>4</sup> *Doe v. Younger*, Civil Action 91-187 (E.D. Ky., 1996)

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<sup>5</sup> *Id.* For instance, many juveniles detained in the Kenton County Detention Center were status offenders, of whom the Kentucky statute states: The court noted that detention of status offenders in secure juvenile detention facilities or juvenile holding facilities should only be used for very specific and constructive purposes, when all other less restrictive alternatives to detention have been attempted and are not feasible

<sup>6</sup> *Kierst*, 56 F.3d at 854 (citations and internal quotations omitted)(emphasis added).

<sup>7</sup> *Boyd*, 876 F. Supp. at 796-97.

<sup>8</sup> *Id.* at 798 n.44; *Hegstrom*, 831 F.2d at 1432 (noting that the Constitution requires a “reasonable balance between liberty interests [of juveniles] and the institution’s operational needs”).

<sup>9</sup> *Boyd*, 876 F. Supp. at 798-99 (emphasis added). See also *Gary H. v. Hegstrom*, 831 F.2d 1430, 1433 (9th Cir. 1987)(rejecting “wholesale adoption of various professional associations’ concepts for model institutions”); *Santana v. Collazo*, 714 F.2d 1172, 1181 (1st Cir. 1983), cert. denied, 466 U.S. 974 (1984).

<sup>10</sup> Pub. L. No. 104-134 Stat. 1321, 18 U.S.C. § 3626(a)(1)(A)(1996).

<sup>11</sup> *Youngberg v. Romeo*, 457 U.S. 307 (1982).

<sup>12</sup> See *Doe v. Younger*, *supra* note 2.

<sup>13</sup> Mark I. Soler, *Conditions of Confinement in Juvenile Facilities*, Youth Law Center 1 (2000)(citing MARK I. SOLER ET AL, REPRESENTING THE CHILD CLIENT ¶ 2.01(1)(1993). This section is directly from Mark Soler’s *Conditions of Confinement in Juvenile Facilities*. Mr. Soler’s expertise and commitment to this subject are unparalleled and his contribution to concerns regarding conditions of confinement in juvenile facilities is greatly appreciated.

<sup>14</sup> *Representing*, *supra* note 13 at ¶ 2.01(2)(a).

<sup>15</sup> *Id.* (citing 42 U.S.C. SS 5601-5785).

<sup>16</sup> *Id.* (citing 28 C.F.R. 31.303(d)(i)); KRS 610.220(3)).

<sup>17</sup> *Id.* (citing 28 C.F.R. 31.303(d)(i)), (citing 28 C.F.R. 31.3039(e)(3)(i))

<sup>18</sup> *Representing*, *supra* note 13, at ¶ 2.01(2)(d)(citing *Jones v. Diamond*, 636 F.2d 1364 (5<sup>th</sup> Cir. 1981).

<sup>19</sup> *Id.* (citing e.g., *Hewett v. Hewett*, 459 U.S. 460, 473 (1983)(holding that “the safety of [an] institutions’ guards and inmates is perhaps the most fundamental responsibility of the prison administration”); *Carver v. Knox County*, Tennessee, 753 F. Supp. 1370 (E.D. Tenn. 1989)(in a lawsuit over numerous conditions in the Knox County Jail, the court held that overcrowding had resulted in the breakdown of an effective classification system. Accordingly, the court ordered that the jail either reconstitute its former classification system (assuming it met constitutional standards, or establish a new one)); *Jones v. Diamond*, 636 F.2d 1364, 1374 (5th Cir. 1981); *McCray v. Sullivan*, 509 F.2d 1332, 1334 (5th Cir. 1975); *Gates v. Collier*, 501 F.2d 1291, 1308-10 (5th Cir. 1974); *H.C. v. Jarrard*, No. TCA 79-0830 (N.D. Fla. June 20, 1980); *Holt v. Sarver*, 309 F. Supp. 362 (E.D. Ark. 1970), *aff’d*, 442 F.2d 304 (8th Cir. 1971)).

<sup>20</sup> *Id.* (citing *Smith v. Wade*, 461 U.S. 30 (1983)).

<sup>21</sup> *Id.* (citing *see Alexander v. Boyd*, 876 F. Supp. 733, 787 (D.S.C. 1995)(juveniles should be screened and classified by professionals, who will consider legitimate safety and security needs, so that aggressive juveniles are identified and separated from more passive ones), *D.B. v. Tewksbury*, 545 F. Supp. 896 ( D. Or. 1982) failure to protect children from harm by other children); *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982). See also *H-C. v. Jarrard*, 786 F.2d 1080 (11th Cir. 1986)(awarding punitive damages to juvenile plaintiff). See also *Dept. of Health and Rehabilitative Services v. Whaley*, 574 So. 2d 100 (Fla. 1991)(14-year-old juvenile arrested for burglary was placed in the same cell with two older and larger juveniles with histories of assaultive conduct who subsequently’ sexually assaulted the 14-year-old. The defendants were held negligent in placing the two older juveniles in the same cell with the younger boy, in allowing the boy to remain in the cell for an extended period of time, and in failing to provide the injured juvenile with immediate medical and psychiatric care following the assault); *Redman v. County of San Diego*, 896 F.2d 362(9th Cir. 1991), 942 F.2d 1435 (1992)(en banc), *cert. denied*, 112 S. Ct. 972 (1992)(holding that there was substantial evidence that the defendants had shown deliberate indifference to an eighteen-year-old’s safety by moving him from the “young and tender” module in a county jail to the “mainline” module which enabled him to be repeatedly raped by older, aggressive inmates); *J.P.W. v. State*, 853 P.2d 4 (Kan. 1993)(held that the state not only had a duty to warn the officials of the attacker’s propensities to commit violence but also to take reasonable steps to protect the plaintiff)).

<sup>22</sup> *Conditions*, *supra* note 13, at 15.

<sup>23</sup> *Representing*, *supra* note 13, at ¶ 2.01(3).

<sup>24</sup> *Id.* (citing *Robyn A. v. McCoy*, Civ. No. 90-1151 (D. Or. April 23, 1992)(involving a detention center in Portland, Oregon, the consent decree required the defendants to provide medical and psychiatric care in accordance with the



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Standards for Health Services in Juvenile Confinement Facilities promulgated by the National Commission on Correctional Health Care, and to request accreditation by the National Commission on Correctional Health Care)).

<sup>25</sup> *Id.* (citing *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff'd in part and vacated in part*, 679 F.2d 1115 (5th Cir.), *amended in part*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983)(a Texas district court reviewed a comprehensive challenge to the conditions and practices in the Texas prison system setting forth the components of a minimally adequate mental health treatment system)).

<sup>26</sup> *Id.* (citing *Julie v. Black*, Case No. 81-C-455 (W.D. Wis. Mar. 29, 1982); *Inmates of Boys Training School v. Affleck*, Civil Action No. 4529 (D.R.I. Jan. 15, 1979)(previous opinion, 346 F. Supp. 1354 (D.R.I. 1972); *Inmates of John J. Connelly Youth Center v. Dukakis*, No. 75-17866 (D. Mass. consent decree Apr. 2, 1976); NAC STANDARDS § 4.2171).

<sup>27</sup> *Representing, supra* note 13, at ¶ 2.01(3)(b)(citing *Alexander v. Boyd*, 876 F. Supp. 773 (D.S.C. 1995), *Julie v. Black*, Case No. 81-C455 (W.D. Wis. Mar. 29, 1982); *Doe v. Holladay*, No. CV-77-74-BLG (D. 32 Mont. Apr. 1, 1982), *Inmates of Boys Training School v. Affleck*, Civil Action No. 4529 (D.R.I. Jan. 15, 1979)(previous opinion, 346 F. Supp. 1354 (D.R.I. 1972)); *Morgan v. Sproat*, 432 F. Supp. 1130 (S.D. Miss. 1977), *Aherns v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978); *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La. 1976); *Inmates of John J. Connelly Youth Center v. Dukakis*, No. 75-17866 (D. Mass. consent decree Apr. 2, 1976); *New York State Ass'n for Retarded Children, Inc. v. Rockefeller*, Nos. 73-C-5, 73-C-113 (E.D.N.Y. consent judgment Apr. 30, 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)); IJA/ABA INTERIM STANDARDS § 4.5; IJA/ABA CORRECTIONS STANDARDS § 4.9).

<sup>28</sup> *Id.* (citing *Alexander v. Boyd*, 876 F. Supp. 773 (D.S.C. 1995); *Robyn A. McCoy*, Civ. No. 90-1151 (D. Or. April 23, 1992) (consent decree provided for daily sick call); *Doe v. Holladay*, No. CV-77-74 BLG (D. Mont. Apr. 1, 1982); *Julie v. Black*, Case No. 81-C-455 (W.D. Wis. Mar. 29, 1982); *Inmates of Boys Training School v. Affleck*, Civil Action No. 4529 (D.R.I. Jan. 15, 1979)(previous opinion, 346 F. Supp. 1354 (D.R.I. 1972); *Morgan v. Sproat*, 432 F. Supp. 1130 (S.D. Miss. 1977); *Aherns v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *of aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978); *Inmates of John Connelly Youth Center v. Dukakis*, No. 75-17866 (D. Mass. consent decree Apr. 2, 1976); *New York State Ass'n for Retarded Children, Inc. v. Rockefeller*, Nos. 73-C-113 (E.D.N.Y. consent judgment Apr. 30, 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)).

<sup>29</sup> *Id.* (citing *Alexander v. Boyd*, 876 F. Supp. 773 (D.S.C. 1995); *D.B. v. Tewksbury*, 545 F. Supp. 896 (D. Or. 1982); *Terry D. v. Rader*, No. Civ-78-0004-T (W.D. Okla. Jan 11, 1982); *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La. 1976); *New York State Ass'n for Retarded Children, Inc. v. Rockefeller*, Nos. 73-C-55, 73-C-113 (E.D.N.Y. consent judgment Apr. 30, 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973); IJA/ABA INTERIM STANDARDS § 4.5; IJA/ABA CORRECTIONS STANDARDS § 4.9, NAC STANDARDS § 4.217).

<sup>17</sup> *Id.* (citing *Inmates of John J. Connelly Youth Center v. Dukakis*, No. 75-17866 (D. Mass. consent decree Apr. 2 1976); IJA/ABA INTERIM STANDARDS § 4.5. *See generally* ACA TRAINING SCHOOL STANDARDS §§ 2-9229 to -9272; ACA DETENTION STANDARDS §§ 3AC-01 to 4C48).

<sup>30</sup> *Id.* (citing *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978)).

<sup>31</sup> *Id.* (citing *Inmates of John J Connelly Youth Center v. Dukakis*, No. 75-17866 (D. Mass consent decree Apr. 2 1976); *New York State Ass'n for Retarded Children, Inc. v. Rockefeller*, Nos. 73-C-55, 73-C-113 (E.D.N.Y. consent judgement Apr. 30, 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)).

<sup>32</sup> *Id.* (citing *Inmates of John J. Connelly Youth Center v. Dukakis*, No. 75-17866 (D. Mass. consent decree Apr. 2 1976); IJA/ABA INTERIM STANDARDS § 4.5. *See generally* ACA TRAINING SCHOOL STANDARDS §§ 2-9229 to -9272; ACA DETENTION STANDARDS §§ 3-4C-01 to -4C-48).

<sup>33</sup> *Representing, supra* note 13, at ¶ 2.01(3)(c)(citing *Robert K. v. Bell*, Civil Action No. 83-287-0 (D.S.C. Apr. 30, 1984); *Benitez v. Collazo*, Civil 77-0662CC (D.P.R. Aug. 27, 1982); *Terry D. v. Rader*, No. Civ-78-0004-T (W.D. Okla. Jan 11, 1982); *Julie v. Black*, Case No. 81-C-455 (W.D. Wis. Mar. 29, 1982); *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Manning v. Matheson*, Case No. NC75-34 (D. Utah Jan. 21, 198 1); *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978). *See also* *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La. 1976); *Martarella v. Kelley*, 359 F. Supp. 478 (S.D.N.Y. 1973); *Morales v. Turman*, 364 F. Supp. 166 (E.D. Tex. 1973), 383 F. Supp. 53 (E.D. Tex. 1974), *rev'd on other grounds*, 535 F.2d 864 (5th Cir. 1976), *rev'd and remanded*, 430 U.S. 322, *remanded on rehearing*, 562 F.2d 993 (5th Cir. 1977)).

<sup>34</sup> *Id.* (citing *Inmates of Boys Training School v. Affleck*, Civil Action No. 4529 (D.R.I. Jan. 15, 1979)(previous opinion, 346 F. Supp. 1354 (D.R.I. 1972)).

<sup>35</sup> *Id.* at ¶ 2.01(3)(d) (citing *see generally* P. Coleman & R. Shellow, *Suicide: Unpredictable and Unavoidable Proposed Guidelines Provide Rational Test for Physician's Liability*, 71 NEB. L. REV. 743 (1992)). There are a plethora of cases involving suicides in jails and prisons, *See Myers v. County of Lake*, 30 F.3d 847 (7th Cir. 1994)(Institutions must use reasonable care to protect their wards from committing suicide. While the court recognized that predicting suicide is impossible, it also found that, under the facts of the case, the county had starved the jail facility of funds that prevented the exercise of reasonable care, even though none of the facility's employees were personally negligent); *Buffington v. Baltimore County, Md.*, 913 F.2d 113 4th Cir. 1990), cert. *denied*, 499 U.S. 906 (1991)(where arresting officers have reason to believe that a pretrial detainee is suicidal, they have an affirmative due process obligation to prevent the detainee from committing suicide); *but see Belcher v. Oliver*, 898 F.2d 32 (4th Cir. 1990)(a detainee was admitted to city jail on charges of public intoxication and hazardous driving. He was taken to a cell and later was found to have hung himself with his belt. Although normal procedures provided for removing belts and shoelaces from all detainees, the officers failed to do so. The court held that the failure to carry out established procedures, without more, does not constitute deliberate disregard for the possibility that the detainee would take his own life. The court also noted the absence of any indication that the detainee was a suicide risk); for cases involving children, *see also Thomas v. Mears*, 474 F. Supp. 908 (E.D. Ark. 1979)(prohibiting any child who is a serious suicide threat from being placed in the juvenile detention center at all); *Martarella v. Kelley*, NO. 71 Civ. 3159 (S.D.N.Y. Mar. 26, 1975)(previous opinions 349 F. Supp. 575 (S.D.N.Y. 1972), 359 F. Supp. 478 (S.D.N.Y. 1973)).

<sup>36</sup> *Id.* (citing *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Terry D. v. Rader*, No. Civ-79-0004-T (W.D. Okla. Jan. 11, 1982); *Manning v. Matheson*, Case No. NC75-34 (D. Utah Jan. 21, 1981); *Inmates of Boys Training School v. Affleck*, Civil Action No. 4529 (D.R.I. Jan. 15, 1979)(previous opinion, 346 F. Supp. 1354 (D.R.I. 1972)); *Morgan v. Sproat*, 432 F. Supp. 1130 (S.D. Miss. 1977); *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La 1976); *Morales v. Turman*, 364 F. Supp. 166 (E.D. Tex. 1973), 383 F. Supp. 53 (E.D. Tex. 1974), *rev'd on other grounds*, 535 F.2d 864 (5th Cir. 1976), *rev'd and remanded*, 430 U.S. 322, *remanded on rehearing*, 562 F.2d 993 (5th Cir. 1977); *Martarella v. Kelley*, 359 F. Supp. 478 (S.D.N.Y. 1973); NAC STANDARDS § 4.214; citing *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Terry D. v. Rader*, No. Civ-78-0004-T (W.D. Okla. Jan. 11, 1982); *Manning v. Matheson*, Case No. NC75-34 (D. Utah Jan. 21, 1981); *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La 1976), *New York State Ass'n for Retarded Children, Inc. v. Rockefeller*, Nos. 73-C-55, 73-C-113 (E.D.N.Y. 1973)); *Martarella v. Kelley*, 359 F. Supp. 478 (S.D.N.Y. 1973)).

<sup>37</sup> *Representing, supra* note 13, at ¶ 2.01(3)(e)(i)(citing *Alexander v. Boyd*, 876 F. Supp. 773 (D. S.C. 1995); *Julie v. Black*, Case No. 81-C-455 (W.D. Wis. Mar. 29, 1982); *Inmates of Boys Training School v. Affleck*, Civil Action No. 4529 (D.R.I. Jan. 15, 1979)(previous opinion, 346 F. Supp. 1354 (D.R.I. 1972)); *F.E. v. Hensley*, Civil Action No. 73 CV 43-W-1 (W.D. Mo. Dec. 15, 1978); *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La. 1976); *New York State Ass'n for Retarded Children, Inc. v. Rockefeller*, Nos. 73-C-55, 73-C-113 (E.D.N.Y.) (consent judgment Apr. 30, 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)); IJA/ABA CORRECTIONS STANDARDS § 4.10; NAC STANDARDS § 4.62; ACA TRAINING SCHOOL STANDARDS §§ 2-9260 to -9261).

<sup>38</sup> *Id.* (citing *United States v. Brown*, 878 F.2d 222 (8th Cir. 1989); *Julie v. Black*, Case No. 81-C-455 (W.D. Wis. Mar. 29, 1982); *New York State Ass'n for Retarded Children, Inc. v. Rockefeller*, Nos. 73-C-55, 73-C-113 (E.D.N.Y. consent judgment Apr. 30, 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)); IJA/ABA CORRECTIONS STANDARDS § 4.10; NAC STANDARDS § 4.62; ACA TRAINING SCHOOL STANDARDS § 2-9260).

<sup>39</sup> *Representing, supra* note 13, at ¶ 2.01(3)(e)(iii)(*See also Washington v. Harper*, 494 U.S. 210 (1990); ¶ 2.01(8)(a). 494 U.S. 210 (1990). *Soler, supra* note 1, at ¶ 2.01(3)(e)(iii)(citing *Robert K. v. Bell*, Civil Action No. 83-287-0 (D.S.C. Apr. 30, 1984); *Terry D. v. Rader*, No. Civ-78-0004-T (W.D. Okla. Jan 11, 1982), *Doe v. Holladay*, No. CV/77-74-BLG (D. Mont. Apr. 1, 1982); *Brian v. Clinicare Corp.*, Civil Action No. 79-C-198 (W.D. Wis. Sept. 9, 1980); *F.E. v. Hensley*, Civil Action No. 73 CV 43-W-1 (W.D. Mo. Dec. 15, 1978); *New York State Ass'n for Retarded Children, Inc. v. Rockefeller*, Nos. 73-C-55, 73-C-113 (E.D.N.Y. consent judgment Apr. 30, 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)); IJA/ABA CORRECTIONS STANDARDS § 4.10, NAC STANDARDS § 4.62; ACA TRAINING SCHOOL STANDARDS § 2-9263).

<sup>40</sup> *Representing, supra* note 13, at ¶ 2.01(4).

<sup>41</sup> *Conditions, supra* note 13, at 12, (citing *Procunier v. Martinez*, 416 U.S. 396 (1974)).

<sup>42</sup> *Representing, supra* note 13, at ¶ 2.01(4)(a)(citing *Nelson v. Heyne*, 355 F. Supp. 451, 457-58 (N.D. Ind. 1972), *aff'd*, 491 F.2d 352 (7<sup>th</sup> Cir. 1974), *cert. denied*, 417 U.S. 976 (1974)).

<sup>43</sup> *Id.* (citing *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. April 1, 1982); *Julie v. Black*, Case No. 81-C-455 (W.D. Wis. Mar. 29, 1982); *Benitez v. Collazo*, Civil 77-0662CC (D.P.R. Aug. 27, 1982); *Manning v. Matheson*, Case No. NC 75-34 (D. Utah Jan. 21, 1981)(opened in presence of supervisor); *Inmates of Boys Training School v.*

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*Affleck*, Civil No. 4529 (D.R.I. Jan 15, 1979)(previous opinion 346 F. Supp. 1354 (D.R.I. 1972)); *Maldonado v. Ciuros*, 76 Civ. 2854 (LWP)(S.D.N.Y. Aug. 29, 1978); *Santiago v. Philadelphia*, Civil NO. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978); *Doe v. Lake County*, Civil No. H 74-49 (N.D. Ind. Oct. 25, 1977); *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La 1976); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976); *Manning v. Matheson*, No. 75-34 (D. Utah June 29, 1975), *Morales v. Turman*, 364 F. Supp. 166 (E.D. Tex. 1973), 383 F. Supp. 53 (E.D. Tex. 1974), *rev'd on other grounds*, 535 F.2d 864 (5th Cir. 1976), *rev'd and remanded*, 430 U.S. 322, *remanded on rehearing*, 562 F.2d 993 (5th Cir. 1977); IJA/ABA INTERIM STANDARDS § 10.7; NAC STANDARDS § 4.41; ACA TRAINING SCHOOL STANDARDS §§ 2-9283, 2-9319, 2-9319; ACA DETENTION STANDARDS §§ 3-5G-01 to 3-5G-09. See *Wolff v. McDonnell*, 418 U.S. 539 (1974). Cf. *Johnnie K. v. Crist*, No. Civ-92-0182-HB (D.N.M., May 24, 1983)(stipulation and order)(incoming and outgoing letters are not to be read, except where there is clear and convincing evidence to believe that the mail contains escape plans, other plans to commit a delinquent act or crime or to violate institutional rules or regulations, or constitutes a delinquent act or crime in or of itself)).

<sup>44</sup> *Representing*, *supra* note 13, at ¶ 2.01(4)(b).

<sup>45</sup> *Id.* (citing *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Benitez v. Collazo*, Civil 77-0662CC (D.P.R. Aug. 27, 1982); *Julie v. Black*, Case No. 81-C-455 (W.D. Wis. Mar. 29, 1982); *Manning v. Matheson*, Case No. NC 75-34 (D. Utah Jan. 21, 1981); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Maldonado v. Ciuros*, 76 Civ. 2854 (LWP)(S.D.N.Y. Aug. 29, 1978) *Doe v. Lake County*, Civil No. H 74-49 (N.D. Ind. Oct. 25, 1977); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17966 (D. Mass. Apr. 1976); *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La 1976); IJA/ABA INTERIM STANDARDS § 10.7-1 ACA TRAINING SCHOOL STANDARDS § 2-9330).

<sup>46</sup> *Id.* (citing *Benitez v. Collazo*, Civil 177-0662CC (D.P.R. Aug. 27, 1982); *Julie v. Black*, Case No. 8-C-455 (W.D. Wis. Mar. 29, 1982); *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. April 1, 1982); *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978); IJA/ABA INTERIM STANDARDS § 10.7; ACA DETENTION STANDARDS § 3-5G-11).

<sup>47</sup> *Representing*, *supra* note 13, at ¶ 2.01(4)(c)(citing *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Julie v. Black*, Case No. 81-C-455 (W.D. Wis. Mar. 29, 1982); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976)).

<sup>48</sup> *Id.* (citing *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Julie v. Black*, Case No. 81-C-455 (W.D. Wis. Mar. 29, 1982); *Thomas v. Mears*, 474 F. Supp. 908 (E.D. Ark. 1979); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Doe v. Lake County*, Civil No. H 74-49 (N.D. Ind. Oct. 25, 1977); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75--17866 (D. Mass. Apr. 1976); *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La. 1976); *Morales v. Turman*, 364 F. Supp. 166 (E.D. Tex. 1973), 383 F. Supp. 53 (E.D. Tex. 1974), *rev'd on other grounds*, 535 F.2d 864 (5th Cir. 1976), *rev'd and remanded*, 430 U.S. 322, *remanded on rehearing*, 562 F.2d 993 (5th Cir. 1977); IJA/ABA INTERIM STANDARDS § 2-9326).

<sup>49</sup> *Id.* (citing *Benitez v. Collazo*, Civil 77-0662CC (D.P.R. Aug. 27, 1982); *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Julie v. Black*, Case No. 81-C-455 (W.D. Wis. Mar. 29, 1982); *D.B. v. Tewksbury*, 545 F. Supp. 896 (D. Or. 1982); *Manning v. Matheson*, Case No. NC 75-34 (D. Utah Jan. 21, 1981); *Thomas v. Mears*, 474 F. Supp. 908 (E.D. Ark. 1979); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978); *Doe v. Lake County*, Civil No. H 74-49 (N.D. Ind. Oct. 25, 1977); *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La. 1976), *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976); *Morales v. Turman*, 364 F. Supp. 166 (E.D. Tex. 1973), 383 F. Supp. 53 (E.D. Tex. 1974), *rev'd on other grounds*, 535 F.2d 864 (5th Cir. 1976), *rev'd and remanded*, 430 U.S. 322, *remanded on rehearing*, 562 F.2d 993 (5th Cir. 1977); IJA/ABA CORRECTIONS STANDARDS § 4.9; NAC STANDARDS § 4.44; ACA TRAINING SCHOOL STANDARDS § 2-9326; ACA DETENTION STANDARDS §§ 3-5G-12 to 3-5G-15).

<sup>50</sup> *Representing*, *supra* note 13, at ¶ 2.01(4)(d)(citing 430 U.S. 817, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977)). See also *Straub v. Monge*, 815 F.2d 1467 (11th Cir. 1997)).

<sup>51</sup> *Conditions*, *supra* note 13, at 18.

<sup>52</sup> *Representing*, *supra* note 50 (citing *Bounds v. Smith*, 430 U.S. 817, 828 (1977)).

<sup>53</sup> *Id.* (citing *John L. v. Adams*, 969 F.2d 228 (6th Cir. 1992)).

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<sup>54</sup> *Representing*, *supra* note 13.

<sup>55</sup> *Representing*, *supra* note 13, at ¶ 2.01(5).

<sup>56</sup> *Id.* (citing *Donnell C. v. Illinois State Bd. of Educ.*, 1016 (N.D. 111. 1993)(finding a lack of instruction gave rise to a claim under substantive due process and equal protection); *Robyn A. v. McCoy*, Civ. No. 90-1151 (D. Or. April 23, 1992)(consent decree provided for educational services in classroom setting for each child on school days); *Robert K. v. Bell*, Civil Action No. 83-287-0 (D.S.C. Apr. 30, 1984); *Doe v. Holladay*, No. CV-7774-BLG (D. Mont. Apr. 1, 1982), *D.B. v. Tewksbury*, 545 F. Supp. 896 (D. Or. 1982); *Tommy P. v. Board of County Comm'rs*, 645 P.2d 697 (1982); *Terry D. v. Rader*, No. CIV-79-0004-T (W.D. Okla. Jan. 11, 1992), *Julie v. Black*, Case, F.2d 864 (5th Cir. 1976), *rev'd and remanded*, 430 U.S. 322, *remanded on rehearing*, 562 F.2d 993 (5th Cir. 1976); *Inmates of Boys Training School v. Affleck*, 346 F. Supp. 1354, 1369-70 (D. R.I. 1972), Civil No. 4529 (D.R.I. Jan. 15, 1979)(final order). *Cf. McRedmond v. Wilson*, 533 F.2d 757, 762 (2d Cir. 1976), IJA/ABA INTERIM STANDARDS § 10.6; IJA/ABA CORRECTIONS STANDARDS § 7.11; NAC STANDARDS §§ 4.216, 4.2161-.2163; ACA TRAINING SCHOOL STANDARDS §§ 2-9334 to -9337).

<sup>57</sup> *Id.* (citing *Green v. Johnson*, 513 F. Supp. 965, 968 (D. Mass. 1981); *Alexander v. Boyd*, 876 F. Supp. 773, 788 (D.S.C. 1995)(suggesting 50% in South Carolina Training School). *See* 20 U.S.C. §§ 1400-1485. *See [Representing at] ¶ 6.07* (citing *Green v. Johnson*, 513 F. Supp. 965 (D. Mass. 1981)). *See* Keenan Hammond, *The Institutionalized Child's Claim to Special Education: A Federal Codification of the Right to Treatment*, 56 DET. J. URB. L. 337 (1979)).

<sup>58</sup> *Id.* (citing *Inmates of Boys Training School v. Affleck*, Civil No. 4529 (D.R.I. Jan. 15, 1979)(previous opinion 346 F. Supp. 1354 (D.R.I. 1972)); *F.E. v. Hensley*, Civil Action No. 73 CV 43-W-1 (W.D. Mo. Dec. 15, 1978); *Morgan v. Sproat*, 432 F. Supp. 1130 (S.D. Miss. 1977); *Doe v. Lake County*, Civil No. H 74-49 (N.D. Ind. Oct. 25, 1977); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976); *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La. 1976); *McRedmond v. Wilson*, 74 Civ 4945 (S.D.N.Y. Nov. 3, 1976)(previous opinions 402 F. Supp. 1087(S.D.N.Y. 1975)), 533 F.2d 757 (2d Cir. 1976)); *New York State Ass'n for Retarded Children v. Rockefeller*, Nos. 73-C-55, 73-C-113 (E.D.N.Y. April 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)); IJA/ABA CORRECTIONS STANDARDS § 7.11; ACA TRAINING SCHOOL STANDARDS §§ 2-9339 to -9340).

<sup>59</sup> *Id.* (citing *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982), *Inmates of Boys Training Sch. v. Affleck*, Civil No. 4529 (D.R.I. Jan. 15, 1979)(previous opinion 346 F. Supp. 1354 (D.R.I. 1972)); *F.E. v. Hensley*, Civil Action No. 73 CV 43-W-1 (W.D. Mo. Dec. 15, 1978); *Morgan v. Sproat*, 432 F. Supp. 1130 (S.D. Miss. 1977); *Doe v. Lake County*, Civil No. H 7449 (N.D. Ind. Oct. 25, 1977); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976); *McRedmond v. Wilson*, 74 Civ 4945 (S.D.N.Y. Nov. 3, 1976)(previous opinions 402 F. Supp. 1087 (S.D.N.Y. 1975), 533 F.2d 757 (2d Cir. 1976)); *New York State Ass'n for Retarded Children v. Rockefeller*, Nos. 73-C-55, 73-C-113 (E.D.N.Y. April, 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)); IJA/ABA CORRECTIONS STANDARDS § 7.11, ACA DETENTION STANDARDS §§ 3-5C01 to 3-5C-04).

<sup>60</sup> *Representing*, *supra* note 13, at ¶ 2.01(5)(b)(citing *Terry D. v. Rader*, No. CIV-78-0004-T (W. D. Okla. Jan 11, 1982); *D.B. v. Tewksbury*, 545 F. Supp. 896 (D. Or. 1982); *Morgan v. Sproat*, 432 F. Supp. 1130 (S.D. Miss. 1977); *Baker v. Hamilton*, 345 F. Supp. 345, 353 (W.D. Ky. 1972); ACA TRAINING SCHOOL STANDARDS § 2-9278. The courts have made similar rulings in cases involving adult inmates. *See, e.g., Miller v. Carson*, 563 F.2d 741 (5th Cir. 1977); *Carver v. Knox County*, Tenn., 753 F. Supp. 1370 (E.D. Tenn. 1989); *Grubbs v. Bradley*, 552 F. Supp. 1052 (M.D. Tenn. 1982); *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977)).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* (citing *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Julie v. Black*, Case No. 81-C-455 (W.D. Wis. Mar. 29, 1982); *Manning v. Matheson*, Case No. NC 75-34 (D. Utah Jan. 21, 1981); *H.C. v. Jarrad*, No. TCA 79-0830 (N.D. Fla. June 20, 1980); *Thomas v. Mears*, 474 F. Supp. 908, 912 (E.D. Ark. 1979); *Inmates of Boys Training Sch. v. Affleck*, Civil No. 4529 (D.R.I. Jan. 15, 1979)(previous opinion 346 F. Supp. 1354 (D.R.I. 1972)); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17966 (D. Mass. Apr. 1976); *New York State Ass'n for Retarded Children v. Rockefeller*, Nos. 73-C-55, 73-C-113 (E.D.N.Y. Apr. 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)); *Martarella v. Kelley*, 359 F. Supp. 478 (S.D.N.Y. 1973); IJA/ABA CORRECTIONS STANDARDS § 4.9; NAC STANDARDS § 4.218).

<sup>63</sup> *Id.* (citing *Julie v. Black*, Case No. 81-C-455 (W.D. Wis. Mar. 29, 1982); *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Manning v. Matheson*, Case No. NC 75-34 (D. Utah Jan. 21, 1981), *Inmates of Boys Training Sch. v. Affleck*, Civil No. 4529 (D.R.I. Jan. 15, 1979)(previous opinion 346 F. Supp. 1354 (D.R.I. 1972));

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*Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)), *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976); NAC STANDARDS § 4.218).

<sup>63</sup> *Id.* (citing *Robyn A. v. McCoy*, Civ. No. 90-1151 (D. Or. April 23, 1992)(consent decree provided for at least one hour per day of outside recreation); *Thomas v. Mears*, 474 F. Supp. 908 (E.D. Ark. 1979), *Inmates of Boys Training Sch. v. Affleck*, Civil No. 4529 (D.R.I. Jan. 15, 1979)(previous opinion 346 F. Supp. 1354 (D.R.I. 1972)); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1979)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976); *New York State Ass'n for Retarded Children v. Rockefeller*, Nos. 73-C-55, 73-C-113 (E.D.N.Y. Apr. 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)); NAC STANDARDS § 4.218; ACA TRAINING SCHOOL STANDARDS § 2-9278; ACA DETENTION STANDARDS §§ 2-8298, 2-8363 to -836.

<sup>64</sup> *Conditions*, *supra* note 13, at 19 (citing *Cruz v. Beto*, 405 U.S. 319 (1972)).

<sup>65</sup> *Id. Representing*, *supra* note 13, at ¶ 2.01(5)(d)(citing *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978); *Doe v. Lake County*, Civil No. H 74-49 (N.D. Ind. Oct. 25, 1977); IJA/ABA CORRECTIONS STANDARDS § 4.9; NAC STANDARDS § 4.45; ACA TRAINING SCHOOL STANDARDS § 2-9277); (citing *Maldonado v. Cluros*, 76 Civ. 2854 (LWP)(S.D.N.Y. Aug. 29, 1978); ACA TRAINING SCHOOL STANDARDS § 9277).

<sup>66</sup> *Id.* (citing *Doe v. Lake County*, Civil No. H 74-49 (N.D. Ind. 1977)).

<sup>67</sup> *Representing*, *supra* note 13, at ¶ 2.01(5)(c)(citing *King v. Carey*, 405 F. Supp. 41, 44 (W.D.N.Y. 1975)). *See also Madewell v. Roberts*, 909 F.2d 1203 (8th Cir. 1990)(where prisoner with arthritis forced to sit without coat on cold floor for over four hours, material question of fact raised regarding Eighth Amendment violations); *Wheeler v. Glass*, 473 F.2d 983 (7th Cir. 1973)(forcing children to scrub walls 10 to 12 hours a day violates Eighth Amendment's prohibition on cruel and unusual punishment); *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La. 1976); IJA/ABA CORRECTIONS STANDARDS § 4.14; NAC STANDARDS § 4.49- ACA DETENTION STANDARDS § 3-5C-05).

<sup>68</sup> *Id.* (citing *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La. 1976); IJA/ABA CORRECTIONS STANDARDS § 4.14; ACA TRAINING SCHOOL STANDARDS § 2-9282).

<sup>69</sup> *Id.* (citing *King v. Carey*, 405 F. Supp. 41, 44 (W.D.N.Y. 1975); IJA/ABA CORRECTIONS STANDARDS § 4.14; NAC STANDARDS § 4.49; ACA TRAINING SCHOOL STANDARDS § 2-9282).

<sup>70</sup> *Representing*, *supra* note 13, at ¶ 2.01(6)(citing *see generally* L. LUND, CIVIL LIABILITY OF PUBLIC ADMINISTRATORS (1983); M. AVERY & D. RUDOVSKY, POLICE MISCONDUCT: LAW AND LITIGATION § 3.4(c) (2d ed. 1986)).

<sup>71</sup> *Id.* (citing *McKinnon v. City of Berwyn*, 750 F.2d 1383, 1391 (7th Cir. 1984); *McKenna v. City of Memphis*, 544 F. Supp. 415 (W.D. Tenn. 1982); *Bonsignore v. City of New York*, 521 F. Supp. 394 (S.D.N.Y. 1981), *aff'd*, 683 F.2d 635 (2d Cir. 1982); *Mid v. Bruner*, 496 F. Supp. 93, 98-99 (D.N.J. 1980)).

<sup>72</sup> *Id.* (citing *Owens v. Haas*, 601 F. 2d 1242, 1246-47 (2d Cir.), *cert. denied*, 444 U.S. 980 (1979)); *McClelland v. Facteau*, 610 F.2d 693 (10th Cir. 1979); *Dewell v. Lawson*, 489 F.2d 877 (10th Cir. 1974); *Beverly v. Morris*, 470 F.2d 1356 (5th Cir. 1972); *Carter v. Carlson*, 447 F.2d 358 (D.C. Cir. 1971), *rev'd on other grounds sub nom, District of Columbia v. Carter*, 409 U.S. 418 (1973); *Redmond v. Baxley*, 475 F. Supp. 1111, 1116 (E.D. Mich. 1979); *Popow v. City of Margate*, 476 F. Supp. 1237, 1246-47 (D.N.J. 1979); *Leite v. City of Providence*, 463 F. Supp. 585 (D.R.I. 1978)).

<sup>73</sup> *Id.* (citing *Wright v. Stickler*, 523 F. Supp. 193, 198 (N.D. Ill. 1981); *Spriggs v. City of Chicago*, 523 F. Supp. 138 (N.D. Ill. 1981); *Stinson v. Sheriff's Dept. of Sullivan County*, 499 F. Supp. 259, 265 (S.D.N.Y. 1980); *Redmond v. Baxley*, 475 F. Supp. 1111, 1116 (E.D. Mich. 1979), and authorities cited in M. AVERY & D. RUDOVSKY, POLICE MISCONDUCT: LAW AND LITIGATION § 3.4(c)(4)(2d ed. 1986)).

<sup>74</sup> *Id.* (citing *Moon v. Winfield*, 368 F. Supp. 843 (N.D. Ill. 1973)).

<sup>75</sup> *Id.* (citing *Dewell v. Lawson*, 489 F.2d 877 (10th Cir. 1974); *Cf. Ford v. Breier*, 383 F. Supp. 505 (E.D. Wis. 1974)).

<sup>76</sup> *Id.* (citing *Murray v. Murphy*, 441 F. Supp. 120 (E.D. Pa. 1977)).

<sup>77</sup> *Conditions*, *supra* note 13, at 18 (citing *Daniels v. Williams*, 474 U.S. 327 (1986)).

<sup>78</sup> *Id.* (citing *Davidson v. Cannon*, 474 U.S. 344 (1986)).

<sup>79</sup> *Representing*, *supra* note 13, at ¶ 2.01(6)(citing *Smith v. Wade*, 461 U.S. 30, 56 (1983)).

<sup>80</sup> *Id.* (citing *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *D.B. v. Tewksbury*, 545 F. Supp. 896 (D. Or. 1982); *Julie v. Black*, Case No. 81-C-455 (W.D. Wis. Mar. 29, 1982); *Inmates of Boys Training School v.*

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*Affleck*, Civil No. 4529 (D.R.I. Jan 15, 1979)(previous opinion 346 F. Supp. 1354 (D.R.I. 1972)); *Doe v. Henderson*, Civil Action No. A-7980-I (*Chanc. Ct. Davidson Co.*, Tenn. Feb. 26, 1979); *F.E. v. Hensley*, Civil Action No. 73 CV 43-W-1 (W.D. Mo. Dec. 15, 1978); *Morgan v. Sproat*, 432 F. Supp. 1130 (S.D. Miss. 1977); *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978); *Daratsakis v. Smith*, 76 Civ. 3218 (IBW)(S.D.N.Y. July 30, 1976); *Martarella, v. Kelley*, 359 F. Supp. 478 (S.D.N.Y. 1973); *Morales v. Turman*, 364 F. Supp. 166 (E.D. Tex. 1973), 383 F. Supp. 53 (E.D. Tex. 1974), *rev'd on other grounds*, 535 F.2d 864 (5th Cir. 1976), *rev'd and remanded*, 430 U.S. 322, *remanded on rehearing*, 562 F.2d 993 (5th Cir. 1977); IJA/ABA CORRECTIONS STANDARDS § 3.3; NAC STANDARDS § 4.212).

<sup>81</sup> *Id.* (*Terry D. v. Rader*, No. CIV.-79-0004-T (W.D. Okla. Jan. 11, 1982); *Inmates of Boys Training School v. Affleck*, Civil No. 4529 (D.R.I. Jan 15, 1979)(previous opinion 346 F. Supp. 1354 (D.R.I. 1972)); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Doe v. Lake County*, Civil No. H 74-49 (N.D. Ind. Oct. 25, 1977); *Morgan v. Sproat*, 432 F. Supp. 1130 (S.D. Miss. 1977); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976); *Martarella v. Kelley*, 359 F. Supp. 478 (S.D.N.Y. 1973); *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982), IJA/ABA CORRECTIONS STANDARDS § 3.3; NAC STANDARDS § 4.2122).

<sup>82</sup> *Id.* (citing *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Terry D. v. Rader*, No. CIV-78-0004-T (W.D. Okla. Jan. 11, 1982); *Doe v. Lake County*, Civil No. H 74-49 (N.D. Ind. Oct. 25, 1977); *Morgan v. Sproat*, 432 F. Supp. 1130 (S.D. Miss. 1977); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976); *New York State Ass'n for Retarded Children, Inc. v. Rockefeller*, Nos. 73-C-55, 73-C-113 (E.D.N.Y. April. 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)); *Martarella v. Kelley*, 359 F. Supp. 478 (S.D.N.Y. 1973); *Morales v. Turman*, 364 F. Supp. 166 (E.D. Tex. 1973), 383 F. Supp. 53 (E.D. Tex. 1974), *rev'd on other grounds*, 535 F.2d 864 (5th Cir. 1976), *rev'd and remanded*, 430 U.S. 322, *remanded on rehearing*, 562 F.2d 993 (5th Cir. 1977); NAC STANDARDS § 4.2122; ACA TRAINING SCHOOL STANDARDS §§ 29057 to -9089; ACA DETENTION STANDARDS §§ 2-8060 to -8100).

<sup>83</sup> *Id.* (citing *Robyn v. McCoy*, Civ. No. 90-1151 (D. Or. April 23, 1992)(providing that all rooms be cleaned by janitorial service three times per week); *H.C. v. Jarrad*, No. TCA 79-0830 (N.D. Fla. June 20, 1980); *Maldonado v. Ciuros*, 76 Civ. 2854 (LWP)(S.D.N.Y. Aug. 29, 1978); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976); *Hernandez v. Carroll*, Index No. 41973-76 (Sup. Ct. N.Y. Co. Jan. 20, 1977)).

<sup>84</sup> *Id.* (citing *Robyn v. McCoy*, Civ. No. 90-1151 (D. Or. April 23, 1992)(providing that all bathrooms and kitchens be cleaned three times per week); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978)).

<sup>85</sup> *Id.* (citing *Maldonado v. Ciuros*, 76 Civ. 2854 (LWP)(S.D.N.Y. Aug. 29, 1979), *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978); *Hernandez v. Carroll*, Index No. 41973-76 (Stip. Ct. N.Y. Co. Jan. 20, 1977)).

<sup>86</sup> *Id.* (citing *Julie v. Black*, Case No. 81-C455 (W.D. Wis. Mar. 29, 1982), *Maldonado v. Ciuros*, 76 Civ. 2854 (LWP)(S.D.N.Y. Aug. 29, 1978); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976)).

<sup>87</sup> *Id.* (citing *Manning v. Matheson*, Case No. NC 75-34 (D. Utah Jan. 21, 1981); *Inmates of Boys Training School v. Affleck*, Civil No. 4529 (D.R.I. Jan 15, 1979)(previous opinion 346 F. Supp. 1354 (D.R.I. 1972)); *Maldonado v. Ciuros*, 76 Civ. 2854 (LWP)(S.D.N.Y. Aug. 29, 1978); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976)).

<sup>88</sup> *Id.* (citing *Robyn v. McCoy*, Civ. No. 90-1151 (D. Or. April 23, 1992)(providing that children are furnished clean bed linens and towels); *Julie v. Black*, Case No. 81-C-455 (W. D. Wis. Mar. 29, 1982), *Inmates of Boys Training School v. Affleck*, Civil No. 4529 (D.R.I. Jan 15, 1979)(previous opinion 346 F. Supp. 1354 (D.R.I. 1972)); *Maldonado v. Ciuros*, 76 Civ. 2854 (LWP)(S.D.N.Y. Aug. 29, 1978); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976)).

<sup>89</sup> *Id.* (citing *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Maldonado v. Ciuros*, 76 Civ. 2854 (LWP)(S.D.N.Y. Aug. 29, 1978); *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976). *Cf. Martarella v. Kelley*, 359 F. Supp. 478 (S.D.N.Y. 1973); IJA/ABA INTERIM STANDARDS § 11.2; IJA/ABA CORRECTIONS STANDARDS § 7.6; ACA TRAINING SCHOOL STANDARDS §§ 2-9214 to -9228).

<sup>90</sup> *Representing*, *supra* note 13, at ¶ 2.01(7)(b)(citing *Robyn v. McCoy*, Civ. No. 90-1151 (D. Or. April 23, 1992) (providing for qualified person to review and report on current food service, with recommendations implemented as soon as practicable); *Julie v. Black*, Case No. 81 -C-45 5 (W.D. Wis. Mar. 29, 1982); *Inmates of Boys Training School v. Affleck*, Civil No. 4529 (D.R.I. Jan 15, 1979)(previous opinion 346 F. Supp. 1354 (DR.I. 1972)).

<sup>91</sup> *Conditions*, *supra* note 13, at 20. *Representing*, *supra* note 13, at ¶ 2.01(7)(b)(citing *Robyn v. McCoy*, Civ. No. 90-1151 (D. Or. April 23, 1992)(providing for second helpings at each meal if requested and mid-morning and mid-afternoon snacks)).

<sup>92</sup> *Id.* (citing *Maldonado v. Ciuros*, 76 Civ. 2854 (LWP)(S.D.N.Y. Aug. 29, 1978); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978); *New York State Ass'n for Retarded Children, Inc. v. Rockefeller*, Nos. 73-C-55, 73-C-1 13 (E.D.N.Y. April. 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)); *Maldonado v. Ciuros*, 76 Civ. 2854 (LWP) (S.D.N.Y. Aug. 29, 1978); *Doe v. Lake County*, Civil No. H 74-49 (N.D. Ind. Oct. 25, 1977); *Morgan v. Sproat*, 432 F. Supp. 1130 (S.D. Miss. 1977), *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976); *New York State Ass'n for Retarded Children, Inc. v. Rockefeller*, Nos. 73-C-55, 73-C-1 13 (E.D.N.Y. April. 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)); ACA TRAINING SCHOOL STANDARDS § 2-9206; ACA DETENTION STANDARDS §§ 3-2E-08, 3-4A-01 to 3-413-15).

<sup>93</sup> *Conditions*, *supra* note 13, at 20. *Representing*, *supra* note 13, at ¶ 2.01(7)(c)(citing *Robyn v. McCoy*, Civ. No. 90-1151 (D. Or. April 23, 1992)(setting minimum and maximum temperatures and required that healthful level of circulating fresh air be maintained); *Ramos v. Lamemrn*, 639 F.2d 559 (10th Cir. 1980), *cert. denied*, 450 U.S. 1041 (1981); *Toussaint v. Rushen*, 553 F. Supp. 1365 (N.D. Cal. 1983); *French v. Owens*, 538 F. Supp. 910 (S.D. Ind. 1982); *Patmigiano v. Garrahy*, 443 F. Supp. 956 (D.R.I. 1977), *cert. denied*, 449 U.S. 839 (1980); *Laaman v. Helgemoe*, 437 F. Supp. 269 (D.N.H. 1977); *Jordan v. Fitzharris*, 257 F. Supp. 674 (N.D. Cal. 1966)).

<sup>94</sup> *Conditions*, *supra* note 13, at 20. *Representing*, *supra* note 13, at ¶ 2.01(7)(e).

<sup>95</sup> *Conditions*, *supra* note 13, at 21. *Representing*, *supra* note 13, at ¶ 2.01(7)(e).

<sup>96</sup> *Id.* (citing *Robyn v. McCoy*, Civ. No. 90-1151 (D. Or. April 23, 1992)(providing for fire evacuation plan, fire drills and regular fire and safety inspections); *F.E. v. Hensley*, Civil Action No. 73 CV 43-W- 1 (W.D. Mo. Dec. 15, 1978); *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978); *Hernandez v. Carroll*, Index No. 41973-76 (Sup. Ct. N.Y. Co. Jan. 20, 1977); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976); *New York State Ass'n for Retarded Children, Inc. v. Rockefeller*, Nos. 73-C-55, 73-C-113 (E.D.N.Y. April. 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)); IJA/ABA INTERIM STANDARDS § 11.2; ACA TRAINING SCHOOL STANDARDS §§ 2-2A-03, 2-2A-04, 3-3B-01 to 3-3B-11).

<sup>97</sup> *Representing*, *supra* note 13, at ¶ 2.01(7)(f)(citing *Robyn v. McCoy*, Civ. No. 90-1151 (D. Or. April 23, 1992) (requiring lighting adequate to permit children to read while in detention rooms); *Inmates of Boys Training School v. Affleck*, Civil No. 4529 (D.R.I. Jan 15, 1979) (previous opinion 346 F. Supp. 1354 (D.R.I. 1972)); *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976)).

<sup>98</sup> *Conditions*, *supra* note 13, at 21. *Representing*, *supra* note 13, at ¶ 2.01(7)(g)(citing *Robyn v. McCoy*, Civ. No. 90-1151 (D. Or. April 23, 1992)(providing for outer clothes at least twice a week and more frequently if necessary; children shall receive clean underwear and socks daily); *Inmates of Boys Training School v. Affleck*, Civil No. 4529 (D.R.I. Jan 15, 1979)(previous opinion 346 F. Supp. 1354 (D.R.I. 1972)); *Maldonado v. Ciuros*, 76 Civ. 2854 (LVP)(S.D.N.Y. Aug. 29, 1978), *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976); *New York State Ass'n for Retarded Children, Inc. v. Rockefeller*, Nos. 73-C-55, 73-C-113 (E.D.N.Y. April. 1975)(previous opinion 3357 F. Supp. 752 (E.D.N.Y. 1973)); *Id.* (citing *see Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Julie v. Black*, Case No. 81-C-455 (W.D. Wis. Mar. 29, 1982); *Thomas v. Mears*, 474 F. Supp. 908 (E.D. Ark. 1979); *Manning v. Matheson*, Case No. NC 75-34 (D. Utah Jan. 21. 1981); *Maldonado v. Ciuros*, 76 Civ. 2854 (LWP)(S.D.N.Y. Aug. 29, 1978); *Santiago v. Philadelphia*, Civil

No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976); *New York State Ass'n for Retarded Children, Inc. v. Rockefeller*, Nos. 73-C-55, 73-C-I 13 (E.D.N.Y. April. 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)); IJA/ABA CORRECTIONS STANDARDS § 7.6; NAC STANDARDS § 4.42; ACA TRAINING SCHOOL STANDARDS § 2-9288); *Id.* (citing *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Manning v. Matheson*, Case No. NC 75-34 (D. Utah Jan. 21. 1981); *Inmates of Boys Training School v. Affleck*, Civil No. 4529 (D.R.I. Jan 15, 1979)(previous opinion 346 F. Supp. 1354 (DR.I. 1972)); *Doe v. Lake County*, Civil No. H 74-49 (N.D. Ind. Oct. 25, 1977); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976); *New York State Ass'n for Retarded Children, Inc. v. Rockefeller*, Nos. 73-C-55, 73-C-1. 13 (E.D.N.Y. April. 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)); NAC STANDARDS § 4.42).

<sup>99</sup> *Id.* (citing *Inmates of Boys Training School v. Affleck*, Civil No. 4529 (D.R.I. Jan 15, 1979)(previous opinion 346 F. Supp. 1354 (D.R.I. 1972)), *Maldonado v. Ciuros*, 76 Civ. 2854 (LWP)(S.D.N.Y. Aug. 29, 1978); *Doe v. Lake County*, Civil No. H 74-49 (N.D. Ind. Oct. 25, 1977); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976)); *Id.* (citing *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976)).

<sup>100</sup> *Conditions*, *supra* note 13, at 21. *Id.* (citing *e.g., McCord v. Maggio*, 910 F.2d 1248 (5th Cir. 1990); *Fambro v. Fulton Co.*, Ga., 713 F. Supp., 1426 (N.D. Ga. 1989); *Toussaint v. Rushen*, 553 F. Supp. 1365 (N.D. Cal. 1983); *French v. Owens*, 538 F. Supp. 910 (S.D. Ind. 1982); *McMurry v. Phelps*, 533 F. Supp. 742 (W.D. La 1982); *Union County Jail Inmates v. Scanlon*, 537 F. Supp. 993 (D.N.J. 1982), *cert. denied*, 465 U. S. 1102 (1984); *Dawson v. Kendrick*, 527 F. Supp. 1252 (S.D. W. Va. 1981)).

<sup>101</sup> *Representing*, *supra* note 13, at ¶ 2.01(7)(h). (There is a serious question whether the *Rhodes v. Chapman* standard would apply to most institutions in which children are confined. For one thing, children confined in jails and detention centers are generally held *prior* to their adjudications in juvenile court, so that the applicable standard would be whether the conditions amounted to "punishment," in violation of the due process clause of the Fourteenth Amendment, *Bell v. Wollish*, 441 U.S. 520 (1979), rather than whether they constituted "wanton and unnecessary infliction of pain," in violation of the Eighth Amendment. In addition, it may well be that conditions that would not be considered serious deprivations for adult prisoners would nevertheless be though much more damaging to confined children. (citing IJA/ABA INTERIM STANDARDS § 10.5 (limit of 12 to 20 children per facility)); IJA/ABA CORRECTIONS STANDARDS §7.2 (limit of 12 to 20 children per facility); NAC STANDARDS §§ 4.2112, 4.2191, 4.221, 4.261 (limit of 20 beds per living unit); ACA TRAINING SCHOOL STANDARDS § 2-9119 (limit of 25 children per unit)(*see generally* §§ 2-9117 to -9154); ACA DETENTION STANDARDS §§ 3-2A-01 to 2-2G-02. Nor is it clear whether the *Rhodes v. Chapman* standard applies to children in state training schools. *See Alexander v. Boyd*, 876 F. Supp. 773, 795 (D.S.C. 1995)).

<sup>102</sup> *Id.* (citing *F.E. v. Hensley*, Civil Action No. 73 CV 43-W-1 (W.D. Mo. Dec. 15, 1978); *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976), ACA TRAINING SCHOOL STANDARDS § 2-9126).

<sup>103</sup> *Id.* (citing *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978), *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976); ACA TRAINING SCHOOL STANDARDS § 2-9128).

<sup>104</sup> *Id.* (citing *Terry D. v. Rader*, No. CIV-78-0004-T (W.D. Okla. Jan. 22, 1982); *D.B. v. Tewksbury*, 545 F. Supp. 896 (D. Or. 1982); *Thomas v. Mears*, 474 F. Supp. 908 (E.D. Ark. 1979) (new cells to have own toilet and lavatory facilities); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Ahrens v. Thomas*, 434 F. Supp. 873 (W.D. Mo. 1977), *aff'd in part, rev'd in part*, 570 F.2d 286 (8th Cir. 1978)(requiring lock on door that can be operated by child from inside his room, as well as controlled by correctional officers); *Daratsakis v. Smith*, 76 Civ. 3218 (IIBW)(S.D.N.Y. July 30, 1976)(requiring doors on toilet stalls and curtains on showers); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976)(toilets in lavatories to have partitions), IJA/ABA INTERIM STANDARDS § 10.7).

<sup>105</sup> *Representing*, *supra* note 113, at ¶ 2.01(8)(a)(citing *Milonas v. Williams*, 691 F.2d 931 (10th Cir. 1982), *cert denied*, 460 U.S. 1069 (1983); *Robert K. v. Bell*, Civil Action No. 83-287-0 (D.S.C. Apr. 30, 1984); *Doe v. Holladay*, No. CV 77-74-BLG (D. Mont. Apr. 1, 1982); *Terry D. v. Rader*, No. CIV-78-0004-T (W. D. Okla. Jan. 11, 1982); *F.E. v. Hensley*, Civil Action No. 73 CV 43-W-1 (W.D. Mo. Dec. 15, 1978); *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La. 1976); *Pena v. New York State Div. for Youth*, 419 F. Supp. 203 (S.D.N.Y. 1976); *New York*



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*State Ass'n for Retarded Children, Inc. v. Rockefeller*, Nos. 73-C-55, 73-C-113 (E.D.N.Y. April, 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)); IJA/ABA INTERIM STANDARDS § 10.7; IJA/ABA CORRECTIONS STANDARDS § 4.8; NAC STANDARDS §§ 4.6,4.61, ACA TRAINING SCHOOL STANDARDS § 2-9190).

<sup>106</sup> *Id.* (citing *Robert K. v. Bell*, Civil Action No. 83-287-0 (D.S.C. Apr. 30, 1984)(four-hour limit); *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Terry D. v. Rader*, No. CIV-78-0004-T (W.D. Okla. Jan. 11 1982); *F.E. v. Hensley*, Civil Action No. 73 CV 43-W-1 (W.D. Mo. Dec. 15, 1978); *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La. 1976); *Pena v. New York State Div. for Youth*, 419 F. Supp. 203 (S.D.N.Y. 1976); *New York State Ass'n for Retarded Children, Inc. v. Rockefeller*, Nos. 73-C-55, 73-C-113 (E.D.N.Y. Apr. 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)); IJA/ABA INTERIM STANDARDS § 10.7; NAC STANDARDS §§ 4.6,4.61).

<sup>107</sup> *Id.* (citing *Robert K. v. Bell*, Civil Action No. 83-287-0 (D.S.C. Apr. 30, 1984); *Terry D. v. Rader*, No. CIV-78-0004-T (W.D. Okla. Jan. 11, 1982); *Julie v. Black*, Case No. 81-C-455 (W.D. Wis. Mar. 29, 1982); *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *F.E. v. Hensley*, Civil Action No. 73 CV 43-W-1 (W.D. Mo. Dec. 15, 1978); *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La. 1976); *New York State Ass'n for Retarded Childrerin, Inc. v. Rockefeller*, Nos. 73-C-55, 73-C-113 (E.D.N.Y. April, 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)), IJA/ABA CORRECTIONS STANDARDS § 7.8; ACA TRANING SCHOOL STANDARDS § 2-9190).

<sup>108</sup> *Id.* (citing *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Terry D. v. Rader*, No. CIV-78-0004-T (W.D. Okla. Jan. 11 1982)(padded leather restrains only); *F.E. v. Hensley*, Civil Action No. 73 CV 43-W-1 (W.D. Mo. Dec. 15, 1978); *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La. 1976)); (citing *Robert K. v. Bell*, Civil Action No. 83-287-0 (D.S.C. Apr. 30, 1984); *Doe v. Holladay*, No. CV-77-74 BLG (D. Mont. Apr. 1, 1982)(every 15 minutes); *F.E. v. Hensley*, Civil Action No. 73 CV 43-W-1 (W.D. Mo. Dec. 15, 1978)(every 15 minutes); *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La. 1976)(every 30 minutes); *New York State Ass'n for Retarded Children, Inc. v. Rockefeller*, Nos. 73-C-55, 73-C-113 (E.D.N.Y. April, 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)(every 30 minutes)).

<sup>109</sup> *Id.* (citing *Robert K. v. Bell*, Civil Action No. 83-287-0 (D. S.C. Apr. 30, 1984); *Doe v. Holladay*, No. CV-77-74 BLG (D. Mont. Apr. 1, 1982); *F.E. v. Hensley*, Civil Action No. 73 CV 43-W-1 (W.D. Mo. Dec. 15, 1978); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La. 1976), *New York State Ass'n for Retarded Children, Inc. v. Rockefeller*, Nos. 73-C-55, 73-C-113 (E.D.N.Y. April, 1975)(previous opinion 357 F. Supp. 752 (E.D.N.Y. 1973)); IJA/ABA CORRECTIONS STANDARDS § 4.8; ACA TRAINING SCHOOL STANDARDS § 2-9190)).

<sup>110</sup> *Representing, supra* note 13, at ¶ 2,01(8)(b).

<sup>111</sup> *Id.* (citing *Milonas v. Williams*, 691 F.2d 931 (10th Cir. 1982), *cert. denied*, 460 U.S. 1069 (1983); *Robert K. v. Bell*, Civil Action No. 83-287-0 (D.S.C. Apr. 30, 1984); *Terry D. v. Rader*, No. CIV-78-0004-T (W.D. Okla. Jan. 11 1982); *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Julie v. Black*, Case No. 81-C-455 (W.D. Wis. Mar. 29, 1982); *Brian v. Clinicare Corp.*, Civil Action No. 79-C-188 (W.D. Wis. Sept. 9, 1980); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Doe v. Lake County*, Civil No. H 74-49 (N.D. Ind. Oct. 25, 1977); IJA/ABA CORRECTIONS STANDARDS § 7.11).

<sup>112</sup> *Id.* (citing *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982)(every 30 minutes); *D.B. v. Tewksbury*, 545 F. Supp. 896 (D. Or. 1982); *Benitez v. Collazo*, Civil 77-0662CC(D.P.R. Aug. 27, 1982)(staff to remain in room throughout period of isolation); *Julie v. Black*, Case No. 81-C-455 (W.D. Wis. Mar. 29, 1982 (every 15 minutes); *Brian v. Clinicare Corp.*, Civil Action No. 79-C-188 (W.D. Wis. Sept. 9, 1980)(15 minutes), *F.E. v. Hensley*, Civil Action No. 73 CV 43-W-1 (W.D. Mo. Dec. 15, 1978)(monitored every 15 minutes); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977))(every 15 minutes); *Doe v. Lake County*, Civil No. H 74-49 (N.D. Inc. Oct. 25, 1977)(monitored hourly, more frequently if child is particularly depressed, and staff to be within calling distance at all times); *Morgan v. Sproat*, 432 F. Supp. It 30 (S.D. Miss. 1977); *Inmtes of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976)(every 15 minutes); *Morales v. Turman*, 364 F. Supp. 166 (E.D. Tex. 1973), 383 F. Supp. 53 (E.D. Tex. 1974), *rev'd on other grounds*, 535 F.2d 864 (5th Cir. 1976) *rev'd and remanded*, 430 U.S. 322, *remanded on rehearing*, 562 F,2d 993 (5th Cir. 1977); IJA/ABA CORRECTIONS STANDARDS § 7.11; NAC STANDARDS § 4.52; ACA TRAINING SCHOOL STANDARDS §§ 2-9295, 2-9302).

<sup>113</sup> *Id.* (citing *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Terry D. v. Rader*, No. CIV-78-0004-T (W.D. Okla. Jan. 11 1982); *Benitez v. Collazo*, Civil 77-0662CC (D.P.R. Aug. 27, 1982); *Manning v. Matheson*, Case No. NC 75-34 (D. Utah Jan. 21, 1981)- *F.E. v. Hensley*, Civil Action No. 73 CV 43-W-1 (W.D. Mo. Dec. 15, 1978); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Doe v. Lake County*, Civil No. H 74-49 (N.D. Ind. Oct. 25, 1977); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976); *Pena v. New York State Div. for Youth*, 419 F.

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Supp. 203 (S.D.N.Y. 1976); IJA/ABA CORRECTIONS STANDARDS § 7.11 -1 NAC STANDARDS § 4.52-, ACA TRAINING SCHOOL STANDARDS § 2-9301).

<sup>114</sup> *Id.* (citing *Robert K. v. Bell*, Civil Action No. 83-287-0 (D.S.C. Apr. 30, 1984); *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Terry D. v. Rader*, No. CIV-78-0004-T (W.D. Okla. Jan. 11 1982); *Manning v. Matheson*, Case No. NC 75-34 (D. Utah Jan. 21, 198 1); *Thomas v. Mears*, 474 F. Supp. 908 (E.D. Ark. 1979); *Maldonado v. Cluros*, 76 Civ. 2854 (LWP) (S.D.N.Y. Aug. 29, 1978), *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Doe v. Lake County*, Civil No. H 74-49 (N.D. Ind. Oct. 25, 1977), *Morgan v. Sproat*, 43 2 F. Supp. 1130 (S.D. Miss. 1977); *Pena v. New York State Div. for Youth*, 419 F. Supp. 203 (S.D.N.Y. 1976); *Harris v. Bell*, 402 F. Supp. 469 (W.D. Mo. 1975); *Morales v. Turman*, 364 F. Supp. 166 (E.D. Tex 1973), 383 F. Supp. 53 (E.D. Tex. 1974), *rev'd on other grounds*, 535 F.2d 864 (5<sup>th</sup> Cir. 1976), *rev'd and remanded*, 430 U.S. 322, *remanded on rehearing*, 562 F.2d 993 (5th Cir. 1977); IJA/ABA CORRECTIONS STANDARDS § 7.11; NAC STANDARDS § 4.52).

<sup>115</sup> *Id.* (citing *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Terry D. v. Rader*, No. CIV-78-0004-T (W.D. Okla. Jan. 11 1982); *Benitez v. Collazo*, Civil 77-0662CC (D.P.R. Aug. 27, 1982); *Julie v. Black*, Case No. 81-C-455 (W.D. Wis. Mar. 29,1982); *Manning v. Matheson*, Case No. NC 75-34 (D. Utah Jan. 21,1981); *F.E. v. Hensley*, Civil Action No. 73 CV 43-W-1 (W.D. Mo. Dec. 15, 1978); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Morgan v. Sproat*, 432 F. Supp. 1130 (S.D. Miss. 1977); *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La 1976), *Pena v. New York State Div. for Youth*, 419 F. Supp. 203 (S.D.N.Y. 1976); NAC STANDARDS § 4.52).

<sup>116</sup> *Id.* (citing *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Terry D. v. Rader*, No. CIV-78-0004-T (W.D. Okla. Jan. 11 1982); *Benitez v. Collazo*, Civil 77-0662CC (D.P.R. Aug. 27, 1982), *Julie v. Black*, Case No. 81-C-455 (W.D. Wis. Mar. 29, 1982); *Manning v. Matheson*, Case No. NC 75-34 (D. Utah Jan. 21, 1981); *F.E. v. Hensley*, Civil Action No. 73 CV 43-W-1 (W.D. Mo. Dec. 15, 1978); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977)); *Doe v. Lake County*, Civil No. H 74-49 (N.D. Ind. Oct. 25, 1977); *Morgan v. Sproat*, 432 F. Supp. 1130 (S.D. Miss. 1977), *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La. 1976); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976); *Pena v. New York State Div. for Youth*, 419 F. Supp. 203 (S.D.N.Y. 1976); NAC STANDARDS § 4.52).

<sup>117</sup> *Id.* (citing *Doe v. Holladay*, No. CV-77-74-BLG (D. Mont. Apr. 1, 1982); *Terry D. v. Rader*, No. CIV-78-0004-T (W.D. Okla. Jan. 11 1982)(three hours); *Benitez v. Collazo*, Civil 77-0662CC (D.P.R. Aug. 27, 1982)(two hours), *Julie v. Black*, Case No. 81-C-455 (W.D. Wis. Mar. 29,1982); *Manning v. Matheson*, Case No. NC 75-34 (D. Utah Jan. 21, 198 1)(three hours), *F.E. v. Hensley*, Civil Action No. 73 CV 43-W-1 (W.D. Mo. Dec. 15, 1978)(24 hours); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978)(previous opinion 435 F. Supp. 136 (E.D. Pa. 1977))(24 hours); *Doe v. Lake County*, Civil No. H 74-49 (N.D. Ind. Oct. 25, 1977)(eight hours); *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La. 1976)(12 hours); *Inmates of Judge John J. Connelly Youth Center v. Dukakis*, Civil No. 75-17866 (D. Mass. Apr. 1976)(two-hour limit); *Pena v. New York State Div. for Youth*, 419 F.

<sup>118</sup> *Id.* (citing *Danny O. v. Bowman*, Civil No. 84-1272 (D. Idaho July 12, 1985); *Robert K. v. Bell*, Civil Action No. 83-287-0 (S.S.C. Apr. 30,1984); *Terry D. v. Rader*, No. CIV-78-0004-T (W.D. Okla. Jan. 11, 1982); *D.B. v. Tewksbury*, 545 F. Supp. 896 (D. Or. 1982); *Benitez v. Collazo*, Civil 77-0662CC (D.P.R. Aug. 27, 1982); *Manning v. Matheson*, Case No. NC 75-34 (D. Utah Jan. 21, 198 1), *F.E. v. Hensley*, Civil Action No. 73 CV 43-W-1 (W.D. Mo. Dec. 15, 1978); *Pena v. New York State Div. for Youth*, 419 F. Supp. 203 (S.D.N.Y. 1976)).

<sup>119</sup> *Representing, supra* note 13, at ¶ 2.01(8)(c)(citing *Morales v. Turman*, 383 F. Supp. 53 (E.D. Tex. 1974), *rev'd on other grounds*, 535 F.2d 864 (5th Cir. 1976), *rev'd and remanded*, 430 U.S. 322, *remanded on rehearing*, 562 F.2d 993 (5th Cir. 1977)).

<sup>120</sup> *Id.* (citing *Milonas v. Williams*, 691 F.2d 931 (10th Cir. 1982), *cert. denied*, 460 U.S. 1069 (1983)(prohibiting use of polygraph as part of "therapy" program); *Terry D. v. Rader*, No. CIV-78-0004-T (W.D. Okla. Jan. 11, 1982); *Benitez v. Collazo*, Civil 77-0662CC (D.P.R. Aug. 27, 1982); *Santiago v. Philadelphia*, Civil No. 74-2589 (E.D. Pa. Dec. 1978) (previous opinion 435 F. Supp. 136 (E.D. Pa. 1977))(homosexual juveniles protected from harassment or stigmatization by isolation or segregation into a single unit); *State ex rel. K.W. v. Werner*, 242 S.E.2d 907 (W. Va. 1978); *Doe v. Henderson*, Civil Action No. A-7980-1 (Chancery Ct., Davidson County, Tenn. Feb. 26, 1979)(prohibiting hitting, slapping, shoving, and throwing of children, as well as the "dying cockroach" in which child lies on back with arms and legs in air, and "standing the wall," in which child places forehead against a wall with hands behind back and feet at distance from wall), *see also Danny O. v. Bowman*, Civil No. 84-1272 (D. Idaho July 12, 1985)); *Manning v. Matheson*, Case No. NC 75-34 (D. Utah Jan. 21, 198 1); *Gary W. v. Louisiana*, 437 F.

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Supp. 1209 (E.D. La. 1976); IJA/ABA CORRECTIONS STANDARDS §§ 4.8, 4.9, 8.7; NAC STANDARDS § 4.5 1; ACA TRAINING SCHOOL STANDARDS § 2-9281; ACA DETENTION STANDARDS § 3-3D-06).

<sup>121</sup> *Representing*, *supra* note 13, at ¶ 2.01(9).

<sup>122</sup> *Conditions*, *supra* note 13, at 22 (citing *Hudson v. McMillan*, 503 U.S. 1 (1992); *Whitley v. Albers*, 475 U.S. 312 (1984). *Representing*, *supra* note 13, at ¶ 2.01(9)(citing *Valencia v. Wiggins*, 981 F.2d 1440, 1446 (5th Cir. 1993)).

<sup>123</sup> Sue Burrell *Improving Conditions of Confinement in Secure Juvenile Detention Facilities*, Pathways to Juvenile Detention Reform 17 (Annie E. Casey Foundation, 2000)

<sup>124</sup> *Id.* at 19.

## **CHAPTER VII**

### **THE RIGHT TO REGULAR AND SPECIAL EDUCATION FOR JUVENILES IN DETENTION**

Juveniles in the Commonwealth of Kentucky have both the right to a regular education program, as well as the responsibility by law for prompt and regular attendance. These rights and responsibilities arise primarily from state constitutional and statutory mandates, and are applicable to all juveniles, whether incarcerated or not.

The right to an appropriate education was recognized as a fundamental constitutional right by the Kentucky Supreme Court in *Rose v. Council for Better Education*.<sup>1</sup> The court held that Section 183 of Kentucky's Constitution ensures that the General Assembly shall "provide for an efficient system of common schools throughout the State." Kentucky's statutory framework establishes access to common schools throughout, granting the "privilege" to all juveniles to attend school within their given district.<sup>2</sup> Not only has the right to a general education been established through this legal framework, the requirement of compulsory school attendance is contained within the law, including penalties for both juveniles and adults for non-compliance.<sup>3</sup> Such provisions are, at least in part, the by-products of the Kentucky Education Reform Act (KERA), the sweeping education reform bill passed in 1990 in response to the *Rose* decision, which brought about major education reforms in academic achievement, school financing and administration.<sup>4</sup>

Providing education programs to juveniles who are in juvenile detention and juvenile holding facilities poses a challenge to administrators given the transient nature of the juveniles in these facilities, the general lack of education records and history, and the relatively short time

most juveniles are detained. Such programs must, however, be designed and implemented within the framework of the Kentucky Education Reform Act.

The bigger challenge for practitioners, however, is to understand the rights of juveniles within the juvenile justice system who have been identified as, or suspected to be, disabled students within the meaning of federal law and regulations. It is this segment of the detention population that must be better understood, and better served.

The Individuals with Disabilities Education Act (IDEA) requires every juvenile between the ages of three and 21 who has a disability be provided with a free appropriate public education (FAPE).<sup>5</sup> This federal legislation provides that all eligible juveniles, including those incarcerated or involved with the juvenile justice system, are entitled to be provided with educational services tailored to their specific academic needs. The identification, evaluation, and specially designed instruction for juveniles who are detained can present special challenges to detention center staff, educators, and other key decision makers. As more fully explained in Chapter VIII, the prevalence of juveniles with disabilities in detention and treatment facilities, both suspected and actually identified, necessitates an understanding of the rights these juveniles possess as disabled students.

This chapter explains the basic requirements of the IDEA as it relates to all disabled students, and underscores the need to better identify students with disabilities who are detained in an attempt to develop more meaningful interventions and treatment strategies. It does not attempt to delineate all of the requirements of the Rehabilitation Act of 1974<sup>6</sup> or the Americans with Disabilities Act,<sup>7</sup> two additional pieces of federal legislation that provide protection for disabled students and others. It should be noted, however, that both of these latter two pieces of legislation are applicable to detention and correctional settings for juveniles, and as such, present

compliance issues for detention center administrators and local education agencies that provide services therein.<sup>8</sup>

## **I. LEAST RESTRICTIVE ENVIRONMENT**

The IDEA requires that “to the maximum extent appropriate,” juveniles with disabilities should be educated in classes with non-disabled students.<sup>9</sup> This provision, often called the least restrictive environment (LRE), includes juveniles in public and private institutions along with other care facilities. Placement of juveniles in regular classes may require the use of supplemental aids and services. Placement in special classes, separate schooling, or other removal from the regular educational environment is done only when the nature and/or severity of the disability is such that inclusion in regular classes cannot be satisfactorily achieved.<sup>10</sup>

Generally speaking, juveniles in detention facilities do not have a range of placement options available to them given their involuntary incarceration. The provisions of IDEA were developed with school settings in mind. Nonetheless, while the application of this provision within the confines of a detention facility is particularly difficult, it is still possible that juveniles with disabilities in correctional facilities may receive educational services with non-disabled, incarcerated peers.

## **II. IDENTIFICATION, REFERRAL AND EVALUATION, INCLUDING CHILD FIND REQUIREMENTS**

The IDEA requires schools and other public agencies to not only evaluate juveniles for disabilities, but also to actively search out and identify those who may have a disability and who would be eligible for special services. This is often referred to as the “Child Find” obligation.<sup>11</sup> States must have administrative regulations and policies as to whom may request an evaluation and what procedures must be followed.

Generally, a teacher, parent or other interested party involved with the juvenile makes an evaluation request. A referral system must be in place within a given school system to explain how referrals from district and non-district sources will be accepted and acted upon in a timely manner.<sup>12</sup> As this is a public document, copies of the district's policies are available upon request.

States are required to notify parents or guardians and obtain parental consent before evaluating the juvenile.<sup>13</sup> The local education agency will then administer a variety of tests, appropriate to the juvenile's cultural and linguistic background, designed to identify and quantify disabilities. The tests or evaluations are administered over a period of time, often by several different knowledgeable and qualified personnel, including speech and language therapists, psychologists, and special education teachers.<sup>14</sup> In Kentucky, a variety of assessment tools and strategies must be used to gather relevant functional and developmental information about the juvenile, including information provided by the parent, and information related to enabling the juvenile to be involved in and progress in the general curriculum described in the Kentucky Program of Studies.<sup>15</sup>

Once a juvenile is identified through an evaluation as being eligible for special services, the juvenile must be re-evaluated at least once every three years. This evaluation must be made to assess the present levels of performance and educational needs of the juvenile, determine the need for continued special education and related services, and determine whether any additions or modifications to the special education and related services are needed to enable the juvenile to meet the measurable annual goals set out in the individualized education program (IEP).<sup>16</sup>

### **III. INDIVIDUALIZED EDUCATION PROGRAM (IEP)**

When a juvenile is evaluated and found eligible for special education services, his school district must develop and implement an individualized education program, commonly referred to as an IEP. Federal regulations require that a meeting must be held to develop the plan no more than 30 days after the determination that the juvenile is eligible for special services. The team that develops the IEP, known in Kentucky as the Admissions and Release Committee (ARC), includes:<sup>17</sup>

- The juvenile's parents;
- At least one of the juvenile's regular education teachers (if the juvenile is or may be participating in a regular education environment);
- At least one special education teacher (or provider, if appropriate) of the juvenile;
- A qualified representative of the local education agency, often the principal;
- An individual who can interpret the institutional implications of evaluation results;
- Others (at the discretion of the parents or the agency) who have knowledge or special expertise regarding the juvenile, including related service personnel as appropriate. This category may include:
  - Probation officers
  - Institutional staff
  - Others with special knowledge or expertise regarding the juvenile
  - The juvenile's attorney or advocate for the child or parents
- The juvenile with the disability may also be included if appropriate, and must be invited if over 14-years-old.<sup>18</sup>

Federal regulations require an IEP to be in place at the start of every school year.<sup>19</sup> In developing the IEP, the ARC considers the present level of educational performance, the juvenile's particular disability and the services that will be required to keep him in the least



restrictive environment. Services are devised and must include the objectives to be met, a timeline for meeting those objectives, services to be delivered and the mode in which the services will be provided, and a way in which progress may be assessed.<sup>20</sup>

**A. IDEA requires each IEP to include the following basic elements:<sup>21</sup>**

1. A statement of the juvenile's present levels of educational performance, including but not limited to:
  - a. How the juvenile's disability affects his or her involvement and progress in the curriculum for non-disabled juveniles.
2. A statement of *measurable* (emphasis added) annual goals, including benchmarks or short-term objectives, related to:
  - a. Meeting the needs of the juvenile that are a result of his disability to enable him to be involved in and progress in the general curriculum (the curriculum for non-disabled students).
  - b. Meeting each of the juvenile's other educational needs that are a result of his disability.
3. A statement of special education and related services (including supplementary aides and services) to be provided to the juvenile, or on his behalf, and a statement of the program modifications or support for school personnel that will be provided for the juvenile to:
  - a. Advance appropriately toward attaining the annual goals.
  - b. Be involved and progress in the general curriculum and participate in extracurricular and other nonacademic activities.
  - c. Be educated and participate with other juveniles with disabilities and non-disabled juveniles in the activities described above.
4. An explanation of the extent, if any, to which the juvenile will not participate with non-disabled juveniles in the regular class and in extracurricular and other nonacademic activities.
5. A statement of any individual modifications in the administration of state or district-wide assessments of the student achievement that are needed for the juvenile to participate in the assessment.
6. If the ARC determines that the juvenile will not participate in a particular state or district assessment of student achievement (or part of an assessment), a statement of why that assessment is not appropriate for the juvenile and how he will be assessed is needed.

7. A projected date for the beginning of services and modifications, including the anticipated frequency, location, and duration of these services and modifications.
8. A statement of how the juvenile's progress toward the annual goals will be measured and how the juvenile's parents will be regularly informed of his progress toward the annual goals, at least as often as the parents of non-disabled juveniles are informed of their child's progress. The statement will also inform the parents of whether that progress is sufficient to enable the juvenile to achieve the stated goals by the end of the school year.

**For older students, the Individuals with Disabilities Act also requires that the IEP include:**

9. A statement of transition service needs of the student that focuses on the student's course of study (e.g., advanced placement courses, vocational education) if the juvenile involved is 14-years-old (or younger if determined appropriate by the IEP). This statement must be updated annually.
10. A statement of needed transition services if the juvenile involved is 16-years-old (or younger if determined appropriate by the ARC).

The latter two requirements are particularly significant for juveniles in the juvenile justice system because they are provided for juveniles moving from school to post-school activities. These requirements address vocational training, employment (including supported employment), post-secondary education, including continuing and adult education, special adult services, and independent living and community participation.<sup>22</sup> Individualized Education Plans may include specific assistance in applying for vocational school, access to community services such as job training or group housing and independent living, or applications to colleges.<sup>23</sup> When an IEP meeting is held to determine transition services, the juvenile with a disability of any age must be invited to attend.

**B. In addition, an IEP must include the following if appropriate:**

1. In a case when the juvenile's behavior impedes his or her learning or that of other students, consider strategies, if appropriate, to address the behavior including positive behavior interventions, strategies, and supports;

2. In the case of a juvenile with limited English proficiency, consider the language needs of the juvenile as those needs relate to his IEP;
3. In the case of a blind or visually impaired juvenile, provide for instruction in Braille and the use of Braille unless the ARC determines, after an evaluation of the juvenile's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the juvenile's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the juvenile;
4. Consider the communication needs of the juvenile, and in the case of a juvenile who is deaf or hard of hearing, consider the juvenile's language and communication needs, opportunities for direct communication with peers and professional personnel in the juvenile's language and communication mode, academic level, and full range of needs including opportunities for direct instruction in the juvenile's language and communication mode; and,
5. Consider whether the juvenile requires technology devices and services to assist him.<sup>24</sup>

Individualized Education Programs must be implemented as soon as possible after the IEP meeting. The IEP must be reviewed by the ARC and revised at least once a year after that. Revisions should address any lack of expected progress, results of re-evaluation, information provided by parents, the juvenile's anticipated needs or other matters.<sup>25</sup>

#### **IV. SPECIAL EDUCATION AND RELATED SERVICES**

The definition of special education under the IDEA is "specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability..."<sup>26</sup> including "instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings and instruction in physical education."<sup>27</sup> The IDEA also requires provision of related services including transportation, and other supportive services such as speech and language therapy and psychological services and mobility services. Other services that may be required include various therapies such as physical, occupational and recreational, early identification and

assessment of disabilities in juveniles and rehabilitation counseling. Related services may also include social work services in schools and parent counseling and training.<sup>28</sup>

## **V. DUE PROCESS PROTECTIONS**

The juvenile's parents should be involved as much as possible in all facets of the juvenile's educational decisions. A full range of procedural safeguards is in place to assist them, including the right to:

- Examine all records;
- Receive written notice of proposed actions or refusal to take requested actions;
- Participate in meetings relating to the identification, evaluation and educational placement and provisions of a free appropriate public education to their child.<sup>29</sup>

When a parent (as defined in 34 C.F.R. § 300.20) cannot be identified, and/or the whereabouts of the parent cannot be discovered after reasonable efforts, or the juvenile is a ward of the state, IDEA provides for the assignment of a surrogate parent to protect the educational rights of the juvenile. To be a ward of the state in Kentucky requires that the juvenile be committed to a state agency, and that parental rights have been terminated.<sup>30</sup>

A surrogate parent may not be employed by the school district or the state educational agency or other agency involved in the care of the juvenile, except for non-public agency employees providing non-educational care for the juvenile who meet the other requirements. In addition, the surrogate must have no conflicting interest with the interest of the juvenile he represents, and must have knowledge and skills that ensure adequate representation of the juvenile.<sup>31</sup>

When the juvenile reaches the statutory age of majority, a state may provide for transfer of parental rights to the juvenile with a disability, unless the student is determined incompetent under state law. When this occurs, the state must take steps to ensure that the parents of the

juvenile with a disability have notice of the transfer to the juvenile. The state must also ensure that any rights the parents had under IDEA transfer to the juvenile.<sup>32</sup>

## **VI. ENFORCEMENT OF RIGHTS THROUGH IDEA**

The IDEA provides several remedies for juveniles whose rights have been violated under the Act, including mediation, a request for a due process hearing, and/or the filing of a formal complaint through the state education agency.

### **A. Mediation**

The IDEA requires that a mediation procedure to resolve disputes must be established by the state and local education agencies and made available to the parties whenever a due process hearing is scheduled, or as otherwise agreed to by the parties.

#### **1. The mediation must be:**

- a. voluntary;
- b. scheduled in a timely manner;
- c. held in a place convenient to the parties to the dispute; and,
- d. conducted by a qualified and impartial mediator who is trained in effective mediation techniques.<sup>33</sup>

Mediation may not be used to deny or delay the parents' right to pursue their complaints through due process hearing procedures. In addition, mediation may not be used to deny any other rights afforded under part B of IDEA.<sup>34</sup>

Finally, any agreement reached through mediation must be put in writing.<sup>35</sup>

### **B. Due Process Hearings**

Due process hearings are another way that a juvenile's parent or legal representative may pursue remedies under IDEA. These hearings are conducted either by the state or local educational agency, depending upon state regulations.<sup>36</sup> A parent or a local education agency

may initiate a due process hearing on any of the matters described in the written notice relating to identification, evaluation or educational placement of a juvenile with a disability, or the provision of a free and appropriate public education to the juvenile, or the refusal to initiate or change the identification, evaluation or educational placement of the juvenile.<sup>37</sup>

A request for a due process hearing is made to the Kentucky Department of Education.

1. The request must contain:

- a. the name of the juvenile;
- b. the name of the school the juvenile is attending;
- c. the address of the residence of the juvenile;
- d. a description of the nature of the problem; and,
- e. facts relating to the problem and a proposed resolution to the extent known and available to the parents at the time.<sup>38</sup>

The parents and the local education agency or any other parties must disclose any evaluations and recommendations the party intends to use five business days before the hearing. The hearing officer must not be employed by either the state or the local education agency involved in the education or care of the juvenile.<sup>39</sup> An attorney and/or other person with specialized training and/or knowledge about the needs and problems of the juvenile may accompany the parents to the hearing.

2. Parents also have the right to:

- a. present evidence;
- b. prohibit the introduction of evidence not disclosed five business days before the hearing;
- c. confront, cross-examine, and compel the attendance of witnesses;
- d. obtain a written, or at the option of the parents, electronic verbatim record of the findings of fact and decision.<sup>40</sup>

If the due process hearing was conducted by the local educational agency, any party aggrieved by the findings and decision of the hearing may appeal the decision to the state education administration.<sup>41</sup> A party who wishes to appeal the state education agency's decision may file a civil action in the appropriate state or federal court.<sup>42</sup> The court has the discretion to award reasonable attorneys' fees to the parents of a juvenile with a disability who is the prevailing party in any action or proceeding brought under the IDEA. Attorneys' fees may also be awarded under IDEA in connection with IEP meetings convened as the result of administrative proceedings, judicial action, or, at the discretion of the state, pre-complaint mediation. The IDEA does not, however, allow attorneys' fees following the rejection of a settlement offer unless the parents were substantially justified in rejecting the offer.<sup>43</sup>

### **C. Other Complaint Procedures**

In addition to the above remedy procedures, the state must have a complaint procedure in place for IDEA violations. Complaints may also be filed with the Office of Civil Rights, United States Department of Education for discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 or Title II of the Americans with Disability Act.<sup>44</sup> Any organization or individual may utilize the state complaint process. Complaints must be resolved within 60 days after a complaint is filed.<sup>45</sup> Possible outcomes of these procedures may include monetary reimbursement or other corrective action appropriate to the needs of the juvenile and appropriate provision of future services.<sup>46</sup>

To file a complaint in Kentucky, a parent or the parent's representative may send a formal complaint letter to the Division of Exceptional Children, Kentucky Department of Education. The complaint must include a statement that the school district has violated a

requirement of Part B of IDEA and the facts on which the statement is based. The complaint must also allege a violation that occurred not more than one year prior to the date the complaint is received by the Kentucky Department of Education unless a longer period is reasonable because the violation is continuing, or the complaint is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received by the Department of Education.<sup>47</sup>

## **VII. CHANGES IN PLACEMENT OF DISABLED JUVENILES**

Because placement is determined by the ARC, it cannot be changed unilaterally by a school official or other individual, with exceptions, which are set out below. Changes in placement must consider the least restrictive alternatives available and be justified on the basis of the juvenile's IEP requirements.

Federal law requires that while any judicial or administrative proceeding is pending, the “stay put provision” is in effect. This means that the juvenile shall remain in his current educational placement unless there is some agreement reached between the parent and the school district for placement of the juvenile elsewhere.<sup>48</sup>

An ARC may order a change in placement of a juvenile with a disability to an appropriate interim educational setting for the same amount of time that a non-disabled juvenile would be subject to discipline, but for not more than 45 days, if:

1. The juvenile carries or possesses a weapon to school or to a school function; or,
2. The juvenile knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function.<sup>49</sup>

A change in placement occurs when a juvenile is removed from his current educational setting for more than ten days, or if a series of removals such as disciplinary suspensions, totals more than ten days. If a change in placement has occurred, an IEP meeting must be convened



within ten business days after the removal that constituted the change in placement, that is, either after a suspension for more than ten days or the last suspension that puts the number of days above ten.<sup>50</sup> Expulsion is also considered a change of placement, and is subject to the same requirements.<sup>51</sup>

No later than ten business days after commencing an action that results in a change of placement, the district must convene an ARC to develop a plan for conducting a functional behavioral assessment, if one has not already been conducted, develop and implement a behavioral intervention plan if a functional behavior assessment has already been conducted, or review and modify the existing assessment and plan as necessary to address the behavior.<sup>52</sup>

A hearing officer may order a change in placement of a juvenile with a disability to an appropriate interim alternative educational setting for not more than 45 days. This may be done only after the public agency has demonstrated substantial evidence to the hearing officer that maintaining the current educational setting would be “substantially likely to result in injury to the child or to others.”<sup>53</sup> When a hearing officer makes such a change in placement, he must consider whether or not the present educational setting was appropriate for the juvenile and whether the public agency has made reasonable efforts to minimize the risk of harm to the juvenile and to others (e.g., the use of supplementary aides and services).<sup>54</sup>

Because continuity in the progression of the juvenile’s education is very important, the hearing officer should determine whether the alternative setting can appropriately render the services and educational curriculum that the juvenile’s IEP requires. Additionally, services and modifications to address the juvenile’s behavior and prevent a recurrence of the offending behavior must be addressed in the alternative setting.<sup>55</sup>

### **A. Manifestation Determination**

If an action is contemplated that will result in a change of placement for a juvenile with a disability who has engaged in behavior that violated any rule or code of conduct of the school district that applies to all juveniles, the district must, within ten school days after the date on which the decision to take that action is made, conduct a review by the ARC and other qualified personnel to determine the relationship between the juvenile's disability and the behavior subject to the disciplinary action.<sup>56</sup>

If there has been no behavior assessment of the juvenile, and thus no behavior plan in place in the IEP, the ARC must examine the offending behavior and its relationship to the juvenile's disability. This is called a "manifestation determination" and is required under the 1997 amendments to IDEA.<sup>57</sup> In making this determination, the ARC must consider all relevant information including evaluation and diagnostic results. The team must also examine whether the IEP and placement were appropriate, whether services were provided consistent with the IEP and whether the juvenile's disability affected not only the his ability to understand the consequences of the offending action, but the ability to control his behavior as well. If the behavior is a manifestation of the disability, the ARC must develop a plan to address the offending behavior in that meeting to immediately remedy any deficiencies in the IEP or its implementation.<sup>58</sup> If the behavior is a manifestation of the disability, the local education agency must observe the due process protections for the juvenile.

If the committee determines that the juvenile's behavior is not a manifestation of the disability, the disciplinary procedures applicable to juveniles without disabilities may be

applied.<sup>59</sup> However, the local education agency must continue to provide educational services to the extent required under section 300.121(d).<sup>60</sup>

### **B. Expedited Appeal**

Parents have the right to an expedited appeal of the manifestation determination and the placement of their child. In the case of drugs, weapons and in hearing officer placements, when the juvenile is placed in an alternative educational setting, the juvenile must remain in that interim setting until the time period expires, unless the parents and the public agency agree otherwise. After this time expires, the juvenile has the right to return to his previous placement unless the hearing officer extends the placement. The only exception to this rule is if the school personnel feel that keeping the juvenile in the current placement is dangerous, the local education agency may request an expedited hearing to determine if it is proper to place the juvenile in the alternative educational setting or other appropriate placement while the due process procedures occur.<sup>61</sup>

## **VIII. APPLICABILITY OF IDEA PROTECTIONS FOR JUVENILES NOT YET IDENTIFIED**

Some juveniles may be eligible for special education services but have not been identified for one reason or another. These may be juveniles that have not been evaluated either because the parents have not requested it or the local education agency has declined to do an evaluation. If a local education agency has a sufficient “basis of knowledge” that the student had a disability before the behavior that precipitated the disciplinary action occurred, the juvenile is entitled to the protections under the IDEA regarding disciplinary due process.<sup>62</sup>

The district is deemed to have such knowledge if the parents requested an evaluation or expressed in writing to local education agency personnel concerns that their child may need special education. The district is also deemed to have knowledge if the juvenile’s behavior or

performance demonstrates the need for such services or a teacher or other local education agency personnel have expressed concern to the special education director about the juvenile's performance or behavior.<sup>63</sup>

## **IX. SPECIAL EDUCATION IN JUVENILE DETENTION FACILITIES AND JUVENILE HOLDING FACILITIES**

The challenge of providing appropriate special education services to juveniles in juvenile detention and juvenile holding facilities is incumbent upon the Kentucky Department of Juvenile Justice. The state agency is mandated to provide education to juveniles in its care.<sup>64</sup> Local education agencies provide services to these facilities, and the Kentucky Department of Education is charged with monitoring all districts within the state for compliance with the provisions of IDEA.<sup>65</sup> Some of the most common problems include:

- Limited access to school records, thus making it difficult for detention personnel to determine if the child was previously identified. Often, a juvenile may leave the facility before the records from the school are even received.
- Identification and assessment can be hindered by inadequate staffing support, including school psychologists, social workers, special education administrators, and diagnosticians.
- Detention centers and holding facilities that serve multiple counties and school districts are often hindered by poor relationships and/or limited relationships with local school districts, and therefore are hindered in obtaining records, ensuring timely assessments, and adequately transitioning the juvenile back to the home school.
- The curriculum and service delivery systems used in juvenile facilities may vary, but they may be inadequate to meet the needs of a juvenile who is in special education classes.
- Staffing in juvenile detention centers and juvenile holding facilities must meet state requirements regarding staffing ratios and qualifications of teachers certified to teach juveniles with specific disabilities.
- Involvement of parents may be particularly difficult given the distance some parents may have to travel to a regional detention facility. Also, many parents choose not to be involved in educational services for their child.

- The timing involved for providing special education services may conflict with higher priority activities, such as meeting with attorneys, meeting with probation counselors, appearing in court, or attending other scheduled classes.
- Dormitory confinement and other security measures may be necessary and may interfere with the implementation of IEP goals and/or established service delivery methods.
- The provision of vocational services, when included in an IEP, as well as many related services, may be more difficult to implement.

While these problems can make compliance with special education requirements in detention facilities much more difficult, the benefits of a good special education program to juveniles in detention are unquestionable. For many juveniles who have had irregular and/or severely limited school attendance due to transience, repeated out of home placements, and/or discipline problems in school, it is an opportunity to regain lost ground. The correlation between academic success and lower recidivism rates cannot be ignored, and it should provide the incentive to work diligently with this population of juveniles at this critical point in their juvenile justice involvement.

It is not the intent of this publication to provide an extensive review of literature regarding best practices for education programs in detention facilities. A list of available resources, however, is found in Appendix A, which may provide detention center administrators and educators with additional assistance in serving this population effectively, and achieving compliance with special education laws and other mandates. Additionally, the National Juvenile Detention Association has published proposed standards for education programs in detention centers, a copy of which can be found in Appendix E.

**X. TOP TEN LIST FOR PRACTITIONERS REGARDING JUVENILES WITH EDUCATION-RELATED DISABILITIES UNDER IDEA**

The IDEA provides juvenile justice practitioners with the tools to ensure that disabled juveniles receive the appropriate services to achieve academic benefit, and as such, can be an important, yet neglected, part of the intervention process in juvenile court. The following “Top Ten List” suggests practical ways in which juvenile court judges, as well as others, can utilize special education laws on behalf of disabled juveniles in the juvenile justice system.<sup>66</sup>

**A. Determine the juvenile’s special education status.**

Determine if the juvenile is in school, if the juvenile has previously been identified as needing special education, and if the juvenile had an Individual Education Plan (IEP) in the last educational placement.

**B. Find a way to get the juvenile evaluated for special education eligibility**

The parent or a probation officer can initiate the evaluation process, or a judge can refer the juvenile to school system personnel for a comprehensive evaluation if there is a reasonable belief that the juvenile may have a disability that is adversely affecting his educational progress.<sup>67</sup> The local education agency must perform this evaluation in all areas of suspected disability, without charge to the parent. As compared to a typical court evaluation, which is likely to be a forensic screening regarding competency, cognitive levels, or amenability to rehabilitation, a special education evaluation should also contain a complete psycho-educational, speech/language, hearing and vision testing, and may contain such items as an occupational and physical therapy evaluation, neurological and/or psycho/neurological, an evaluation of adaptive functioning and non-verbal intelligence, and a complete vocational evaluation. The information contained in these reports can provide enormous insight into the juvenile, which can aid the court

in making decisions regarding detention, culpability, transfers to adult court, or disposition planning.

**C. Ensure that someone acquires and organizes the juvenile’s educational records for the court.**

This is particularly important for disposition of delinquency or status offender cases, for sentencing of juveniles as adults, and in decisions to transfer juveniles to adult court. A review of such records by the court may reveal a failure to identify the juvenile, or failure to provide appropriate services for the juvenile’s individual needs.

**D. Appoint an educational expert to advise the court.**

Locate an educational psychologist or other professional with expertise in education related disabilities and special education services. An expert can review the juvenile’s educational history, including placement and IEPs, and help the court and the parties to find appropriate and comprehensive services for the juvenile.

**E. Suggest that the parent or other representative find an education advocate.**

A number of attorneys and other advocates are available throughout Kentucky who know and practice special education law. With some assistance, these advocates may be able to ensure services to the juvenile and assist the families in working with school systems to remedy the juvenile’s educational failures.

**F. Understand what “special education,” “free appropriate public education,” “related services” and “transition services” are.**

A list of these terms and others is found in Appendix F.

**G. Ensure that the juvenile has a current, appropriate individualized education plan and appropriate placement.**

Involvement of school personnel in the juvenile court proceedings can be facilitated if requested by a juvenile court judge, probation officer, juvenile’s attorney, and/or other

professional involved with the juvenile. Representatives from appropriate “linking” agencies, such as those who provide transitional services, may be vital to this involvement. Thus, the court can gain knowledge of the juvenile’s IEP and placement, as well as transitional services that are available and appropriate as part of the juvenile’s treatment plan.

**H. The Court's authority can be used creatively to ensure that the juvenile gets needed services (special education, related services and transition services).**

Judges can convene inter-agency meetings, bringing officials and administrators together to discuss collaboration between agencies (including pooling money), to coordinate services for juveniles under the IDEA and to avoid the ordinary tendency to push juveniles with disabilities out of school, onto the streets, and into the delinquency system.

Judges may also insist that parents, probation officers, and others responsible for the juvenile take necessary actions to obtain appropriate services for the juvenile. Summoning school officials to answer the court’s questions regarding services for the juvenile may be sufficient to expedite services for a juvenile otherwise not receiving adequate educational opportunities.

**I. Ensure that a juvenile resides in the least restrictive environment that is consistent with both community safety and the juvenile’s education.**

Comprehensive special education, related and transition services can substitute for harsh treatment of a juvenile in a delinquency or criminal incarceration setting. If a judge determines that a juvenile requires a placement that is not community-based, however, special education law may provide a residential treatment alternative that, as a practical matter, secures the community’s protection from the juvenile while ensuring that the juvenile receives special education related and transition services. If a juvenile with education-related disabilities needs 24-hour supervision to ensure educational progress, school system personnel may be required to



provide that level of care. Thus, a court may wish to have the school system initiate and complete this residential placement process prior to the court's disposition or sentencing date.

**J. Recognize that, by ensuring that the juvenile receives education and treatment, you have advanced an outcome that ultimately is best not only for the juvenile and his family, but also for the court and for the community.**

Ensuring that a juvenile has opportunities to become competent and productive and to fulfill legitimate aspirations is the best outcome for everyone involved. Education reduces recidivism. Courts can, where appropriate, maintain supervision of the juvenile and of the education/treatment process by making attendance and participation in the special education placement a condition of probation. Individualized Education Program's can and often do contain extensive behavior management programs, individual, group and family counseling, small teacher/student ratios (including one to one, when appropriate), recreational and therapeutic recreational activities, mentoring, tutoring, job coaching, and other services that are, in reality, not available in many incarceration settings.

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<sup>1</sup> *Rose v. Council for Better Education, Inc.*, 790 S.W.2d 186, 60 Ed. Law Rep. 1289 (Ky. 1989).

<sup>2</sup> KRS 158.030.

<sup>3</sup> KRS 159.010.

<sup>4</sup> Kentucky Education Reform Act of 1990, Kentucky Laws H.B. 940 (Ch. 476).

<sup>5</sup> 20 USC 1400 et seq.

<sup>6</sup> 29 USC 701 et seq.

<sup>7</sup> 42 USC 12101 et seq.

<sup>8</sup> See *Pennsylvania Department of Corrections, et al. v. Yeskey*, 524 U.S. 206, 118 S. Ct. 1952, 141 L.Ed.2d 215 (1998). (Holding that state prisons are "public entities" within the meaning of the ADA and that prisoners "benefit" from prison "services, programs, or activities"). See also Rehabilitation Act of 1973, § 504(b)(1)(A), 29 USC 794(b)(1)(A); Individuals with Disabilities Education Act, § 612(6), as amended, 20 USC 1412(6); 34 CFR 300.2(b)(4).

<sup>9</sup> 20 USC 1412(a)(5); 34 CFR 300.550(b)(1).

<sup>10</sup> 20 USC 1412(a)(5); 34 CFR 300.550(b)(2).

<sup>11</sup> 20 USC 1412(a)(3)(A); 34 CFR 300.125.

<sup>12</sup> 707 KAR 1:300, § 2.

<sup>13</sup> 20 USC 1415(b)(3), 20 USC 1414(a)(1)(C) and (c)(3); 34 CFR 300.505.

<sup>14</sup> 20 USC 1412(a)(6)(B); 20 USC 1414(b)(2) and (3); 34 CFR 300.532.

<sup>15</sup> 707 KAR 1:300 § 2(4) and 704 KAR 3:303.

<sup>16</sup> 20 USC 1414(a)(2); 34 CFR 300.536, 707 KAR 1:300 § 3(15).

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- <sup>17</sup> 20 USC 1414(d)(1); 34 CFR 300.344(a).
- <sup>18</sup> 20 USC 1414(d)(1)(B)(i); 34 CFR 300.345(b)(2).
- <sup>19</sup> 20 USC 1414(d)(2)(A); 34 CFR 300.342(a).
- <sup>20</sup> 20 USC 1414(d)(1)(A) and (d)(6)(A)(ii); 34 CFR 300.347.
- <sup>21</sup> 20 USC 1414(d)(1)(A)(vii); 34 CFR 300.347(b).
- <sup>22</sup> 20 USC 1401(30); 34 CFR 300.29.
- <sup>23</sup> 20 USC 1401(30); 34 CFR 300.29.
- <sup>24</sup> 20 USC 1414(d)(3)(B); 34 CFR 300.346(a)(2).
- <sup>25</sup> 34 CFR 300.342(b)(ii), § 300.343(c).
- <sup>26</sup> 20 USC 1401(25); 34 CFR 300.26(a)(1).
- <sup>27</sup> 20 USC 1401(25)(A)-(B); 34 CFR 300.24(a)(1)(i)-(ii).
- <sup>28</sup> 20 USC 1401(22); 34 CFR 300.24.
- <sup>29</sup> 20 USC 1415(b); 34 CFR 300.501-300.5012.
- <sup>30</sup> 707 KAR 1:280(59).
- <sup>31</sup> 20 USC 1415(b)(2); 34 CFR 300.515(c)(2).
- <sup>32</sup> 20 USC 1415(m); 34 CFR 300.517.
- <sup>33</sup> 20 USC 1415(e); 34 CFR 300.505(b).
- <sup>34</sup> 20 USC 1415(e); 34 CFR 300.505(b)(1)(ii).
- <sup>35</sup> 20 USC 1415(e); 34 CFR 300.506.
- <sup>36</sup> 20 USC 1415(f); 34 CFR 300.507.
- <sup>37</sup> 707 KAR 1:340 § 4(5).
- <sup>38</sup> 707 KAR 1:340 § 5(1).
- <sup>39</sup> 20 USC 1415(h); 34 CFR 300.509.
- <sup>40</sup> *Id.*
- <sup>41</sup> 20 USC 1415(g); 34 CFR 300.510.
- <sup>42</sup> 20 USC 1415(i)(2); 34 CFR 300.512.
- <sup>43</sup> 20 USC 1415(i)(3); 34 CFR 300.513.
- <sup>44</sup> 34 CFR 300.660-300.662.
- <sup>45</sup> *Id.*
- <sup>46</sup> 34 CFR 300.660(b).
- <sup>47</sup> See 34 CFR 300.660 – 662 and 707 KAR 1:340, § 15, and the Kentucky Department of Education Procedures Manual, November 2000, p.28.
- <sup>48</sup> 20 USC 1415(j); 34 CFR 300.514.
- <sup>49</sup> 707 KAR 1:340 § (8)(3)
- <sup>50</sup> 20 USC 1415(k)(1) and (10); 34 CFR 300.520(b).
- <sup>51</sup> 20 USC 1415(k); 34 CFR 300.519.
- <sup>52</sup> 707 KAR 1:340, § 7 (4)
- <sup>53</sup> 20 USC 1415(k)(2) and (10); 34 CFR 300.521.
- <sup>54</sup> 20 USC 1415 (k)(2); 34 CFR 300.521.
- <sup>55</sup> *Id.*
- <sup>56</sup> 707 KAR 1:340 § 9
- <sup>57</sup> 28 USC 1415(1c)(4); 34 CFR 300.523.
- <sup>58</sup> 20 USC 1415(k)(1)(B); 34 CFR 300.520 (b).
- <sup>59</sup> 20 USC 1415(k)(5); 34 CFR 300.524.
- <sup>60</sup> 20 USC 1312(a)(1)(A); 34 CFR 300.121(d).
- <sup>61</sup> 20 USC 1415(k)(2), 20 USC 1415(k)(7); 34 CFR 300.525, 300.526, 300.528.
- <sup>62</sup> 20 USC 1415(k)(8)(A); 34 CFR 300.527(a).
- <sup>63</sup> 20 USC 1415(k)(8)(B); 34 CFR 300.527(b).
- <sup>64</sup> KRS 15A.065.
- <sup>65</sup> KRS 157.224.
- <sup>66</sup> Developed by Joe Tulman, Professor of Law at the University of District of Columbia, David A. Clarke School of Law.
- <sup>67</sup> See e.g. 34 CFR 300.532.

## **CHAPTER VIII**

### **UNDERSTANDING THE SPECIAL NEEDS OF JUVENILES IN THE JUVENILE JUSTICE SYSTEM: IMPLICATIONS FOR DECISIONS TO INCARCERATE AND OTHER INTERVENTION/TREATMENT DECISIONS**

The juvenile justice system's emphasis on treatment and rehabilitation necessitates an accurate understanding of the individualized needs of juveniles in the court system prior to making critical decisions concerning the juvenile. The decision to detain a juvenile can have negative and in some cases, severe effects on the juvenile. While this is true in general, it is even more important to understand the effects of incarceration on juveniles with disabilities, or those with other special needs. In order to understand the effects of these special needs on the procedures and outcomes of a given case, practitioners should be aware of the implications that these disabilities, as well as race, gender and nationality, may have on effective decision-making throughout the court process, particularly decisions regarding detention of a juvenile.

This chapter provides a general overview of juvenile incarceration and its effects. It details the prevalence of certain common disabilities found among these juveniles, including educational disabilities, as found in the *Statistical Manual of Mental Disorders*, Fourth Edition, and the relevant considerations for working with these juveniles.<sup>1</sup> Further, this chapter contains a discussion of the prevalence of minority juvenile in the juvenile justice system and specific implications as to mental health issues with this population. Finally, the rising number of female offenders is discussed, along with the implications regarding physical health, mental health, and equity issues.

## **I. THE EFFECTS OF DETENTION OF JUVENILES IN THE JUVENILE JUSTICE SYSTEM**

Removing a juvenile from a home setting and placing him in secure detention can cause negative effects. Much of the early research and literature concerning this issue focused on juveniles incarcerated in adult jails. For example, early studies funded by the United States Department of Justice indicated that the rate of suicide for juveniles in adult jails was 4.6 times higher than that for the general juvenile population.<sup>2</sup> Suicide rates for juveniles in jails were seven times higher than for those in juvenile detention facilities.<sup>3</sup>

Higher suicide rates and other acts of violence are still a fact of life for juveniles in confinement although the conditions of confinement have clearly changed.<sup>4</sup> A recently published study found that suicide rates of juveniles in custody are four times greater than the general juvenile population.<sup>5</sup> Generally, newer studies continue to find that unnecessary detention may damage a juvenile's self-esteem and may encourage, rather than discourage, future delinquent behavior. Thus, the words of Sherwood Norman of the National Council on Crime and Delinquency 20 years ago are still relevant today: detaining a juvenile "in forced association with other delinquents intensifies his hostility to society and exalts his status in the delinquent group."<sup>6</sup>

The detention of some juveniles before a determination of guilt, or pending placement in residential treatment, is necessary in order to ensure public safety. However, for many others, placement in alternatives to detention programs such as home detention, electronic monitoring, evening reporting centers or foster care may be more desirable. The next four sections discuss some of the special needs of juveniles in the juvenile justice system that should be considered when making decisions regarding detention or other available options.

## **II. MENTAL HEALTH DISABILITIES IN THE JUVENILE JUSTICE SYSTEM**

### **A. The Prevalence of Mental Health Disorders**

While research on the prevalence of juveniles with mental disorders in the juvenile justice system may vary from study to study, a consistent finding among researchers is that the majority of juveniles in the juvenile justice system in this country have mental and/or emotional disorders which may, when they remain untreated, contribute to the juvenile's delinquency.<sup>7</sup> A summary of some of the major studies reflects an increasing interest in this under-served population and suggests that juveniles in the juvenile justice system are comparable to those being treated in community-based mental health systems.<sup>8</sup>

- Based on data obtained from site visits to a nationally representative sample of 95 public and private juvenile facilities, researchers found that 73% of the juveniles in these facilities reported mental health problems during screening, and 57% reported that they have previously received treatment for mental health;<sup>9</sup>
- In Maryland, data obtained from a representative random sample of juveniles from all 15 juvenile facilities indicated that 57% have a history of mental illness. Based on structured diagnostic interviews, 53% have at least one current mental disorder diagnosis.<sup>10</sup>
- In Virginia, a census of 17 secure detention centers revealed that 8–10% of juveniles detained needed immediate mental health treatment, medication or inpatient treatment for depression, anxiety or psychotic symptoms. The clinicians conducting this study estimated that 77% of the juveniles would meet diagnostic criteria for a mental disorder. Of this group, 55% of juveniles in these detention homes had previously received treatment for mental health problems.<sup>11</sup>
- Research conducted in Georgia using a random sample of juveniles admitted to the Regional Youth Detention Center and based on structured diagnostic interviews, indicated that 61% of these juveniles had mental disorders, including substance abuse disorders.<sup>12</sup>
- Researchers in South Carolina, using a random sample of juveniles from the South Carolina Department of Juvenile Justice facilities, found 72% met full criteria for at least one mental disorder diagnosis.<sup>13</sup>

Research is just beginning to recognize and document the high level of co-occurring substance abuse disorders among individuals with mental health disorders.<sup>14</sup> While little data exists which focuses on co-occurring substance abuse disorders among juveniles, one study has found that “approximately half of all adolescents receiving mental health services” in the general population are reported to have a dual diagnosis.<sup>15</sup> Among the juvenile justice system population, the rates may be even higher.<sup>16</sup>

Understanding the nature and extent of a juvenile’s disabling condition is a key factor in the way meaningful interventions and appropriate accommodations are provided within the juvenile justice system. Many juveniles with disabilities have co-existing disorders, making identification and intervention more difficult. Compounded with other risk factors, such as a chaotic family life, drug use, gang activity, low socio-economic status, and other risk factors for juvenile offenders, these juveniles are frequently very difficult to identify, diagnose, treat, and respond to effectively.<sup>17</sup>

Some of the most common disorders found among juveniles in the juvenile justice system found in the studies of incarcerated juveniles discussed above are found in Appendix F with reference to their classification and characteristics.

## **B. Implications for Detaining Mentally Ill Juveniles**

Because there may be misunderstandings of behavior of mentally ill juveniles who are arrested which may result in their being detained disproportionately, careful consideration of appropriate alternatives to detention should be made, provided that the juvenile does not pose a substantial community risk. The issues that should be considered include:

- The likelihood that the juvenile’s mental health needs could better be served in a community based setting with intensive services rather than detention.

- Whether the particular juvenile detention or juvenile holding facility is adequately equipped to handle the mental health needs of a particular juvenile (i.e., contracted psychiatric or psychological services, availability of medication, level of training for staff, and level of supervision).
- Whether the juvenile's conduct with police or court officials is a manifestation of his disability that may have been otherwise misconstrued as him being noncompliant, unresponsive or otherwise inappropriate in response.
- Whether the juvenile would most likely be deemed incompetent to stand trial as a result of mental illness, mental retardation, or other mental deficiency.

### **III. EDUCATIONAL DISABILITIES AMONG JUVENILES IN THE JUVENILE JUSTICE SYSTEM**

A significant number of juveniles in the juvenile justice system have educational disabilities that have an adverse effect upon their educational progress, and they are therefore eligible for specially designed instruction and related services under the Individuals with Disabilities Act (IDEA).<sup>18</sup> Under the IDEA, a juvenile with an identified or suspected disability is entitled to a free and appropriate public education, including identification of the special need, evaluation, specially designed instruction, related services, and due process protections during each step of the process.<sup>19</sup> These rights are explained in greater detail in Chapter VII.

This section provides an overview of the prevalence of educational disabilities among juveniles in the juvenile justice system, and explains the nature and characteristics of some of the most common disabilities among this population. Additionally, this section explores the relationship between disabling conditions and delinquent behaviors. Finally, this section provides suggestions to consider when detaining juveniles with educational disabilities.

#### **A. The Prevalence of Educational Disabilities**

The United States Department of Education reports that 8.6% of public school students have been identified as having disabilities that qualify them for special education services.<sup>20</sup> By

comparison, juveniles in the juvenile justice system are much more likely to have both identified and undiscovered disabilities. For example, consider the following:

- Juveniles with learning disabilities and/or an emotional disability are arrested at higher rates than their non-disabled peers.<sup>21</sup>
- It is estimated that 18% of mentally retarded, 31% of learning disabled, and 57% of emotionally disturbed juveniles will be arrested within five years of leaving high school.<sup>22</sup>
- Studies of incarcerated juveniles suggest that as many as 70% suffer from disabling conditions.<sup>23</sup>

In order to be eligible for services under the IDEA, a juvenile must have one or more of the disabilities listed in the statute, and because of their disability, require specially designed instruction and related services. These broad disability categories include: mental retardation, visual impairment, deafness, hearing impairment, speech or language impairment, deaf/blindness, emotional disturbance, orthopedic impairment, autism, other health impairment, specific learning disability, and multiple disabilities.<sup>24</sup>

The most common disorders among juvenile offenders in the justice system include conduct disorder, depression, attention deficit/hyperactivity disorder, learning disabilities, Post-Traumatic Stress Disorder and developmental disabilities, including mental retardation and autism.<sup>25</sup>

Learning disabilities are common disabilities found among juveniles in the juvenile justice system. Learning disability is defined under IDEA as “a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.”<sup>26</sup> The learning disability may include conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia (speech



impairment), but it does not include learning problems that are primarily the result of environmental, cultural, or economic disadvantage.<sup>27</sup>

Emotional disturbance is also commonly found among juveniles in the juvenile justice system. Emotional disturbance is defined under the IDEA as:

“[A] condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

1. An inability to learn that cannot be explained by intellectual, sensory or health factors;
2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
3. Inappropriate types of behavior or feelings under normal circumstances;
4. A general pervasive mood of unhappiness or depression;
5. A tendency to develop physical symptoms or fears associated with personal or school problems.<sup>28</sup>

The term includes schizophrenia, but does not apply to juveniles who are socially maladjusted unless it is determined that they also have an emotional disturbance.<sup>29</sup>

The “other health impairment” category includes a listing of several types of disabilities that affect juveniles by limiting strength, vitality or alertness due to chronic or acute health problems, asthma, epilepsy, or attention deficit hyperactive disorder (ADHD).<sup>30</sup> A complete list of disability definitions can be found in 34 CFR 300.7(c).

#### **IV. THE RELATIONSHIP BETWEEN DISABLING CONDITIONS AND DELINQUENT BEHAVIORS**

A number of common traits found among many disabled juveniles make them more susceptible for involvement in the juvenile justice system. More specifically, juveniles with suspected or identified disabilities are often prone, depending upon the nature of the disability, to:

- Make poor decisions and social judgments that lead to involvement in crime;
- Have weak or no avoidance techniques that lead to detention and eventual arrest (i.e., they are more likely to get caught);
- Have social skill deficits that result in harsher treatment once in the justice system; and,
- Have learning difficulties that almost ensure increased recidivism (i.e., it is more difficult for them to “learn their lesson” and reform their ways).<sup>31</sup>

Those traits that foster greater susceptibility are often the result of reduced cognitive abilities, or they may stem from language immaturity, developmental and/or academic delays, social perception and problem solving deficits, and/or deficits in the development of interpersonal skills.<sup>32</sup>

In addition to increased susceptibility, many disabled juveniles have not responded to educational intervention, or they have not been afforded appropriate intervention, resulting in significant academic failure and underachievement in school. The embarrassment and frustration which result from this failure work to increase negative self-image, which may cause the student to seek out delinquent-prone peer groups to find acceptance, a social identity and a sense of achievement lacking in the school setting. The juvenile may drop out of school all together, and then be prone to becoming involved in other very negative activities, to earn the respect of their peers and compensate for their perceived failures and shortcomings.<sup>33</sup>

Finally, juveniles with disabilities often receive harsher treatment at arrest, adjudication and disposition as compared to their non-disabled peers.<sup>34</sup> The National Center for State Courts, along with Nancy Cowardin, report the following statistics in support of this:

1. Learning disabled juveniles are 200% more likely to be arrested than non-disabled juveniles for comparable delinquent activity.
2. Adjudication has been found to be 220% more likely if the offender has a learning disability. Non-adjudicated juveniles averaged two years higher in school

achievement than those adjudicated delinquent, despite similar backgrounds of offenses.

3. Despite similar records of prior offenses, once adjudicated delinquent, the term of incarceration and/or probation is 2-3 years longer for those with disabilities as compared to their non-disabled peers.<sup>35</sup>

## **V. IMPLICATIONS FOR DETAINING JUVENILES WITH EDUCATIONAL DISABILITIES**

Because of the increased likelihood that disabled juveniles who come into contact with law enforcement will be arrested and detained, special attention should be drawn to the types of disabilities and characteristics of these juveniles, once known, when considering the decision to detain or to place in alternative programs. Not only do these juveniles present challenges to detention facilities to provide appropriate and/or mandated services, but detention may not be the least restrictive alternative appropriate once the disability is identified and better understood.

Decision makers should consider the following:

1. Many juveniles with disabilities enter the system with no diagnosis or an improper diagnosis, and as such, may not be receiving adequate services in the community.
2. The disability may have contributed to the juvenile's conduct with the police and may not have been understood as a manifestation of the disability, but rather misconstrued as being uncooperative, unresponsive, or otherwise inappropriate.
3. In cases involving juveniles arrested for school-related conduct, the juvenile may not have been receiving the appropriate educational services, which may be a contributing factor in the juvenile's conduct.
4. The juvenile may require hospitalization for severe mental health needs in lieu of detention.
5. A juvenile with special education needs may have an IEP that cannot be properly implemented by a local detention center, and may be better served in a community-based setting if the community's safety is not at issue.

Additional information on common disorders among juveniles in the juvenile justice system and their characteristics can be found in Appendix F. Additional information on steps to special education advocacy can be found in Appendix G.

## **VI. OVERREPRESENTATION OF MINORITY JUVENILES IN THE JUVENILE JUSTICE SYSTEM: MENTAL HEALTH CONSIDERATIONS**

In an era where juvenile crime, even violent crime, has been declining, legislators have increasingly supported more punitive responses to juvenile misconduct.<sup>36</sup> The weight of these punitive juvenile justice policies falls disproportionately on children of color. For example, although African American juveniles between the ages of 10 and 17 constitute only 15% of the population in this country, they account for:

- 26% of juvenile arrests;
- 32% of delinquency referrals to juvenile court;
- 41% of juveniles detained in delinquency cases;
- 46% of juveniles committed to secure institutions; and,
- 52% of juveniles transferred to adult criminal court.<sup>37</sup>

These figures show that minority juveniles are overrepresented at each stage of the process and that overrepresentation increases as juveniles become more deeply involved in the juvenile justice system.

### **A. Identifying Mental Health Needs of Minority Juveniles**

According to a report by the National Mental Health Association (NMHA), minority juveniles have often not received services, or have been poorly served by the mental health system prior to their entry into the juvenile justice arena.<sup>38</sup> For example:

- African American juveniles with mental health problems tend to be diagnosed with more severe disorders, including disorders less amenable to treatment.<sup>39</sup> The rates among African American juveniles for psychiatric hospitalization are

likewise two to three times higher than other juveniles, suggesting that prevention and early intervention may be less available to this population.<sup>40</sup>

- African American juveniles, particularly males, are more likely to be referred to juvenile court rather than the treatment system,<sup>41</sup> and are less likely than their white counterparts to have previously received mental health services.<sup>42</sup>
- Historically, Mexican Americans and other immigrant groups have shown low rates of use of mental health services, in part due to language difficulties and lack of neighborhood-based services.<sup>43</sup>

## **B. Implications for Treatment and Services**

The NMHA suggests several considerations for addressing the mental health needs of minority juveniles in the juvenile justice system.<sup>44</sup> These include:

- Increased access to early intervention services is important and should be provided in a manner where integration of the service system involves between mental health, juvenile justice, education and child welfare.
- Early identification of mental health disorders must be made more readily available to minority juveniles involved in the juvenile justice system, with diversion into the treatment system whenever possible.
- Programs that emphasize the role that families and kinship networks play in the social functioning of juveniles are important, as is the need to assess family structure and level of acculturation, particularly among Hispanic juveniles and families.
- Economic status, education, health care, housing, racism and other ecological factors that affect the functioning of the juvenile and his family must be addressed as external systems which can affect developing psychological problems.
- Cultural competence is essential in the service delivery and decision making system, including culturally appropriate assessment instruments, adequate training of mental health and juvenile justice providers and decision makers, and focus on the strengths and protective factors available to culturally diverse juveniles and their families and extended families.

## **VII. SPECIAL NEEDS OF GIRLS IN THE JUVENILE JUSTICE SYSTEM**

Overall, the existing juvenile justice system is designed to meet the needs of boys. This may be because traditionally boys have accounted for a larger percentage of the juvenile justice population. The underlying issues affecting girls and their needs in the juvenile justice system are very different from the needs of boys in the system. Health care issues, underlying trauma and emotional issues and the way in which girls come into the juvenile justice system are all very different from boys. Despite overall declining arrest and incarceration rates among juvenile offenders, more juvenile girls under 18-years-old were arrested by police in 1997, accounting for 26% of total juvenile arrests for that year.<sup>45</sup> Most were arrested for non-violent crimes, with the highest numbers being for larceny (usually shoplifting) and running away from home.<sup>46</sup> The most significant increases in arrests of girls between 1993 and 1997 were for drug abuse and curfew violations.<sup>47</sup>

While a diverse group, female offenders present challenges to the juvenile justice system as a result of significant academic difficulties, high incidence of victimization (physical, sexual and/or emotional), and significant health issues. Often, involvement with the juvenile justice system exacerbates the difficulties girls face during adolescent years.

#### **A. Identifying the Special Needs of Girls**

A number of treatment issues have been identified that are important for practitioners to consider when working with girls, particularly when incarceration is being considered.

##### **1. Juvenile female offenders exhibit high rates of mental health problems:**

Girls have higher rates of depression than boys during adolescence and are more likely to attempt suicide. Low self-esteem, negative body image, and substance abuse are also common problems for girls. Suicide attempts and self-mutilation are

particularly problematic for female juveniles who are incarcerated, in part due to the characteristics of a detention environment, such as seclusion and loss of privacy.<sup>48</sup>

2. Substance abuse treatment and other health related issues of females involved in the juvenile justice system:

Arrests for drug abuse violations among girls have increased significantly over the past few years.<sup>49</sup> Studies indicate that 60% to 87% of female juvenile offenders need substance abuse treatment.<sup>50</sup> Many young women may be self-medicating with illegal substances as a method of coping with stress or mental health problems such as depression or anxiety.

Many girls in the juvenile justice system are pregnant or already parents, and they must encounter separation from their young children, thus creating additional emotional and practical difficulties. Nearly one-third of the girls in a National Council on Crime and Delinquency (NCCD) study had been pregnant one or more times and 16% had been pregnant while in custody.<sup>51</sup> Many also have a sexually transmitted disease or other chronic health condition.<sup>52</sup> It is not uncommon for girls to fail to report significant health problems because of fear, lack of trust, and embarrassment.<sup>53</sup>

3. Girls in the juvenile justice system report high levels of abuse and trauma:

Girls who are incarcerated report significantly higher rates of physical and sexual abuse than boys. A 1998 study on girls in the juvenile justice system in California conducted by the National Council on Crime and Delinquency revealed that 92% reported that they had been subjected to some form of emotional, physical and/or sexual abuse.<sup>54</sup> Female adolescents who have been sexually abused have been shown

to have more serious problems with self-image, sexual attitudes, family relationships, vocational and educational goals and mastering their environment than males.<sup>55</sup>

As a result of repeated exposure to multiple forms of violence and trauma, Post-Traumatic Stress Disorder (PTSD) is prevalent among adolescent females in the juvenile justice system, with nearly 50% meeting diagnostic criteria for this disorder.<sup>56</sup>

4. Juvenile girls have significant challenges with parenting and other interpersonal relationships:

The NCCD study also revealed that the families and caretakers of girls in the juvenile justice system were subject to a wide range of stressors, including poverty, death, and an intergenerational pattern of arrest and incarceration. For example, more than 95% of the girls were assessed to lack a stable home environment, and more than half reported having mothers who had been arrested or incarcerated.<sup>57</sup>

5. School failure and high drop out rates are prevalent among girls in the juvenile justice system:

The NCCD study concluded that school failure was almost as universal an experience as victimization in the lives of those girls interviewed. Ninety-one percent reported that they had experienced one or more of the following:

- Suspension or expulsion;
- Repeating one or more grades; and/or,
- Being placed in a special classroom.<sup>58</sup>

Many girls described school as a battleground in which sexual harassment, racism, interpersonal rivalries with peers, and inattention from adult professionals made dropping out appear to be a necessary means of escape.<sup>59</sup>



## **B. Implications for Cases Involving Delinquent Girls**

The characteristics of female juvenile offenders necessitate an approach that focuses on relationship building with adults. Girls often perceive that individuals “let them down” by failing to produce certain outcomes or not spending enough time with them.<sup>60</sup> They often need reassurance and demonstrations that an adult is working on their behalf, and girls require additional support to balance their habits of self-protection and dependency.<sup>61</sup> Consistent long-term relationships are important to girls, often making it difficult for them to transition to new attorneys, probation officers or counselors as their cases progress.<sup>62</sup>

Even when attorneys or other service providers make special attempts to form and build relationships with a female offender, lack of maturity may make it difficult for her to adequately assist in her own defense. Signs of this immaturity may be manifested in several ways:

- Wanting to be liked and being so compliant that she cannot express independent opinions. Some may do whatever their families advise them to do.
- Viewing her offense as unintentional and inconsistent with her identity.
- Preoccupation with fairness that distorts the view of her rights.
- Loyalty-driven belief that informing on others is morally wrong.
- Insistence that her lack of intention means she should not be sanctioned.
- Lack of trust in lawyers and the court process.<sup>63</sup>

For those delinquent females whose immaturity may interfere with an adequate understanding of the judicial process, these factors may also affect their understanding of *Miranda* rights and the impact of statements they may make to the police.<sup>64</sup> They may be more susceptible to provide information based on intense and perhaps irrational loyalty (i.e., to protect a boyfriend), or out of fear resulting from past abuses.<sup>65</sup>

Other considerations to be made in the decision to detain girls include:

- Whether the program provides structured services for girls to accommodate their unique needs concerning health care, education, mental health treatment, mutual support and mentoring opportunities, prenatal care and parenting skills, substance abuse prevention and treatment, job training, and family support/strengthening services.
- Whether there are appropriate alternatives to detention that can focus on building positive relationships while understanding the nature of relationship issues with female offenders is important for the success of the placement.
- Placement in a setting that does not re-traumatize girls who have been abused or otherwise victimized is essential,<sup>66</sup> while encouraging them to learn appropriate coping strategies and constructively explore and resolve their feelings.<sup>67</sup>

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<sup>7</sup> National Mental Health Association, *Prevalence of Mental Disorders Among Children in the Juvenile Justice System*, Arlington, VA (1999) <http://www.nmha.org/children/justjuv/prevalence.cfm>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*, p. 1 of 5 (citing Abt Associates, Inc., *Conditions of Confinement: Juvenile Detention and Corrections Facilities*, Office of Juvenile Justice and Delinquency Prevention: Washington, D.C. (1994)).

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<sup>11</sup> Policy Design Team, *Mental Health Needs of Youth in Virginia's Juvenile Detention Centers*, Richmond, VA: Department of Criminal Justice Services (1994).

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<sup>13</sup> D. Atkins, et al., *Psychopathology of Incarcerated Youth: An Epidemiological Study*, *Journal of Child and Family Studies*.

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<sup>15</sup> Greenbaum, P.E., Foster-Johnson, L., and Perrilla, J., *Co-occurring Addictive and Mental Disorders Among Adolescents: Prevalence Research And Future Directions*. *American Journal of Orthopsychiatry* 66 (152) p. 60 (1996).

<sup>16</sup> PACER Center Inc., *Unique Challenges, Hopeful Responses*, Minneapolis, MN: PACER Center, Inc., p. 1 (Citing Otto, R.K., Greenstein, J.J., Johnson, M.K., and Friendman, R. M. (1992) Prevalence of mental disorders among juveniles in the juvenile justice system, In *Responding to the Mental Health Needs of Youth in the Juvenile Justice*

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<sup>17</sup> *Id.* at 4.

<sup>18</sup> Individuals with Disabilities Act, 20 USC 1400, et seq.

<sup>19</sup> *Id.*, generally. See also Chapter 4 on Affirmative Rights of Disabled Youth under IDEA, § 504 of the Rehabilitation Act, 20 U.S.C. § 794 (1973), and the Americans with Disabilities Act, 42 U.S.C. § 1210 et seq. (1990).

<sup>20</sup> U.S. Department of Education, *To Assure the Free Appropriate Public Education of All Children With Disabilities, Twentieth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act*, Washington, D.C.: U.S. Dept. of Ed. (1998).

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<sup>25</sup> See *supra* n. 16 at 4.

<sup>26</sup> 20 USC 1412(26)(A); 34 CFR 300.7 (c)(10)(i).

<sup>27</sup> 20 USC 1412(26)(A); 34 CFR 300.7 (c)(10)(i) and (ii).

<sup>28</sup> 20 USC 1401(3)(A) and (B); 34 CFR 300.74(c)(i)(A-E).

<sup>29</sup> 34 CFR 300.7(c)(4).

<sup>30</sup> 34 CFR 300.7(c)(9).

<sup>31</sup> Rosado, L., *supra* note 22, at 12.

<sup>32</sup> *Id.* at 12-13.

<sup>33</sup> *Id.* at 13.

<sup>34</sup> Cowardin, N., *Punishing Disabilities* in M. Young, ed., *The Sentencing Project* (In press).

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<sup>37</sup> *Id.* at 91.

<sup>38</sup> National Mental Health Association, *Mental Health and Youth of Color in the Juvenile Justice System*, National Mental Health Assn., (2000).

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# TABLE OF CONTENTS

<b>CHAPTER I</b> .....	<b>I-1</b>
<b>THE ELEMENTS FOR A SUCCESSFUL JUVENILE DETENTION SYSTEM</b>	
<b>I. THE PROJECT’S FOUR OBJECTIVES WERE</b> .....	<b>I-1</b>
<b>II. GUIDING PRINCIPLES REGARDING DETENTION PLANNING</b> .....	<b>I-2</b>
<b>III. DESCRIBING THE CURRENT DETENTION SYSTEM</b> .....	<b>I-3</b>
<b>A. Arrest, Referral and Demographic Data</b> .....	<b>I-3</b>
<b>B. Facility Population Counts</b> .....	<b>I-4</b>
<b>C. Individual Case Data</b> .....	<b>I-4</b>
<b>IV. REVIEWING THE POLICIES AND PRACTICES OF THE</b> <b>DETENTION SYSTEM</b> .....	<b>I-4</b>
<b>V. CONDUCTING A CONDITIONS ANALYSIS</b> .....	<b>I-5</b>
<b>VI. A WORKING SYSTEM OF DETENTION: ADDRESSING INTAKE,</b> <b>ALTERNATIVES AND UNNECESSARY DELAYS</b> .....	<b>I-6</b>
<b>A. Controlling the Front Gates: Effective Admissions</b> .....	<b>I-6</b>
<b>B. Guiding Principles for Effective Detention Admissions</b> .....	<b>I-6</b>
<b>C. Elements of a Structured, Objective Admissions Process</b> .....	<b>I-7</b>
<b>VII. THE CASE FOR ALTERNATIVES TO DETENTION</b> .....	<b>I-8</b>
<b>A. Guiding Principles for Effective Detention Alternatives</b> .....	<b>I-8</b>
<b>B. Elements of a Successful Alternative to Detention Program</b> .....	<b>I-9</b>
<b>VIII. REDUCING UNNECESSARY DELAYS IN CASE PROCESSING</b> .....	<b>I-13</b>
<b>A. Guiding Principles to Reduce Unnecessary Delays</b> .....	<b>I-13</b>
<b>CHAPTER II</b> .....	<b>II-1</b>
<b>FEDERAL MANDATES REGARDING JUVENILE DETENTION: THE JUVENILE</b> <b>JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974</b>	
<b>I. HISTORY OF THE ACT</b> .....	<b>II-1</b>
<b>II. TITLE II FORMULA GRANTS PROGRAM</b> .....	<b>II-1</b>
<b>A. Deinstitutionalization of Status Offenders</b> .....	<b>II-1</b>
<b>B. Separation</b> .....	<b>II-2</b>
<b>C. Jail and Lockup Removal</b> .....	<b>II-3</b>

D. Disproportionate Minority Confinement.....	II-3
E. Requirements for Participating in Title II.....	II-4
<b>III. KENTUCKY’S HISTORY UNDER THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT .....</b>	<b>II-4</b>
A. Creation of the Department of Juvenile Justice.....	II-4
B. Achieving Compliance with the Juvenile Justice and Delinquency Prevention Act.....	II-5
C. State Application of Federal Requirements.....	II-6
<b>IV. ADDRESSING DISPROPORTIONATE MINORITY CONFINEMENT.....</b>	<b>II-6</b>
A. Required Procedure for Addressing Disproportionate Minority Confinement.....	II-7
B. Building Blocks for Youth Initiative: <i>And Justice for Some</i> .....	II-8
C. Kentucky’s Approach to Addressing Disproportionate Minority Confinement .....	II-10
D. Disparity Beyond Disproportionate Confinement .....	II-12
 <b><u>CHAPTER III</u> .....</b>	<b>III-1</b>
<b>AN OVERVIEW OF THE JUVENILE JUSTICE SYSTEM IN KENTUCKY</b>	
<b>I. KENTUCKY’S JUVENILE DETENTION SYSTEM .....</b>	<b>III-1</b>
A. The Kentucky Unified Juvenile Code.....	III-2
B. The Court Designated Worker Program .....	III-3
C. County Operated Detention Facilities.....	III-4
D. The Department of Juvenile Justice and Kentucky’s Statewide Detention Plan.....	III-6
E. Detention Subsidy Payments.....	III-10
 <b><u>CHAPTER IV</u>.....</b>	<b>IV-1</b>
<b>KENTUCKY STATUTORY PROVISIONS REGARDING JUVENILE DETENTION</b>	
<b>I. INTRODUCTION.....</b>	<b>IV-1</b>
<b>II. DETENTION BY POLICE (TAKING INTO CUSTODY).....</b>	<b>IV-2</b>
<b>III. DETENTION BY DISTRICT COURTS – PUBLIC OFFENSES .....</b>	<b>IV-3</b>
A. Pre-Adjudication.....	IV-3
B. Post-Adjudication.....	IV-3
C. Disposition.....	IV-4
<b>IV. DETENTION BY DISTRICT AND FAMILY COURTS – STATUS OFFENSES.....</b>	<b>IV-4</b>
A. Introduction.....	IV-4
B. Pre-Adjudication .....	IV-5
C. Post-Adjudication.....	IV-6
D. Disposition.....	IV-6
E. Contempt and the Valid Court Order Requirement .....	IV-6

V.	DETENTION FOR MOTOR VEHICLE OFFENSES .....	IV-7
VI.	YOUTHFUL OFFENDERS.....	IV-8
	A. Introduction.....	IV-8
	B. Sentencing .....	IV-9
	C. Parole.....	IV-10
	D. Committing Youthful Offenders to Department of Corrections .....	IV-10
VII.	DEPARTMENT OF JUVENILE JUSTICE COMMISSIONER’S WARRANT .....	IV-11

**CHAPTER V.....V-1**  
**LEGAL ISSUES CONCERNING JUVENILE CONFINEMENT**

**PART I: ADDRESSING CONCERNS REGARDING THE FACT OF, DURATION OF, AND PLACE OF CONFINEMENT .....** V-1

I.	RESTRICTIONS ON JUVENILE DETENTION	
	A. Representation of the Juvenile by Legal Counsel .....	V-2
	B. Timing of Detention Hearing .....	V-4
	C. Necessity of Appropriate Court Findings .....	V-5
	D. Appropriate Juvenile Detention Facilities .....	V-7
	E. Determining the Legal Status of a Juvenile .....	V-8
	F. Conditions of Release from Detention .....	V-8
	G. Minority Overrepresentation and the Decision to Detain.....	V-9
II.	JUDICIAL REMEDIES FOR ILLEGAL DETENTION RESULTING FROM THE FACT OF, DURATION OF, OR PLACE OF DETENTION.....	V-9
	A. Writ of Habeas Corpus.....	V-10
	B. Appeal of Detention Decision .....	V-10
	C. Writs of Prohibition and Mandamus .....	V-11
	D. Judicial Review.....	V-11

**CHAPTER VI.....VI-1**  
**LEGAL ISSUES CONCERNING JUVENILE CONFINEMENT**

**PART II: ISSUES CONCERNING THE CONDITIONS OF CONFINEMENT .....** VI-1

I.	CONSTITUTIONAL CHALLENGES TO CONDITIONS IN JUVENILE FACILITIES .....	VI-2
	A. The Appropriate Legal Standard .....	VI-2
II.	OVERALL CONDITIONS OF CONFINEMENT IN JUVENILE FACILITIES .....	VI-3
	A. Classification and Separation Issues .....	VI-4
	B. Health Care Issues.....	VI-5

C. Access Issues (mail, telephone, visitation, counsel) .....	VI-6
D. Programming.....	VI-8
E. Training and Supervision of Employees .....	VI-9
F. Environmental Issues .....	VI-10
G. Restraints, Isolation, and Punishment .....	VI-12
H. Safety.....	VI-13
<b>III. CONCLUSION .....</b>	<b>VI-14</b>

**CHAPTER VII.....VII-1**  
**THE RIGHT TO REGULAR AND SPECIAL EDUCATION FOR CHILDREN IN  
DETENTION**

<b>I. LEAST RESTRICTIVE ENVIRONMENT.....</b>	<b>VII-3</b>
<b>II. IDENTIFICATION, REFERRAL AND EVALUATION, INCLUDING CHILD FIND REQUIREMENTS.....</b>	<b>VII-3</b>
<b>III. INDIVIDUALIZED EDUCATION PROGRAM (IEP) .....</b>	<b>VII-5</b>
A. IDEA <i>requires</i> each IEP to include the following basic elements .....	VII-6
B. In addition, an IEP must include the following if appropriate .....	VII-7
<b>IV. SPECIAL EDUCATION AND RELATED SERVICES.....</b>	<b>VII-8</b>
<b>V. DUE PROCESS PROTECTIONS.....</b>	<b>VII-9</b>
<b>VI. ENFORCEMENT OF RIGHTS THROUGH IDEA.....</b>	<b>VII-10</b>
A. Mediation .....	VII-10
B. Due Process Hearings.....	VII-10
C. Other Complaint Procedures.....	VII-12
<b>VII. CHANGES IN PLACEMENT OF DISABLED JUVENILES .....</b>	<b>VII-13</b>
A. Manifestation Determination .....	VII-15
B. Expedited Appeal .....	VII-16
<b>VIII. APPLICABILITY OF IDEA PROTECTIONS FOR JUVENILES NOT YET IDENTIFIED.....</b>	<b>VII-16</b>
<b>IX. SPECIAL EDUCATION IN JUVENILE DETENTION FACILITIES AND JUVENILE HOLDING FACILITIES.....</b>	<b>VII-17</b>
<b>X. TOP TEN LIST FOR PRACTITIONERS REGARDING JUVENILES WITH EDUCATION-RELATED DISABILITIES UNDER IDEA .....</b>	<b>VII-19</b>
A. Determine the juvenile’s special education status.....	VII-19
B. Find a way to get the juvenile evaluated for special education eligibility .....	VII-19



C. Ensure that someone acquires and organizes the juvenile’s educational records for the court.....	VII-20
D. Appoint an educational expert to advise the court .....	VII-20
E. Suggest that the parent or other representative find an education advocate .....	VII-20
F. Understand what “special education,” “free appropriate public education,” “related services” and “transition services” are .....	VII-20
G. Ensure that the juvenile has a current, appropriate individualized education and appropriate placement .....	VII-20
H. The Court's authority can be used creatively to ensure that the juvenile gets needed services (special education, related services and transition services).....	VII-21
I. Ensure that a juvenile resides in the least restrictive environment that is consistent with both community safety and the juvenile’s education .....	VII-21
J. Recognize that, by ensuring that the juvenile receives education and treatment, you have advanced an outcome that ultimately is best not only for the juvenile and his family, but also for the court and for the community .....	VII-22

**CHAPTER VIII .....VIII-1**  
**UNDERSTANDING THE SPECIAL NEEDS OF JUVENILES IN THE JUVENILE JUSTICE SYSTEM: IMPLICATIONS FOR DECISIONS TO INCARCERATE AND OTHER INTERVENTION/TREATMENT DECISIONS**

I. THE EFFECTS OF DETENTION OF ADOLESCENTS IN THE JUVENILE JUSTICE SYSTEM .....	VIII-2
II. MENTAL HEALTH DISABILITIES IN THE JUVENILE JUSTICE SYSTEM .....	VIII-3
A. The Prevalence of Mental Health Disorders.....	VIII-3
B. Implications for Detaining Mentally Ill Juveniles.....	VIII-4
III. EDUCATIONAL DISABILITIES AMONG JUVENILES IN THE JUVENILE JUSTICE SYSTEM .....	VIII-5
A. The Prevalence of Educational Disabilities .....	VIII-5
IV. THE RELATIONSHIP BETWEEN DISABLING CONDITIONS AND DELINQUENT BEHAVIORS.....	VIII-7
V. IMPLICATIONS FOR DETAINING JUVENILES WITH EDUCATIONAL DISABILITIES .....	VIII-9
VI. OVERREPRESENTATION OF MINORITY JUVENILES IN THE JUVENILE JUSTICE SYSTEM: MENTAL HEALTH CONSIDERATIONS.....	VIII-10
A. Identifying Mental Health Needs of Minority Juveniles .....	VIII-10
B. Implications for Treatment and Services.....	VIII-11

**VII. SPECIAL NEEDS OF GIRLS IN THE JUVENILE JUSTICE SYSTEM .....VIII-12**  
**A. Identifying the Special Needs of Girls.....VIII-12**  
**B. Implications for Cases Involving Delinquent Girls.....VIII-15**

**APPENDIX A**

**DEFINITIONS .....A-1**

**APPENDIX B**

**JUVENILE DETENTION RESOURCES.....B-1**

**APPENDIX C**

**CHECKLIST OF KENTUCKY LEGAL REQUIREMENTS  
CONCERNING JUVENILE DETENTION.....C-1**

**APPENDIX D**

**CONDITIONS OF CONFINEMENT CHECKLIST .....D-1**

**APPENDIX E**

**PROPOSED JUVENILE DETENTION EDUCATION STANDARDS.....E-1**

**APPENDIX F**

**COMMON DISORDERS AMONG JUVENILES IN THE JUVENILE  
JUSTICE SYSTEM AND THEIR CHARACTERISTICS.....F-1**

**APPENDIX G**

**STEPS TO SPECIAL EDUCATION ADVOCACY .....G-1**

# ***A PRACTITIONER'S GUIDE TO JUVENILE DETENTION IN KENTUCKY***

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## TABLE OF CASES

<i>A. J. v. Kierst</i> .....	VI-2
<i>Alexander S. v. Boyd</i> .....	VI-3
<i>Bounds v. Smith</i> .....	VI-7
<i>Cruz v. Belo</i> .....	VI-9
<i>Daniels v. Williams</i> .....	VI-9
<i>Davidson v. Cannon</i> .....	VI-9
<i>Doe v. Younger</i> .....	VI-2
<i>Hudson v. McMillan</i> .....	VI-13
<i>In Re Gault</i> .....	V-2
<i>John L. v. Adams</i> .....	VI-8
<i>Procunier v. Martinez</i> .....	VI-7
<i>Rose v. Council for Better Education</i> .....	VII-1
<i>Schall v. Martin</i> .....	V-3
<i>Whitley v. Albers</i> .....	VI-13
<i>Youngberg v. Romeo</i> .....	VI-3

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Youth Law Center  
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952-838-9000  
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Bazelon Center for Mental Health Law  
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Washington, DC 20005-5002  
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National Association of Protection and Advocacy Systems, Inc.  
900 Second Street, NE, Ste 211  
Washington, DC 20002  
202-408-9514  
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The Special Ed Advocate  
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[www.wrightslaw.com](http://www.wrightslaw.com)  
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Building Blocks for Youth  
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## **APPENDIX B**

### **DEFINITIONS**

**Beyond the control of school:** The district court may find a juvenile “beyond the control of school” when he has repeatedly violated the lawful regulation for the government of the school as provided in KRS 158.150 and as documented in writing in the school’s petition. The petition shall describe the student’s behavior and all intervention strategies attempted by the school.<sup>1</sup>

**Beyond the control of parents:** The district court may find a juvenile “beyond the control of parents” when he has repeatedly failed to follow the reasonable directives of his parents, legal guardian, or person exercising custodial control or supervision, not including a state agency, and such behavior endangers the juvenile or others. This behavior cannot constitute behavior that would warrant the filing of a petition under the Mental Health Act (KRS Chapter 645).<sup>2</sup>

**Certified juvenile facility staff:** An individual who meets the qualifications of and has completed a course of education and training in juvenile detention developed and approved by the DJJ and other appropriate state agencies.<sup>3</sup>

**Detention:** The safe and temporary custody of a juvenile who is accused of conduct subject to the jurisdiction of the court who requires a restricted environment for his own, or the community’s, protection.<sup>4</sup>

**Detention Hearing:** A hearing held by a judge or trial commissioner within 24 hours, exclusive of weekends and holidays, of the start of any period of detention prior to adjudication.<sup>5</sup>

**Emergency Shelter:** A group home, private residence, foster home, or other homelike facility that provides temporary or emergency care of children.<sup>6</sup>



**Habitual Runaway:** The district court may find a juvenile a “habitual runaway” if he has been absent from his place of lawful residence without the permission of his custodian for at least three days during a one-year period.<sup>7</sup>

**Habitual Truant:** The district court may find that a child is a “habitual truant” if he has been reported as truant, absent from or tardy to school without a valid excuse for three or more days (KRS 159.150), for three or more times during a one-year period.<sup>8</sup>

**Intermittent Holding Facility:** A physically secure setting, which is entirely sight and sound separated from all other portions of a jail containing adult prisoners, where a juvenile accused of a public offense may be detained and regularly supervised for no more than 24 hours, exclusive of weekends and holidays, prior to a detention hearing.<sup>9</sup>

**Juvenile Holding Facility:** A physically secure facility approved by DJJ with an entirely separate portion or wing of a building containing an adult jail that provides total sight and sound separation between juvenile and adult facility spatial areas and is staffed by a sufficient, certified juvenile facility staff to provide constant supervision.<sup>10</sup>

**Least Restrictive Alternative:** A program developed for a juvenile that is no more harsh, hazardous, or intrusive than necessary, involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the juvenile and the community, and is conducted at the appropriate facility closest to the juvenile’s place of residence.<sup>11</sup>

**Motor Vehicle Offense:** Any violation of the nonfelony provisions of KRS Chapters 186, 189 or 189A, 177.300, 304.39-110, or 304.39-117.<sup>12</sup>

**Nonsecure Facility:** A facility that provides its residents access to the surrounding community and which does not rely primarily on the use of physically restrictive construction and hardware to restrict freedom.<sup>13</sup>

**Physically Secure Facility:** A facility that relies primarily on the use of construction and hardware such as locks, bars, and fences to restrict freedom.<sup>14</sup>

**Public Offense Action:** An action, excluding contempt, brought in the interest of a juvenile who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult would be a crime, whether it is a felony, misdemeanor, or violation, other than an action alleging that a juvenile 16-years of age or older has committed a motor vehicle offense.<sup>15</sup>

**Retain in Custody:** The continued holding of a juvenile who has been taken into custody by a peace officer for a period of time not to exceed 12 hours when authorized by the court or the court designated worker for the purpose of making preliminary inquiries.<sup>16</sup>

**Secure Juvenile Detention Facility:** Any physically secure facility used for the secure detention of juveniles other than any facility in which adult prisoners are confined.<sup>17</sup>

**Status Offense Action:** Any action brought in the interest of a juvenile who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such juveniles shall be termed status offenders. Status offenses shall not include violations of state or local ordinance that may apply to children such as a violation of curfew or possession of alcoholic beverages.<sup>18</sup>

**Take into Custody:** The procedure by which a peace officer or other authorized person initially assumes custody of a juvenile for no more than two hours.<sup>19</sup>

**Valid Court Order:** A court order issued by a judge to a juvenile alleged or found to be a status offender:

- a. who was brought before the court and made subject to the order;
- b. whose future conduct was regulated by the order;
- c. who was given written and verbal warning of the consequences of the violation of the order at the time the order was issued and whose attorney or parent or legal guardian was also provided with a written notice of the consequences of violation of the order, which notification is reflected in the record of the court proceedings; and,
- d. who received, before the issuance of the order, the full due process rights guaranteed by the Constitution of the United States.<sup>20</sup>

**Youthful Offender:** Any person, regardless of age, transferred to and convicted in circuit court under the provisions of KRS Chapter 635 or 640.<sup>21</sup>

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<sup>1</sup> KRS 600.020(2).

<sup>2</sup> KRS 600.020(3).

<sup>3</sup> KRS 600.020(6).

<sup>4</sup> KRS 600.020(19).

<sup>5</sup> KRS 600.020(20).

<sup>6</sup> KRS 600.020(22).

<sup>7</sup> KRS 600.020(27).

<sup>8</sup> KRS 600.020(28).

<sup>9</sup> KRS 600.020(33).

<sup>10</sup> KRS 600.020(34).

<sup>11</sup> KRS 600.020(35).

<sup>12</sup> KRS 600.020(36).

<sup>13</sup> KRS 600.020(39).

<sup>14</sup> KRS 600.020(45).

<sup>15</sup> KRS 600.020(46).

<sup>16</sup> KRS 600.020(49).

<sup>17</sup> KRS 600.020(52).

<sup>18</sup> KRS 600.020(57).

<sup>19</sup> KRS 600.020(58).

<sup>20</sup> KRS 600.020(59).

<sup>21</sup> KRS 600.020(62).

## APPENDIX C

### **CHECKLIST OF KENTUCKY LEGAL REQUIREMENTS CONCERNING JUVENILE DETENTION**

**Juveniles who are detained must be represented by legal counsel and afforded basic due process rights. This includes, at a minimum:**

- An expeditious probable cause hearing;
- Findings regarding the need for detention once probable cause is established;
- An expeditious fact-finding hearing; and
- Conditions of confinement that do not amount to punishment.

**Juveniles must have a detention hearing within a given time period in order for their continued detention to be legal, even if they are released to other alternatives that restrict their liberty. A juvenile may be detained:**

- Not more than **2 hours** by a police officer if the juvenile is in custody at a police station, secure juvenile detention facility, juvenile holding facility, intermittent holding facility, a non-secure facility, or, as necessary, in a hospital or clinic, but only for purposes specified in KRS 610.220(1).
- Not more than an additional **10 hours** if approved by a court designated worker, but not in an intermittent holding facility.
- Not more than **24 hours** for a juvenile alleged to be a **status offender** or accused of being in **contempt of court on an underlying status offense**, exclusive of weekends and holidays, pending a detention hearing.
- Not more than **48 hours** for a juvenile accused of committing a **public offense** or contempt of court on an underlying public offense, pending a detention hearing, and not more than **24 hours** if the juvenile is being held in an **intermittent juvenile holding facility**. (All times are exclusive of weekends and holidays.)

**Courts must make appropriate findings throughout the proceedings in order for a juvenile to be detained.**

- A court must make a determination of whether a juvenile should be further detained, and consider:
  - The nature of the offense;

- The juvenile’s background and history; and
  - Other information relevant to the juvenile’s conduct or condition.
- An order to continue detention must state on the record the **specific reasons for the detention**, and the **need for detention** must be properly established.
  - KRS 610.280 requires separate findings that:
    - **Probable cause** exists to believe that an offense has been committed and that the accused juvenile committed that offense, and
    - The court has considered the **seriousness of the offense**, the likelihood that the juvenile would commit an offense **dangerous to himself or in the community pending disposition** of the alleged offense, the juvenile’s **prior record**, if any, and whether there are **other pending charges** against the juvenile.
  - **Status offenders** cannot be securely detained **after the initial detention hearing**.
  - A **juvenile accused of, or who has been adjudicated of, violating a valid court order where the underlying offense was a status offense**, may be securely detained for up to **72 hours**, exclusive of weekends and holidays, including any detention prior to the detention hearing, **pending receipt of a written or oral report as detailed in a valid court order**. If the juvenile’s court file contains sufficient information, then the district court is not required to wait 72 hours for the report. The court must also make findings that the requirements for a valid court order were met at the time the original order finding the juvenile to be a status offender was issued, and that there is probable cause that the juvenile violated the valid court order.
  - A **public offender** may be detained **after a detention hearing** only if the court makes a finding by a preponderance of the evidence that the circumstances surrounding the juvenile are such as to endanger his safety or welfare or that of the community.
  - A **public offender** may be detained **after a disposition hearing** in a juvenile detention facility or juvenile holding facility if:
    - The juvenile is **between the ages of 14 and 16** and the court includes this as a disposition, but not for more than **30 days**.
    - The juvenile is **16 or older** and the court includes this as a disposition, but not for more than **90 days**.

- The juvenile is **committed to the Department of Juvenile Justice** as a public offender and is awaiting placement, but DJJ shall move the juvenile to an appropriate placement as soon as possible, **not to exceed 35 days** from the time of commitment or re-commitment. This provision does not apply to youthful offenders.

**Juveniles must be securely detained in an approved juvenile detention facility, juvenile holding facility, or intermittent holding facility, or a non-secure alternative in the manner and with the limitations required by state and federal law.**

**Status offenders:** Can be held in a secure juvenile detention facility, or juvenile holding facility, but not for more than 24 hours, exclusive of weekends and holidays pending a detention hearing.

Cannot be held in an intermittent juvenile holding facility.

No secure detention after the detention hearing.

Non-secure setting may be used prior to detention hearing, or after, pending adjudication or disposition.

**Public Offenders:** Can be detained up to 48 hours prior to a detention hearing in a secure juvenile facility or juvenile holding facility, but only for 24 hours if in an intermittent juvenile holding facility.

Can be detained in a secure juvenile detention facility or juvenile holding facility after a detention hearing with the appropriate findings, after disposition with appropriate findings, and after disposition within statutory time limits.

**Non-Offenders** Cannot be detained in any facility.

**The juvenile's legal status must be correctly determined and allow for detention to be used given the individual circumstances**

- **Juveniles who violate a city ordinance** (i.e., curfew) cannot be detained as they are neither public nor status offenders by law.
- **A juvenile who reaches the age of 18 while in detention**, who is being lodged as a public offender or youthful offender, can no longer be detained in a secure juvenile detention facility or juvenile holding facility, unless he is committed to DJJ.

- **A juvenile who is being held pursuant to Chapter 645** of the Kentucky Unified Juvenile Code cannot be held in a secure juvenile detention facility or juvenile holding facility, unless a status offense action or public offense action is also pending.
- **A juvenile over the age of 16 who is charged with a motor vehicle offense** has the same conditions of release as that of an adult; however, the juvenile must be held pending release in a secure juvenile detention facility or juvenile holding facility, or if neither is available, in an intermittent holding facility.
- **A juvenile being detained as a disposition on a public offense** may only be held for up to 30 days if the juvenile is at least 14 years of age, and up to 90 days if the juvenile is at least 16 years of age. A court cannot “stack” dispositions imposing detention time in such a manner as will exceed this aggregate number.

**Courts must establish conditions of release comparable to those of adults in certain circumstances under Kentucky’s statutory scheme**

- **Juveniles transferred to circuit court** are entitled to bail.
- **Juveniles over the age of 16 charged with motor vehicle offenses** have the same conditions of release as that of adults; however, they must be held pending release in a secure juvenile detention facility or juvenile holding facility, or if neither is available, in an intermittent holding facility.

**Judicial Remedies for Illegal Detention may include:**

- Writ of Habeas Corpus
- Appeal of decision regarding detention
- Writs of Prohibition and Mandamus
- Judicial review

## **APPENDIX D**

### **CONDITIONS OF CONFINEMENT CHECKLIST**

#### **Legal Responsibility for Conditions of Confinement in Kentucky**

- The Department of Juvenile Justice (DJJ) has regulatory, monitoring and enforcement authority over juvenile holding facilities, intermittent holding facilities, and juvenile detention facilities operated by jails, and as such is responsible for conditions of confinement in juvenile holding facilities and juvenile detention facilities, whether county or state operated.
- Counties that operate local jail facilities with juvenile holding facilities or intermittent holding facilities are liable for conditions of confinement within those facilities.
- DJJ is responsible by statute for the provision of educational services in juvenile detention facilities and juvenile holding facilities.
- The Kentucky Department of Education is responsible by virtue of its regulatory, monitoring and enforcement authority to ensure that juveniles in juvenile detention and juvenile holding facilities who are eligible for services under the Individuals with Disabilities Education Act receive a free and appropriate public education.

#### **Sources of Legal Authority**

- State and federal laws and regulations (i.e., Juvenile Justice and Delinquency Prevention Act, Individuals with Disabilities Education Act, Americans with Disabilities Education Act, Rehabilitation Act of 1974).
- The Due Process Clause of the Fourteenth Amendment to the United States Constitution, and similar state constitutional principles, rather than the Eighth Amendment, on the ground that those detained for juvenile offenses have not been convicted of any crime and that the purpose of their confinement is rehabilitative rather than penal.
- Standards applicable to secure confinement of juveniles such as the American Bar Association Standards on Interim Status, American Correctional Association Standards for Juvenile Correctional Facilities, National Commission on Correctional Health Care Standards, and U.S. Department of Justice Standards for the Administration of Juvenile Justice.



## **The C.H.A.P.T.E.R.S. Analysis for Conditions of Confinement**

### **Classification of Juveniles**

- Juveniles must be classified in a number of ways, including, but not limited to: age, offense, propensity for violent behavior, sex, prior post-adjudication, and in some instances, health.
- The Juvenile Justice and Delinquency Prevention Act specifically requires that in states that receive funding under the Act, dependent and neglected children, status offenders and delinquent children shall not be detained or confined in any institution where they have regular contact with adult inmates.

### **Health care issues**

At a minimum, an adequate health treatment plan must include:

- Screening and evaluation to identify those who require treatment.
- Trained mental health professionals to evaluate and treat juveniles.
- Maintenance of accurate and complete records.
- Initial psychological screening by trained staff and qualified professionals to provide mental health services, including emergency services.
- Appropriate supervision and evaluation of the prescription and administration of medications.
- Right to refuse medical and psychological treatment, including medication, as long as the juvenile is not a danger to himself or others.

### **Access Issues**

- Censorship of incoming and outgoing mail.
- Access to telephones for contact with family.
- Visitation with relatives and friends.
- Meaningful access to the courts and to counsel to access the courts.

### **Programming**

- Educational programming, including the provision of regular and special education services.
- Regular exercise and recreation opportunities, generally at a minimum of one to three hours per day.
- Reasonable opportunities to attend religious services.
- Work programs that are simple “housekeeping tasks” similar to those a juvenile might do in a home setting.

### **Training and supervision of employees**

Liability may be imposed on supervisors for:

- Hiring people unfit for available jobs or who do not meet established minimum hiring standards.
- Failing to adequately train staff for their duties.
- Failing to adequately supervise staff once they are on the job, particularly when the supervisor knew or should have known of staff inadequacies.
- Assigning staff to positions for which they are obviously unfit.
- Failing to provide staff with direction through formal policies and procedures.
- Retaining staff members who are clearly unfit for service.

### **Environmental issues**

- Sanitation and personal hygiene issues.
- Appropriate nutritional standards in dietary program.
- Proper ventilation, heating and cooling.
- No exposure to environmental hazards.
- Adequate fire safety provisions, including policies and practices.
- Adequate lighting in cells and other rooms.

- Regularly laundered clothing and personal items.
- Protection from overcrowding and the provision of adequate living space and privacy.

### **Restraints, Punishments, and Due Process**

- No use of restraints as punishment, for staff convenience or as a substitute for programming.
- Use of isolation only in extreme circumstances and subject to heavily monitored and frequently reviewed procedures.
- No corporal punishment, intention humiliation, or psychological or mental abuse.

### **Safety**

- The use of excessive force is forbidden, with inquiry into whether or not the actions taken inflicted unnecessary and wanton pain, and whether force was applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically intended to cause harm.

## **APPENDIX E**

### **PROPOSED JUVENILE DETENTION EDUCATION STANDARDS\***

#### **I. Administration**

##### **A. Establishment/Governance**

1. There is a publicly displayed mission statement/philosophy describing the goals of the organization.
2. There is a written documentation of the annual review, development, update, and approval, of the mission/philosophy statement, goals, and all policies and procedures. The educational staff is involved in the review process.
3. There is a policies and procedures manual document for the governance of the educational program that is accessible to both detention and educational staff.
4. There is an agency table of organization showing the position of the detention education organization in the agency structure that is updated annually. There are written materials that explain the table of organization(s), or the lines of authority and cooperation.

##### **B. Budgeting**

1. The responsible funding authority provides a discrete education budget, which allocates funds to the detention education program. The budget is based, a minimum, on a per pupil expenditure system and is pro-rated based on the number of days in operation. At a minimum, federal funding sources such as Title 1, Perkins, and IDEA flows to the detention education program.
2. The chief education administrator has authority and responsibility for the expenditures and use of the budget for the detention education program.
3. There is an approved accounting system for the budget, allocation, disbursement, expenditure, and reconciliation of funds.

##### **C. Evaluation/Approval**

1. The detention education program is approved, certified, accredited by the State Education Agency (SEA) or is operated by or in conjunction with a local school district.
2. There is an evaluation completed by an outside source/agency to measure the effectiveness of the detention education program at a minimum of every three years.

## **II. Staff**

### **A. Personnel**

1. Teachers should be certified by the appropriate state agency. All education staff are appropriately assigned work in accordance with state education regulations
2. There is a job description that describes the authority and responsibility of all educational positions.
3. There are policies and procedures that provide for the selection, retention and evaluation of education personnel according to qualifications, performance and experience.
4. Teachers are provided at a minimum one planning period per day. Non-instructional time is provided for the development and revising of the curriculum, course plans, ILPs and IEPs for students.

### **B. Training**

1. There are policies and procedures for providing new staff with pre-service training in areas of education and facility operation.
2. All education staff shall receive at least the state minimum required hours of professional development and the training requirements for comparable facility personnel.

## **III. Students**

### **A. Records**

1. There are policies and procedures for recording student progress in cumulative records.
2. Access, storage and transfer of student records meet the requirements of privacy and confidentiality according to law and regulation.
3. Student educational records are requested and transferred in a timely fashion.

### **B. Eligibility/Accessibility**

1. There are policies and procedures to ensure equal access to educational services regardless of race, disability, sex, religion, or any other legally protected classification.
2. When appropriate, students in the detention education program have access to a full range of educational services.
3. Special education services will be provided to all eligible students.
4. There are policies and procedures that ensure educational programming for students who are segregated, restricted, suspended or isolated status.

C. Assessment/Screening/Evaluation

1. There are policies and procedures for the educational screening, assessment and evaluation of students upon their arrival at the facility.
2. There are policies and procedures for the on-going evaluation and assessment of students to measure progress and plan for future instructional needs.
3. Success indicators and outcome measures are used to demonstrate student proficiencies.
4. There is an individualized plan of instruction (IEP) for each special education student and an IPI for all other students.

D. Transition

1. Students have an educational transition plan.
2. All education programs in the facility are approved to award transferable credit in accordance with State Education Agency (SEA) regulations.

**IV. Program**

A. Length of School/Class Size

1. There will be a year-round detention education program.
2. The school day shall be no less than the state minimum standard for public schools.
3. The educational staff (teachers & aides) to student ratio should not exceed 9 to 8.

B. Physical Space/Access to Resources

1. Education space requirements in Juvenile Detention Facilities should comply with SEA standards.
2. Educational areas are conducive to learning.
3. Resources that meet the developmental needs of students and are equitable to those used in the public school are available for use in the detention education program.

C. Admission and Orientation

1. Students should be enrolled in the school program no later than the first full school day after admission to the facility.
2. All students in the facility are provided an orientation to the school programs by educational staff.

D. Curriculum and Instruction

1. Curriculum and/or instructional plans have teacher input and are updated annually.

2. Curriculum provided in the juvenile detention facility meets SEA standards and addresses student needs.
3. Instructional plans exist for groups and/or individualized instruction.

E. Integration of Education with Detention Programs and Community

1. There is a policies and procedures for utilization of education information in the system-wide or institutional treatment plan or classification process.
2. Education staff should regularly participate in detention program/treatment team meetings.
3. Facility youth workers should be assigned to and actively participate in education.
4. There is evidence of community involvement in the detention education program.

F. Incentives

1. An incentive system is utilized to recognize students for educational attainment.

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\* *Note: These proposed standards were developed by the National Juvenile Detention Association Education Committee in conjunction with the Council for Educators of At-Risk and Delinquent Youth and the Eastern Kentucky University Training Resource Center, which initiated the Juvenile Detention Education Standards Project in 1999.*

## **APPENDIX F**

### **COMMON DISORDERS AMONG JUVENILES IN THE JUVENILE JUSTICE SYSTEM AND THEIR CHARACTERISTICS**

These descriptions attempt to provide practitioners with some of the characteristics juveniles experiencing these disorders may express. These are not exhaustive lists as each juvenile will be unique in his presentation of symptoms. Also, a juvenile may not exhibit all of the listed characteristics. Similarly, the suggested interventions are those that are recommended by authorities in the field of child and adolescent psychology and psychiatry. The specific treatment approach designed for a juvenile will depend upon that juvenile's current needs.

#### **Major Depressive Disorder and Dysthymia**

##### **Descriptions and Risk Factors:**

- Depressed or irritable moods
- Loss of interest and pleasure
- Changes in patterns of appetite, weight, sleep or energy
- Decreased motivation
- Low self-esteem
- Decreased school performance
- Withdrawal from enjoyed activities
- Less frequent peer interaction
  
- Issues Specific to Children
  - More anxious symptomatology
  - Irritability with temper tantrums or behavior problems
  
- Issues Specific to Adolescents
  - Sleep and appetite disturbances
  - Delusions
  - Suicidal ideation and attempts
  - Greater impairment than children<sup>1</sup>

##### **Suggested Interventions:**

- Always take any suicidal gestures seriously: assess functional impairment, degree of hopelessness, availability of support, availability of method, consider treatment in a restrictive setting
- Educate the youth and his/her family about the disorder
- Individual therapy
- Group therapy
- Medication intervention



## **Oppositional Defiant Disorder**

### **Descriptions and Risk Factors:**

- Frequently losing temper
- Arguing with adults
- Actively defying rules
- Deliberately annoying others
- Blaming other for his or her mistakes
- Easily angered or resentful
- Spiteful<sup>2</sup>

### **Suggested Interventions:**

- Clear rules and consequences for behavior
- Behavior management strategies such as star charts or token economies
- Parent training in behavior management
- Social skills training

## **Conduct Disorder**

### **Descriptions and Risk Factors:**

- Bullies, threatens, or initiates physical fights
- Uses a weapon to cause serious harm
- Physically cruel to people or animals
- Confronts another to steal items
- Forces another into sexual activity
- Deliberately destroys property or sets fires to destroy property
- Breaks into another's house or car, steals items, lies to obtain goods
- Truant from school
- Repeatedly running away<sup>3</sup>

### **Suggested Interventions:**

- Generally must be long term
- Family therapy that includes parent training
- Individual therapy using behavioral and/or cognitive strategies
- Group therapy
- Skills training
- Peer intervention: promoting socially appropriate peer networks
- Vocational or independent-living skills training
- Mentor groups such as Big Brothers and Big Sisters<sup>4</sup>

## Attention Deficit Hyperactivity Disorder (ADHD)

### Descriptions and Risk Factors:

- Inattention
  - Fails to give close attention to details
  - Difficulty sustaining attention
  - Not listening or being easily distracted
  - Not following through tasks or activities
  - Difficulty organizing
  
- Hyperactivity
  - Fidgeting
  - Being “on the go” or acting as though driven by motor
  - Talking excessively
  
- Impulsivity
  - Interrupting
  - Blurting out responses
  
- Issues Specific to Adolescents
  - Restlessness often more prevalent than hyperactivity
  - Inattention
  - Poor impulse control
  - Poor organizational skills
  - Difficulty setting and keeping priorities
  - Poor problem-solving skills
  - Low self-esteem
  - Poor peer relationships
  - Increased likelihood of dangerous impulsivity and poor judgment<sup>5</sup>

### Suggested Interventions:

- Medication
- Behavior Modification: target specific and enforce consistent contingencies for behavior, vary reinforcements for appropriate behavior
- Social skills training
- Academic skills training
- Self-monitoring/self-evaluation training
- Education about ADHD
- Support groups
- Recreational therapies<sup>6</sup>

## **Bipolar Disorder (Manic Depressive Disorder)**

### Descriptions and Risk Factors:

- Issues Specific to Children
  - Erratic changes in mood, psychomotor agitation, and mental excitement
  - Irritability
  - Belligerence
  - Mixed features of mania and depression
  - Developmental and social limitations leading to school failure, fighting, and more dangerous play
- Issues Specific Adolescents
  - Psychotic symptoms: paranoia, marked thought disorder, hallucinations
  - Extremely labile moods that may have mixed depressive and manic features
  - Deterioration in behavior<sup>7</sup>

### Suggested Interventions:

- Medication
- Assess suicide risk
- Education about the disorder
- Long-term treatment plans that include psychotherapy, support groups, educational and vocational services<sup>8</sup>

## **Post Traumatic Stress Disorder (PTSD)**

### Descriptions and Risk Factors:

- Extreme stress from experiencing or witnessing an event that is capable of causing death or severe injury, a threat of injury or death, or learning about a significant other involved in such a situation
- Re-experiencing the event through thoughts or nightmares
- Avoiding talking about, being with people, or going to places associated with the event
- Amnesia for important aspects of the trauma
- Withdrawal from friends and usual activities
- Hyperarousal and hypervigilance
- Difficulties concentrating
- Issues Specific to Adolescents with chronic PTSD
  - Dissociative characteristics
  - Self-injurious behavior
  - Substance abuse
  - Suicidal behavior
  - Other anxious symptoms<sup>9</sup>

### Suggested Interventions:

- Assess whether these behaviors are malingering
- Treatment may be short or long-term depending on the juvenile's needs
- Education about the disorder and available treatments
- Relaxation techniques
- Trauma-focused therapy: explore and discuss the traumatic events
- Behavioral modification to address related behavioral difficulties
- Cognitive-behavioral methods to control intrusive thoughts
- Group therapy
- Medication<sup>10</sup>

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<sup>1</sup> Practice Parameters for the Assessment and Treatment of Children and Adolescents Depressive Disorders. *Journal of the American Academy of Child and Adolescent Psychiatry*. 37 (10 Supplement) 63S-83S (1998).

<sup>2</sup> Diagnostic and Statistical Manual of Mental Disorders: Fourth Edition (American Psychiatric Association, 1994) pg. 94.

<sup>3</sup> Diagnostic and Statistical Manual of Mental Disorders: Fourth Edition (American Psychiatric Association, 1994) pg. 90.

<sup>4</sup> Practice Parameters for the Assessment and Treatment of Children and Adolescents with Conduct Disorder. *Journal of the American Academy of Child and Adolescent Psychiatry* 36 (10) 122S-139S (1997).

<sup>5</sup> Practice Parameters for the Assessment and Treatment of Children and Adolescents with Attention Deficit Hyperactivity Disorder. *Journal of the American Academy of Child and Adolescent Psychiatry*. 36 (10 Supplement) 85S-121S (1997).

<sup>6</sup> Id.

<sup>7</sup> Practice Parameters for the Assessment and Treatment of Children and Adolescents with Bipolar Disorder. *Journal of the American Academy of Child and Adolescent Psychiatry*. 36 (10 Supplement) 38S-157S (1997).

<sup>8</sup> Id.

<sup>9</sup> Practice Parameters for the Assessment and Treatment of Children and Adolescents with Posttraumatic Stress Disorders. *Journal of the American Academy of Child and Adolescent Psychiatry*. 37 (10 Supplement) 4S-26S (1998).

<sup>10</sup> Id.

# **APPENDIX G**

## **STEPS TO SPECIAL EDUCATION ADVOCACY\***

### **Identification and Pre-referral Intervention**

- “Child-Find”: Public school agency is required to identify, locate, and evaluate children who are disabled and need special education.
- If it appears a child may be retained, the school system must take intervention steps to ensure promotion of the child.
- If a child is retained despite intervention, the school system must make formal referral for special education assessment and obtain parental consent before doing so.
- Four to six week intervention period in regular education setting is optional.

### **Formal Request to Public School to Evaluate Child**

- A formal request for assessment should be sent to the school that the child attends to formally request assessment of the child.
- Once form is filed, the child is under IDEA.

### **Evaluation of Child**

- After the formal request, a full assessment of the child should occur.
- Types of evaluation: Psychoeducational cognitive (IQ) (academic, perceptual); Clinical Psychological (emotional personality); Occupational/Physical Therapy (motor skills); Medical (vision, auditory, psychiatric, neurological, physical); Speech/Language; Vocational.
- BLMDT Members: Parent or guardian; Child; and Assessment Team: coordinator, psychologists (school, clinical, neuropsychologist), speech therapist, social worker, principal, teacher(s), counselor, transitional & vocational persons, occupational & physical therapists.
- Miscellaneous: Each assessor must draft written report describing results of test and recommendations; Parents must get a copy of evaluations before IEP meeting to review; Parent has a right to an independent evaluation and under certain instances, at public expense; Evaluations must be in the child’s native language.

### **Eligibility of Child for Special Education under IDEA**

- Child must be between the ages of three and twenty-one *and* have a disability that adversely affects his or her ability to learn or make progress in school.
- The child needs specialized instruction, and/or related services in order to learn and make progress in school.
- Eligibility – and final recommendation – is a team decision that includes parent input.

- If ineligible, school system must draft and send letter to parent, explain reasons for ineligibility and include educational prescriptions to be carried out in the regular classroom.
- Parent has a right to challenge eligibility, classification of disability, and/or evaluations.
- Disability classifications: Learning Disabled (LD); Seriously Emotionally Disturbed (SED); Mental Retardation (MR); Autistic; Visual Impairment (VI); Speech/Language Impairment (SI); Other Health Impairment (OHI); Traumatic Brain Syndrome; Orthopedic Impairment (OI); Hearing Impaired (HI).

### **Individualized Educational Program (IEP)**

- The IEP is a written document and a conference/meeting.
- **Purpose of IEP:** Create a document with objectives, measurable goals, specialized instruction and related services for a child's unique need.
  - Provide a working guide for school personnel to implement the goals set out in the IEP.
  - Provide an opportunity for the team to discuss their findings with the parent and answer any questions the parent may have.
- **Notice:** School must notify parent – in writing – of time, place and who will attend IEP conference, and, notice must be in a language and manner the parent can understand.
  - If student is sixteen years of age, transitional services must be included in the notice and be stated in IEP.
  - If transitional services are to be included in IEP, the school system must invite the student.
- **Other Requirements:** Parent must have input and has a right to bring advocate or anyone else to IEP.
  - Parent should receive all evaluations within a reasonable time prior to the IEP.
  - The school team may bring a draft IEP, but parent has the right to change, amend, or modify it.
  - When in disagreement, complete as much of IEP as possible to ensure the student gets some services while dispute gets resolved.

### **Placement**

- The school system must consider placement annually in accordance with the child's IEP.
- The child should be placed in the Least Restrictive Environment.
- The child should be placed as close to home as possible.
- The child should get instruction within the regular education setting as much as possible.
- A parent has the right to challenge any proposed placement and the “stay put” provision will allow the child to remain at his or her last current placement while the dispute gets resolved over the proposed placement.

- If the public school system cannot provide a child with the services required by his or her IEP, a parent can seek to have the child placed into a private placement – at public expense – in order to receive a free, appropriate public education.
- The continuum of services is the range of levels of special education services available; the range of levels is as follows: regular education classroom, separate special education classroom, separate special education school, residential placement, hospital/institution, detention facility.
- The team – which includes parent – determines which level of placement is appropriate.

### **Annual Reviews**

- A child’s IEP and placement must be reviewed on an annual basis.
- A parent may request a review at any time during the year.
- **Purpose of Annual Review:** To determine student’s progress; to modify or develop new IEP; and to revisit the student’s disability classification and placement level.

### **Triennial Reviews**

- A triennial review involves a complete assessment of the child, comparable to the initial testing that took place to determine eligibility.
- Triennial reviews must occur within three years of last complete assessment.
- The purpose of the triennial review is to reconfirm the student’s disability, instruction and related service needs.

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