federal register

Wednesday
November 2, 1988

Part V

Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups; Notice of Final Policy

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups

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

ACTION: Notice of final policy.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (JJDP Act) is publishing a policy to provide guidance to states participating in the JJDP Act Formula Grants Program for determining when a juvenile held within a building that houses an adult jail or lockup facility is considered to be in nonsecure custody for purposes of state monitoring for compliance with section 223(a)(14) of the JJDP Act.

EFFECTIVE DATE: This policy is effective November 2, 1988.

FOR FURTHER INFORMATION CONTACT: Emily C. Martin, Director, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention (OJJDP), 633 Indiana Avenue, NW., Room 768, Washington, DC 20531; telephone (202) 724-5921.

I. Introduction and Background

In an effort to comply with the jail lockup removal mandate, section 223(a)(14) (42 U.S.C. 5633(a)(14)) of the JJDP Act, staff of state administering agencies and facility administrators are often called upon to identify alternatives to holding juveniles in jail cells or lockups while law enforcement officers carry out their responsibilities of identification, investigation, processing, release to parent(s) or guardian, hold for transfer to an appropriate juvenile detention or shelter facility, or transfer to court. the OJJDP recognizes that during this interim period, a balance must be struck between the statutory objective of not holding juveniles in jail cells or lockup areas beyond the six hour temporary holding period permitted for accused criminal-type offenders (a juvenile alleged to have committed, or charged with an offense that would be a crime if committed by an adult); and, not allowing juveniles in temporary law enforcement custody to disrupt police operations or to leave a police, sheriff or municipal facility without authorization.

Section 31.304(m) of the OJJDP Formula Grants Regulation published in the June 20, 1985, Federal Register on pages 25550-25561 (28 CFR Part 312, defines an *adult jail* as:

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

Section 31.304(n) of the Formula Grants Regulation defines an *adult lockup* as:

> Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

While these definitions provide general parameters, the efforts of state agency staff to monitor compliance with the JJDP Act jail and lockup removal requirement and to identify alternatives indicate a need for specific guidelines to identify when a juvenile is being securely detained or confined in an adult jail or lockup area. In making this determination, it is critical to distinguish between nonsecure custody and secure detention or confinement (for purposes of this policy, the terms secure detention or confinement, secure cutsody, and secure holding are synonymous). A juvenile may be in law enforcement custody and, therefore, not free to leave or depart from the presence of a law enforcement officer or at liberty to leave the premises of a law enforcement facility, but not be in a secure detention or confinement status.

A secure detention or confinement status has occurred within a jail or lockup facility when a juvenile is physically detained or confined in a locked room, set of rooms, or a cell that is designated, set aside or used for the specific purpose of securely detaining persons who are in law enforcement custody. Secure detention or confinement may result either from being placed in such a room or enclosure and/or from being physically secured to a cuffing rail or other stationary object.

This policy is designed to assist state agency staff and facility administrators in identifying non-secure alternatives for custody of juveniles within law enforcement facilities. The policy assumes that immediate access or transfer of a juvenile to a juvenile detention center or appropriate nonsecure facility is not possible, and that no area is available within the building or on the grounds that qualifies as a separate juvenile detention facility under the requirements set forth in the Formula Grants Regulation at 28 CFR 31.303(e)(3)(i). This policy provides guidance in identifying practices that do not constitute violations of the statutory jail removal requirement. As such, it reflects the effective strategies many law enforcement jurisdictions are using to achieve jail removal. The policy is not offered as standards for practice, nor does it surpersede any state laws, policies or guidelines.

II. Discussion of Comments

A proposed policy was published was published in the Federal Register on January 28, 1988, for public comment. Comments were received from 12 national, state, and local organizations. All comments have been considered by the OJJDP in the issuance of a final policy.

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

1. *Comment:* Booking areas used to process juveniles and adults are different to classify because there are wide variations in their configurations and levels of security. Respondents indicated that it is unclear whether OJJDP considers booking areas to be secure or nonsecure.

Response: While a booking area may be secure, a juvenile being processed "through" this area is not considered to be in a secure detention status.

Where a secure booking area is all that is available, and continuous visual supervision is provided throughout the booking process, and the juvenile only remains in the booking area long enough to be photographed and fingerprinted (consistent with state law and/or judicial rules), the juvenile will not be considered in a secure detention status. Continued nonsecure custody for the purposes of interrogation, contacting parents, or arranging an alternative placement must occur outside the booking area.

2. *Comment:* Two respondents indicated that a prohibition on handcuffing juveniles to a cuffing rail or other stationary objects is not a viable restriction given safety and cost considerations.

Response: OJJDP understands that many juveniles taken into custody pose a potential risk to self and/or law enforcement officers. Clearly, the officer taking a juvenile into custody must rely on his or her judgement of the level of risk posed by the juvenile.

It is, however, OJJDP's responsibility to clearly define when a juvenile taken

into custody enters a secure detention status. Where an officer determines that a juvenile taken into custody as an *accused* criminal-type offender must be handcuffed to a cuffing rail or other stationary object, or placed in a cell or lockup area, this is permissible under § 31.303(f)(5)(iv)(H) of the OJJDP Formula Grants Regulation (28 CFR 31), for up to six hours. It should be noted, however, that for monitoring purposes, the six hour, "grace period" begins to run when the juvenile enters a secure detention status and ends six hours later.

It is also important to point out that handcuffing techniques that do not involve cuffing rails or other stationary objects will be considered nonsecure custody where the additional criteria for nonsecure custody set forth in this policy are adhered to. Thus, juvenile offenders can be considered in nonsecure custody, even though handuffed, where necessary, so long as a stationary object is not in use.

3. *Comment:* Two respondents expressed concern that without a time limit on nonsecure custody, juveniles could end up spending more time in law enforcement facilities than at present. It was recommended that nonsecure custody be limited to six hours.

Response: One criterion in the policy for determining that custody is nonsecure is that the area where the juvenile remains not be designed or intended for use as a residential area. This reflects OJJDP's policy that if a juvenile is to remain in custody long enough to require residential services, the juvenile should be moved to an apppropriate juvenile residential facility as soon as this need is identified. Once an area of a jail or lockup facility begins to be used for residential purposes, the juvenile will be considered to be in a secure detention status.

Beyond this "nonresidential" requirement, and the other limiting criteria in this policy, the JJDP Act does not confer upon the OJJDP the authority to limit the length of nonsecure custody.

4. *Comment:* One respondent stated that recordkeeping deficiencies at the facility level often make it difficult to determine when juveniles are placed in cells or other secure holding areas, and that this problem will also exist in attempting to monitor the handcuffing of juveniles to cuffing rails or other stationary objects.

Response: Each participating state is required, pursuant to section 223(a)(15) of the JJDP Act, to have an adequate monitoring system. It is expected that states will work with local facilities to develop adequate recordkeeping procedures.

As for recording juveniles placed in a holding cell or other secure area, many police departments handle this by adding the designation "cell" or "secure" to their juvenile admission/booking log. Departments should be particularly willing to do this when liability factors are taken into consideration, i.e., in the event of litigation, departments need to know if a juvenile was or was not placed in a secure area or in a secure detention status, and if so, for how long.

5. *Comment:* Three respondents suggested that the policy does not address the separation provision, section 223(a)(13) of the JJDP Act.

Response: The policy is designed to identify nonsecure alternatives for the custody and handling of juveniles within law enforcement facilities. The section 223(a)(13) separation requirement of the JJDP Act does not apply to juveniles in a nonsecure custody status.

6. *Comment:* One respondent indicated that court holding facilities should be subject to the Deinstitutionalization of Status Offenders provision, section 223(a)(12)(A) of the JJDP Act. Another suggested adding requirements for staff supervision and time limits for court holding facilities.

Response: Section 223(a)(12)(A) of the JJDP Act requires the removal of status and nonoffenders from secure detention and correctional facilities. Section 103 of the Act defines both facility categories to mean "residential" facilities.

This policy clearly states that in order for a court holding facility to be exempt from the adult jail and lockup removal provision of the JJDP Act, it must be nonresidential. The policy also states that the court holding facility cannot be used for punitive purposes or other purposes unrelated to a court appearance, and it confirms that the section 223(a)(13) separation requirement applies to court holding facilities. These requirements pertain to status and nonoffenders, as well as to criminal-type offenders.

As for time limitations, the nonresidential requirement does impose an inherent or practical time limitation. That is, the juvenile must be brought to and removed from the facility during the same judicial day.

The final policy does not address the level of supervision necessary in court holding facilities. However, it is clearly essential that sufficient levels of supervision be provided to ensure the safety of those juveniles before the court, and the integrity of the court process itself.

Executive Order 12291

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

Regulatory Flexibility Act

This policy does not have a "significant" economic impact on a substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96.354).

Paperwork Reduction Act

No collection of information requirements are contained in or effected by this guideline (See the Paperwork Reduction Act, 44 U.S.C. 3504(h)).

List of Subjects in 28 CFR Part 31

Grant programs—law, Juvenile delinquency, Reporting and recordkeeping requirement.

III. Policy: Criteria for Law Enforcement Facilities

The following policy criteria, if satisfied, will constitute nonsecure custody of a juvenile in a building that houses an adult jail or lockup facility:

(1) The area(s) where the juvenile is held is an unlocked multi-purpose area, such as a lobby, office, or interrogation room which is not designated, set aside or used as a secure detention area or is not a part of such an area, or, if a secure area, is used only for processing purposes; (2) The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility; (3) the use of the area(s) is limited to providing nonsecure custody only long enough and for the purposes of identification, investigation, processing, release to parents, or arranging transfer to an appropriate juvenile facility or to court; (4) in no event can the area be designed or intended to be used for residential purposes; and (5) the juvenile must be under continuous visual supervision by a law enforcement officer or facility staff during the period of time that he or she is in nonsecure custody.

IV. Policy: Criteria for Court Holding Facilities

A court holding facility is a secure facility, other than an adult jail or lockup, that is used to temporarily detain persons immediately before or after detention hearings, or other court proceedings. Court holding facilities, where they do not detail individuals

overnight (i.e., are not residential) and are not used for punitive purposes or other purposes unrelated to a court appearance, are not considered adult jails or lockups for purposes of section 223(a)(14) of the JJDP Act. However, such facilities remain subject to the section 223(a)(13) (42 U.S.C. 5633(a)(13)) separation requirement of the Act.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88-25376 Filed 11-1-88; 8:45 am]

BILLING CODE 4410-18-M