



Case Examples: Jurisdictions That Have Removed Youth Under the Age of 18 From Adult Jails

Introduction:

S. 678, the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2009, updates the jail removal and sight and sound core requirements of the Juvenile Justice and Delinquency Prevention Act (JJDP A).

While the JJDP A already requires states to keep youth in the juvenile justice system out of adult jails and lock-ups, S. 678 would require states to move youth under the age of 18 awaiting trial in the adult criminal justice system from adult jails and lock-ups to juvenile facilities unless a judge determines that it is “in the interest of justice” for a particular youth to be held in an adult jail or lock-up. States would have three years to implement this change.

This document highlights two approaches jurisdictions across the United States have taken to successfully remove pre-trial youth in the adult criminal justice system from adult jails and lock-ups and into juvenile facilities.

Cost-Effective, Research-Based Approaches - Multnomah and Los Angeles Counties:

In recent years, jurisdictions that have successfully removed youth from adult jails have undertaken collaborative efforts to place these youth in more appropriate juvenile facilities. Instead of building new facilities, these jurisdictions have identified bed space in existing facilities or undertaken system-wide reforms to house these youth in appropriate settings.

Multnomah County, Oregon — Collaborative County-Driven Reform:

Although Oregon law allows youth prosecuted as adults to be held in adult jails,¹ Multnomah County – the state’s most populous county that includes the state’s largest city, Portland – has nearly eliminated the practice of holding transferred youth in adult jails. In December 2008, the Multnomah Board of County Commissioners unanimously passed a resolution creating a presumption that youth detained pre-trial should be held in the juvenile system.²

Several factors contributed to the passage of the resolution. First, in 1994, the number of youth held in adult jails in Oregon increased significantly due to a change in the state’s transfer law that required all youth 15 and older charged with certain felonies to be prosecuted in adult court. Second, Commissioner Lisa Naito and the County Commissioners were concerned about research consensus showing that youth held in adult jails face extremely dangerous conditions, including a high risk of physical and sexual abuse and a greatly increased suicide risk. Third, the County had worked with the Juvenile Detention Alternatives Initiative (JDAI)³ to create community-based alternatives to detention – a day reporting center, shelter care, and home detention – and to reduce its juvenile detention population through an objective and culturally

sensitive risk assessment tool. These alternatives reduced the need for detention beds and helped the county reduce its average daily population at the juvenile detention facility from 96 to 21. Fourth, Commissioner Naito facilitated ongoing collaboration among stakeholders, including the Sheriff, District Attorney, Chief of Police, and the Department of Community Justice (DCJ), which manages the juvenile detention center. Finally, DCJ engaged its counterparts in the DA's and Sheriff's offices, conducted an assessment of available bed space at the detention center, determined the detention center had enough space for adult-charged youth, and created a back-up plan in case the number of detained juveniles unexpectedly rose.

Since the resolution's passage, the vast majority of youth have been held in the juvenile detention facility despite the closing of some beds at the detention facility due to budget restrictions. Some youth charged as adults have been released on a pretrial supervision program with electronic monitoring. As a result, no more than one youth has been held in the jail at any given time.

Los Angeles County, California — Finding an Effective Solution:

California jurisdictions typically hold youth prosecuted as adults in juvenile facilities, although state law allows adult jails to hold youth who have had discipline problems in juvenile detention facilities.

However, in the early 2000s, the Los Angeles County Probation Department – which runs juvenile detention for the county – contracted with the Sheriff's Department to house up to 44 youth (about a third of the total number of youth facing adult charges) in the county jail. Although these youth were held in a separate juvenile module inside the jail with no contact with adult offenders, they spent over 23 hours per day in their cells and received minimal education, mental health care, and other programming.

These conditions led to several advocacy groups raising awareness about the inhumane conditions of confinement, including beginning investigations to bring litigation against the facility. These efforts were redoubled in June 2003 when suicide attempts by two boys in the jail heightened public concerns about conditions of confinement for youth held there and led a group of community activists, attorneys, elected leaders, and the press to collaborate to make the removal of these youth a priority. After a large public awareness campaign, the Los Angeles County Board of Supervisors voted unanimously later that month to remove these youth from the adult jail.

A broad range of county officials, including the Chief Administrative Officer, Sheriff, Probation Department, and State Board of Corrections, collaborated and within two weeks identified alternatives to detaining these youth in the jail. Upon their recommendation, the youth were moved in November 2003 - just 5 months after the passage of the resolution - to a facility operated by the California Youth Authority (CYA),⁴ which mainly housed youth following disposition or conviction. In this new setting, the youth were able to attend classes in a group, eat meals together, use recreational facilities, and participate in regular religious services.

Expensive Endeavors in Overbuilding Facilities - Kentucky and West Virginia:

Kentucky and West Virginia also removed youth from adult jails, but took a very different approach from Los Angeles and Multnomah Counties' strategies - they built new detention centers across their States. Both of these jurisdictions have much in common. First, both States had very few detention centers before building new facilities. Second, both West Virginia and Kentucky built these facilities in the late 1990s and early 2000s during a time when the Department of Justice (DOJ) made funds available to States specifically for building new facilities. Third, both States seem to have overestimated - and overbuilt - the number of new detention beds needed.

Kentucky — Responding to Litigation:

Over the past 15 years, Kentucky has gone from being out of compliance with the JJDP's jail removal requirement to completely removing all youth from adult jails and prisons.

In the early 1990s, Kentucky had only two juvenile detention centers in the entire State, resulting in many youth being held in adult jails, often on the same floor as adults. During this time, advocates in Kentucky filed two lawsuits - one filed after a suicide in an adult jail - based on violations of JJDP and the youth's constitutional rights to safe conditions of confinement. The claims included inadequate personnel, fire safety violations, and insufficient education, medical and mental health care, recreation, and religious programming for youth. As a result of these lawsuits and other investigations, including an investigation of the juvenile facilities by the Department of Justice Civil Rights Division, Kentucky chose to forgo federal funds and not comply with the JJDP from 1992-1996, rejoining the Act in 1997 after a settlement agreement was reached.

From 1997 to 2005, Kentucky closed its juvenile holding facilities in adult jails and built nine regional juvenile detention centers across the State so that there is now a facility within an hour of each county. The transition was coordinated by the Department of Juvenile Justice (DJJ), which held meetings with stakeholders at each site, including area judges, law enforcement officials, jailers, and other stakeholders, to coordinate the closing of their jails' juvenile sections.

Now all youth under 18 - including those charged as adults - are held at the regional juvenile detention centers, which have 50 beds each. Although data on the number of youth detained in Kentucky are not available, data from OJJDP indicate that no residential facilities are over capacity, and 38 of 49 facilities are operating under capacity. Additionally, youth who are convicted in the adult criminal system cannot be housed in an adult prison. Youth convicted as adults remain in the juvenile facilities until age 18 at which point they can be released, held in a juvenile facility for up to six months, or transferred to the adult system.

West Virginia — Going Above and Beyond JJDP Requirements:

West Virginia ended the practice of holding the vast majority of youth in adult jails in the early 1980s when the JJDP's original jail removal and sight and sound separation requirements came into law. In 1997, West Virginia changed its law to prohibit the placement of youth transferred to adult court in adult jails.⁵

The Supreme Court of Appeals and a Juvenile Facilities Review Panel were key players in implementing the jail removal changes in West Virginia. Although the Panel had long been

inspecting juvenile facilities, the Panel began overseeing youth held in adult jails after Justice Darrell McGraw of the Supreme Court of Appeals attempted to visit a jail to personally investigate the suicide of a 17-year-old boy who had been illegally confined there. However, after arriving at the facility Justice McGraw was forcibly prevented from accessing the facility and arrested. After this incident, the panel conducted unannounced inspections of jails to ensure they were not holding any youth and shared this information with judges, legislators, state agencies, and other facilities. The State provided technical assistance to facilities not in compliance and required all facilities to report on remediation of any noncompliance.

Until the late 1990s, West Virginia had five juvenile detention centers throughout the state. Between 1998 and 2005, the state built nine new regional juvenile detention centers with 23-24 beds each, including three staff-secure facilities that hold mostly status offenders. Although building these new facilities lessened geographic distance to any facility, West Virginia now has more detention beds than it needs. Of the 200+ beds available, the average daily detention population in those facilities was 77.5 in 1999 and 79.3 in 2003. These numbers indicate that West Virginia built its system without undertaking the detailed assessment necessary to determine its actual need.

Conclusion:

The examples above show that jurisdictions moving youth prosecuted as adults into the juvenile system have two options for accommodating these youth: 1) building additional facilities or 2) accommodating youth cost-effectively in existing juvenile facilities by engaging in detention reform.

As jurisdictions consider how to accommodate youth prosecuted as adults, the following lessons learned from these case examples should be considered:

- Completing a detailed needs assessment of bed space for both youth in the juvenile justice system and youth prosecuted as adults: Before making any decisions regarding where to move youth, jurisdictions should conduct a detailed analysis of the number of youth prosecuted as adults who will need to be moved into juvenile facilities as well as the current space available in juvenile detention facilities and the demographics and charges of youth currently being detained in the juvenile justice system. This type of assessment was invaluable in Los Angeles and Multnomah, which realized they could transition youth from the adult system to the juvenile system without building new beds. However, Kentucky and West Virginia overestimated their needs, leaving many open beds in juvenile facilities at a high cost. A more detailed discussion on assessing your jurisdictions' needs can be found in the "Fact Sheet on Jail Removal" document.
- Examining your jurisdiction's detention and jail systems and alternatives to detention and jail: After collecting information on youth in juvenile detention centers, jurisdictions should examine whether all these youth need to be detained or if they can be safely placed in alternatives to detention. One initiative that currently exists to assist jurisdictions in this analysis is the Juvenile Detention Alternatives Initiative of the Annie E. Casey Foundation, which is being implemented in over 100 jurisdictions nationwide.⁶ Under JDAI, jurisdictions have reduced juvenile detention populations by an average of 35%, improved

public safety outcomes, allowed more cost-effective use of juvenile justice funding with the closure of nearly 1,000 detention beds and the reinvestment of these funds in alternatives to detention, and created an average 22% reduction in racial and ethnic disparities. JDAI analysis was particularly useful in Multnomah County, which used JDAI to reduce its juvenile detention population in order to accommodate youth prosecuted as adults in juvenile detention facilities. Additionally, jurisdictions should see if youth prosecuted as adults can be safely monitored in their communities, such as through electronic monitoring, rather than being placed in the jail.

- A comprehensive cost assessment of available options: After completing a needs assessment, jurisdictions should engage in a cost-effectiveness evaluation taking into consideration:
 - *The cost of detention and detention alternatives:* Detaining youth in the juvenile justice system is expensive - the average costs for one detention bed is estimated to be \$48,000 per year and the average cost to build, finance, and operate a single detention bed over its first 20 years is approximately \$1.5 million per bed. However, more effective detention alternatives can cost much less while achieving the result of ensuring that youth appear for court and do not reoffend while awaiting a court date. For example, evening reporting centers operate immediately after school until 9 or 10 PM and allow youth to complete homework, learn life skills, participate in community service, receive meals and have recreation time. In Cook County, these centers cost less than \$33 per youth per day or just over \$12,000 per year.
 - *A lack of funds to build additional new facilities:* Although Kentucky and West Virginia were able to build new facilities to accommodate youth prosecuted as adults, these facilities were built at a time when Department of Justice funds were available funds for this purpose. This funding is currently unavailable from Department of Justice and indeed many States are moving the opposite direction and closing bed space or wings in detention facilities to save money.
 - *The potential litigation costs associated with detaining youth in large facilities:* Three of the four case examples mentioned above - Los Angeles, Kentucky, and West Virginia - all faced expensive litigation when youth were held in dangerous conditions in adult jails or in large juvenile detention facilities. When faced with these law suits, these jurisdictions moved these youth to more appropriate placements. In various jurisdictions across the country, litigation has revealed the harms and costs associated with housing youth in adult jails and in large juvenile facilities.

In conclusion, current best practices and the efforts of several jurisdictions show that youth prosecuted as adults can be accommodated in the juvenile justice system, typically without the costly construction of new facilities. Jurisdictions should do a careful analysis and evaluation of their current system and make creating costly new bed space a last resort.

¹ Or. Rev. Stat. Ann. § 419C.130(b).

² Resolution No. 08-166, available at www.jdaihelpdesk.org/Docs/Documents/08-166.pdf. In Multnomah, youth can only be held in adult facilities upon a joint determination by the Sheriff and the head of the Department of Community Justice (DCJ), the

agency responsible for the juvenile justice system, or their designee. Under this system, the only youth who might be transferred to the jail are those are believed to pose a serious threat to public safety or to other youth.

³ JDAI is an initiative to reduce the unnecessary detention of youth in the juvenile justice system run by the Annie E. Casey Foundation. More information on JDAI is available at www.jdaihelpdesk.org.

⁴ In 2005, the CYA became the Division of Juvenile Justice (DJJ) within the Department of Corrections and Rehabilitation. *See* http://www.cdcr.ca.gov/Divisions_Boards/DJJ/ for an overview of DJJ.

⁵ W. Va. Code Ann. § 49-5-16(a) (as amended 1997).

⁶ More information on JDAI is available at www.jdaihelpdesk.org.