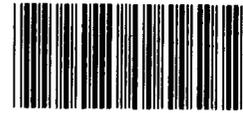


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NONCRIMINAL JUVENILES: Detentions  
Have Been Reduced but Better  
Monitoring is Needed

Statement of  
Lowell Dodge  
Director, Administration  
of Justice Issues  
General Government Division

Before the  
Subcommittee on Juvenile Justice  
Committee on the Judiciary  
United States Senate



NONCRIMINAL JUVENILES: DETENTIONS HAVE BEEN  
REDUCED BUT BETTER MONITORING IS NEEDED

SUMMARY OF STATEMENT OF  
LOWELL DODGE  
DIRECTOR, ADMINISTRATION OF JUSTICE ISSUES  
U.S. GENERAL ACCOUNTING OFFICE

Removing juvenile status offenders--youths under 18 years old charged with such offenses as curfew violation, truancy, running away, and possession of alcohol--from secure detention facilities was an objective of the Juvenile Justice and Delinquency Prevention Act of 1974. To help states achieve this objective, the act created the Office of Juvenile Justice and Delinquency Prevention, which administers a formula grant program. In fiscal year 1990, \$48 million in grant funds were provided to states.

To maintain eligibility for these grants, states are to monitor detention facilities to ensure that status offenders are not confined above an allowable limit. However, a 1980 amendment to the act allowed participating states to detain above this limit status offenders who violate the conditions of a judge's valid court order. If states properly provide these offenders certain procedural protections, states can exclude these cases from those that are counted toward the allowable limit. The Anti-Drug Abuse Act of 1988 required GAO to investigate the extent to which status offenders are placed in detention for violating a judge's court order.

Aggregated data from states showed that they achieved almost a 95-percent reduction in detention of status offenders since joining the program. In 1988, 25 states reported about 5,300 exclusion cases but still met the requirements and remained in compliance with the grant program. Five of these states accounted for 70 percent of the exclusions.

Between 1985 and 1988, the Office audited states and identified errors in their monitoring practices. States reported that since the audits they had either begun or completed action to improve their monitoring practices.

GAO's analysis at a secure detention facility in each of three states identified the need for oversight of states' monitoring systems. For example, in the detention facilities GAO visited, procedural protections were not consistently provided to offenders. Six other states, responding to a GAO survey, reported not complying with the regulations requiring verification of procedural protections for detained status offenders. In response to a GAO recommendation, the Office has agreed to focus its oversight on the adequacy of monitoring in those states that could exceed the allowable limit if the Office were to disallow their excluded cases.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our report on the detention of noncriminal juveniles--Noncriminal Juveniles: Detentions Have Been Reduced But Better Monitoring Is Needed, (GAO/GGD-91-65, Apr. 24, 1991).

Juvenile status offenders are youths under 18 years old who are charged with such offenses as curfew violation, truancy, possession of alcohol, and running away. As a result of such offenses, these youths are subject to being held in secure detention facilities. Removing detained status offenders from such facilities was an objective of the Juvenile Justice and Delinquency Prevention Act of 1974. The act established a state formula grant program to facilitate the development of alternatives to secure detention and tied states' eligibility for grants to a requirement that status offenders be deinstitutionalized. A 1980 amendment allows states to detain status offenders in secure facilities under certain circumstances without risking their grant eligibility.

In general, we found that states reported significant progress in meeting the goals of the act. States reported significant reductions in the number of status offenders detained and did not extensively use the 1980 amendment's provision allowing detention. Aggregated data from 50 participating jurisdictions

showed almost a 95-percent reduction in detention of status offenders since joining the program. Nonetheless, we believe that the Department of Justice could be more systematic in monitoring state compliance with the act.

## BACKGROUND

Practices and procedures in the juvenile justice system vary widely from state to state. Concerned that not all states had sufficient resources to provide a full measure of justice to each youth or to administer their juvenile justice systems effectively, Congress passed the Juvenile Justice and Delinquency Prevention Act of 1974. In addition to the formula grants, the act created the Office of Juvenile Justice and Delinquency Prevention to administer the grant program and provide assistance to states in achieving compliance with grant requirements.

To receive grant funds, states must comply with a number of requirements. States are to monitor detention facilities to ensure that status offenders are not inappropriately confined and must report any detentions they find to the Office. Generally, states detaining fewer than 29.4 per 100,000 of all persons under 18 years of age within the state in a year are in full compliance with the program's deinstitutionalization requirement. This is called the de minimis threshold.

In fiscal year 1990, the Office distributed approximately \$48 million in grants. Following past practice, the President's fiscal year 1992 budget does not contain funding for the grant program. If past practice prevails, Congress will restore these grant funds to the Department's budget.

The 1980 amendment to the act allows participating states to detain status offenders without risking their grant eligibility if certain conditions are met. Under the amendment, a judge may order juveniles detained if they have violated a "valid court order." To be "valid" these orders must meet several Office requirements, including a warning in writing to the juvenile and to the juvenile's attorney and/or legal guardian of the consequences of violating the court order. Such court orders seek to regulate the status offender's future behavior by requiring certain activities, such as attendance in school. If the court order is violated, the judge can detain the offender after the procedural protections are provided as specified in the regulations. For example, states are to ensure that detained juveniles were afforded a right to legal counsel, including the right to court appointed counsel if the juvenile is indigent. If states properly follow the regulations, they can exclude such cases from those cases that they must report to the Office without jeopardizing their grant funds.

In the 1988 Anti-Drug Abuse Act, Congress required us to report

on the detention of status offenders. Accordingly, we (1) gathered information on the extent to which status offenders have been detained, (2) examined states' efforts to meet federal goals and regulations, and (3) determined if the juvenile court system provided detained status offenders procedural protections.

We collected nationally available data from juvenile justice experts and federal agencies, sent a questionnaire to state officials, and reviewed case files of status offenders detained in 1989 at three juvenile detention facilities. In addition, we examined the Office's audits of state compliance monitoring systems.

#### GAO FINDINGS

##### Current Level of Status Offender Detention

During our review, we found that while states continued to detain some status offenders in secure facilities outside of the scope of the exclusion, these detentions numbered less on a state-by-state basis than the de minimis threshold specified in the regulations. Forty-nine states<sup>1</sup> and the District of Columbia reported they have collectively reduced the number of status offenders detained in secure facilities from about 187,000 when they joined the program to about 10,000 in 1988--a 95-percent reduction. According to the Office, all states participating in

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<sup>1</sup>South Dakota did not participate in 1990.

the grant program reduced the number of status offenders detained to a level that either complies with the regulations or shows progress towards compliance.

However, half of the participating states took advantage of the 1980 amendment allowing them to exclude detention resulting from violation of a valid court order. In 1988, 25 of the participating states reported a total of about 5,300 exclusion cases. Ohio accounted for about 44 percent of these cases; Idaho, Missouri, South Carolina, and Tennessee accounted for an additional 26 percent.

#### States Report Efforts To Comply With Regulations

In response to our questionnaire, states reported they were improving their compliance with federal regulations. Between 1985 and 1988 the Office did initial audits of 46 of the participating states' compliance monitoring systems and identified a number of problems. The problems were mainly with data collection and verification. All 46 audited states reported they had either begun or completed action to improve their monitoring procedures as a result of the audits.

Before 1985, the Office did not verify through audits states' claims for exclusion cases. However, its reviews of states' monitoring reports noted some inconsistencies with federal

regulations. For example, some states did not require that detained juveniles receive a hearing within 24 hours. As a result of inconsistencies, the Office rejected 710 exclusion claims in 1988 in five states--Alabama, California, Louisiana, New York, and South Carolina. When added to nonexcluded detentions, the rejected exclusions did not bring these states over their de minimis thresholds.

Procedural Protections Are  
Inconsistently Provided  
And Documented

Assurances do not exist that state juvenile justice systems always provide status offenders the required procedural protections. The Office does not require states whose laws or regulations incorporate all the procedural protections to demonstrate that they were actually provided.

At the three detention facilities we visited, we found instances of court-ordered detentions that, while not necessarily counted by the state as exclusions, showed no record that all of the procedural protections required for an exclusion had been provided. We found 17 of 26 cases from a detention center in Utah where status offenders were not advised of their right to legal counsel. After we pointed this out, Utah officials said status offenders from that point forward would be told of their right to counsel.

Furthermore, the Office regulations require states whose laws or procedures do not incorporate all protections to verify in each case that the protections were provided before it would accept the exclusions those states claim. In response to our questionnaire, eight states reported not incorporating one or more of the procedural protections through state law or court rule. However, six of these states--California, Hawaii, Illinois, Louisiana, Missouri, and Nevada--responded that they verified few, if any, of the cases. Another state--Ohio--said it verified about half of the cases. If the Office had disallowed all the exclusions for three states--Hawaii, Missouri, and Ohio--they would have had levels of institutionalization exceeding the de minimis threshold.

#### RECOMMENDATION AND AGENCY COMMENTS

We recommended that the Attorney General direct the Office to concentrate its oversight on states' monitoring efforts to ensure compliance with Office regulations, particularly with respect to offenders' procedural protections. Specifically, the Office should direct its efforts toward those states that could exceed the de minimis threshold of status offenders detained in secure facilities if the Office, on review, were to disallow some or all of their reported exclusions. The Department of Justice said it generally agreed with our recommendation.

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This concludes my remarks. I would be pleased to answer any questions the Subcommittee may have at this time.

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