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The Differential Detention/Jailing of Juveniles: A Comparison of Detention and Non-Detention Courts

JOHN H. KRAMER*
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INTRODUCTION

Under juvenile law, a child may be held in detention before his adjudicatory hearing on several grounds: that he is a potential runaway, that he must be held for pending proceedings in another jurisdiction, and most controversially, that he constitutes a danger to himself or to the community.¹ In other words, juvenile court law has traditionally recognized the legitimacy of preventive detention.

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1. See D. KATKIN, *DELINQUENCY AND THE JUVENILE JUSTICE SYSTEM* 273 (1976).

In actual practice, three types of justifications for detention can be identified—due process, crime control and rehabilitative.²

The only justification for holding a person in detention that is compatible with *due process* values is to assure that he will not abscond from the jurisdiction before his scheduled court hearings. Youngsters are certainly detained every year because some policeman, or judge, or probation officer is of the opinion that only detention can ensure continued presence in the jurisdiction. There is no way of telling how often that belief underlies a decision to detain, nor how often that belief is valid.

It is likely that a *much* larger number of children are held in detention because of the desire of public officials to *control* crime. Crime control detention is justified in several ways. One legitimation for public officials to detain a youth is the fear that the juvenile will commit offenses while awaiting trial. A second rationale is to assure that the juvenile will receive some punishment in a system which is often perceived as excessively lenient. A third legitimation for crime control detention is to frighten the youngster and to demonstrate that if his delinquent conduct persists, he can look forward to longer periods of such confinement.

The *rehabilitative* orientation of the juvenile justice system may also justify the detention of juveniles. A child may be held in detention not because he is likely to abscond, nor because he seems dangerous, but because he is considered to be in need of treatment or other services. In some respects, there is a presumption of "need" in the rehabilitative model while in the crime control model there is a presumption of "guilt." Some observers believe that rehabilitative concerns underlie many, perhaps most, decisions to detain. Data indicating that youngsters charged with status offenses are detained more often than youngsters charged with serious offenses suggest that the child's condition, rather than his danger to society, may indeed be the major determinant in many instances in which detention is used. As will be shown, however, the greater use of detention for status offenders is also intended to control crime.

If the juvenile justice system operated on a strictly due process orientation, it might reasonably be expected that laws would reflect this, by indicating that juveniles are to be detained solely for reasons of assuring reappearance. Moreover, it would be

2. See Hyman, Katkin, and Dramer, *Three Models of Juvenile Justice*, 12 CRIM. L. REV. 165-88 (1976).

expected that since detention is not for punishment conditions should be humane and there would be frequent judicial review of detention to assure its continued need.

The crime control view presents a different detention philosophy. Juveniles are detained frequently, with minimal review by courts as to either the length of time detained or the purposes of the detention. The quality of the care is of minimal importance, and in fact, the lower the quality of the care in detention the greater its potential to fulfill the "shock" value—an item of some importance in crime control.

The rehabilitative view, while reserving detention for those who *need* the care and protection provided by detention, focuses on the youths' *problems*, be they perceived as social, psychological, educational or whatever, for some programming even during short-term detention.

It is not possible to determine how frequently decisions to detain are based on due process concerns, or on rehabilitative concerns. In the analysis that follows, however, it is clear that *judgments* reflect expectations about what detention facilities ought to be doing. Whether detention is viewed as just and necessary also depends on our view of detention, and especially of jails in comparison to detention facilities—e.g. on whether jails are viewed as places of "punishment" and detention facilities as places of "care."

Several kinds of facilities are used to detain alleged juvenile offenders: detention homes, jails, police station lockups, and various other alternatives such as foster homes. This study examines the differential selection of juveniles for detention. Specifically, it examines whether variation in the use of detention can be attributed to the availability of a detention home and/or to characteristics of juveniles or the type of offense for which the juvenile is referred to court.

DATA AND METHODOLOGY

The data used in this study pertain to delinquency cases referred to 45 county juvenile courts³ of a large eastern state for

3. See Pawlok, *Differential Selection of Juveniles for Detention*, 14 J. OF RESEARCH IN CRIME AND DELINQUENCY 152-65 (1977).

1973 through 1975. The data were made available by the Juvenile Court Judges' Commission, which serves as a centralized repository of county juvenile court data (hereafter referred to as "courts").

Two kinds of analyses are reported in this study. First, courts with and courts without a detention home are compared (only 23 have a detention home). Second, in courts with a detention home, the effect of the juvenile's prior court contacts, offenses, sex, and race on detention are examined. (The small number of white females and of nonwhites in courts without a detention home precludes their inclusion in such an analysis).

EFFECTS OF THE AVAILABILITY OF DETENTION HOMES

Approximately one-fourth of the juveniles in the state's courts are detained prior to their disposition. Among the detained juveniles, 69 percent are placed in detention homes, 5 percent are kept in jails or police stations, and the remainder are placed in other facilities including shelter homes. Among the 23 courts that have a detention home, the percent of juveniles detained ranged from 9 to 45 percent, while among the 21 courts without a detention home, zero to 30 percent of the juveniles are detained.⁴

Table 1
CARE OF JUVENILES PENDING DISPOSITION
(Percent)

No Detention or Shelter Care	Detention	Jail or Police Station	Other	Unknown	Total
75.1	16.5	1.3	6.3	0.8	133629

When the data are separated into jurisdictions with a detention home and those without detention facilities, it is found that counties with a detention home detain juveniles with greater frequency than courts without a detention home.⁵ In those courts with a detention center, 25.2 percent of the court referrals are detained whereas those courts without a detention center detain only 12.6 percent. Moreover, the frequency of detention is unrelated to the characteristics of the juvenile offender. For example, the data indicate that juveniles with similar characteristics have a higher probability of detention in courts with a

4. See Table 1.

5. See Table 2, *infra* p. 799.

detention home than in courts without a detention home.⁶ In courts without a detention home, from 7 to 20 percent of the juveniles in court for the first time are detained. In courts with a detention home, 20 to 35 percent of such juveniles are detained. The differences in handling of juvenile code offenders are marked: depending on the number of prior court contacts, courts with a detention home detain from 6 to 18 percent more of such juveniles than courts without a detention home. Further, although the differences are not large, courts with a detention home jail a smaller percentage of juveniles (1 percent) than courts without a detention home (5 percent). Table 4 reveals another interesting finding. When similar offenders are compared (same race, sex and number of prior referrals), juveniles who have been referred to court for juvenile offenses such as runaways and incorrigibility are more likely to be detained than are those accused of more serious violations.

Thus far, the data lead to three major conclusions: (1) the likelihood of detention is in direct proportion to the availability of detention facilities; (2) courts with a detention home jail a smaller percentage of juveniles than courts without a detention home; and (3) juvenile code offenders are more likely to be detained than person, property or drug offenders.⁷

Table 2
CARE OF REFERRALS PENDING DISPOSITION IN JUVENILE COURTS
WITH AND WITHOUT A DETENTION HOME
(Percent)

	Care Pending Disposition				Total
	No Detention or Shelter	Detention Home	<i>Detained</i> Jail or Police Station	Other	
Courts with a Detention Home	74.8	17.6	0.8	6.9	119035
Courts without a Detention Home	87.4	6.5	4.7	1.4	17598

6. Compare Table 4 with white males section of Table 5, *infra*, p. 802-05.

7. See Table 2, and Table 3, *infra* p. 800.

Table 3
RATES OF DETENTION PLUS JAILING FOR WHITE MALES BASED ON
PRIOR COURT CONTACT, CURRENT OFFENSE, AND
PRESENCE OF DETENTION HOME
(Percent)

Prior Court Contacts	Offense Type	Presence of Detention		Percent Difference
		Detention Facility Present	Detention Facility Not Present	
None	Persons	14.8	10.0	4.8
	Property	10.2	6.3	3.9
	Drugs	9.9	7.3	2.6
	Juvenile	29.4	16.0	13.4
One	Persons	11.1	22.5	11.4
	Property	9.5	13.1	3.6
	Drugs	9.0	20.6	11.6
	Juvenile	25.8	21.5	4.3
Two	Persons	27.7	34.3	6.6
	Property	26.7	37.7	11.0
	Drugs	17.0	38.2	21.2
	Juvenile	43.3	30.3	13.0

Some students of juvenile justice would not be alarmed by these results, although they would protest the use of jails and especially the jailing of status offenders.⁸ For those who view jails as places of "punishment" and detention facilities as places of "care," detention counties have created a more reasonable social control policy because this policy involves a *lesser* reliance on the use of jails.⁹ Even though the availability of a detention home suggests that there may be needless detention of juveniles, what is needed is less arbitrary administrative discretion—not an abandoning of detention itself. However, detention should not occur in jails, nor should the criteria be used too arbitrarily. According to this view, detention that is based on an intention to prevent runaway risks, or future misdeeds is permissible. The detention of status offenders, in particular, is appropriate since seriousness of the offense and danger to society are not the only legitimate criteria for detaining juveniles.

For many students of the administration of juvenile justice, however, detained youngsters whether in jail or in detention are

8. See Table 4, *infra*, p. 802.

9. Our analysis is based on 45 of 67 counties in the state. We excluded 22 counties for either of two reasons: (1) the counties had less than 200 delinquency referrals over the three year sample period or (2) the counties failed to file data for any given year during our sample period.

"under lock and key."¹⁰ Living conditions in detention centers differ from jails mainly in the color of the walls, the cleanliness of the facilities and the greater provision of programs in detention. Thus, it is apparently a more humane type of facility than jail. However, the differences may be more *apparent* than real inasmuch as detention centers, like jails, are secure facilities, often with bars on the windows. One author summarizes this view most forcefully when he states regarding detention centers that: "Living conditions may be less harsh than residence in a local jail, but that fact does not change its functioning as a 'community-based' social-control facility."¹¹ From this perspective it logically follows that it is possible to combine the percent detained and percent jailed into one category.

Shown in Table 3 are the results of combining the percentages of white-male juveniles, placed in jails and in detention, in both detention and non-detention counties. The data indicate that: (1) In counties where detention facilities are *present*, there is a consistent tendency for locking up juvenile status offenders (either in detention or jails). This holds whether there has been zero, one, or two court contacts; (2) Juveniles with no prior contact are more likely to be detained/jailed in detention than in non-detention counties. This holds for person, property, and drug offenders as well as juvenile status offenders; (3) However, non-detention counties are more likely to detain/jail person, property, and drug offenders who have one or more court contacts.

It is usually assumed that status offenders are less serious and dangerous than person, property, and drug offenders, and that offenders with no prior court contact are less serious and dangerous than those with one or more court contacts. Viewed in this manner, the data in Table 3 lead to the conclusion that the existence of detention facilities consistently enhances the likelihood that more offenders, but particularly more non-criminal youth, will be locked up. It can be argued, therefore, that the modern social control system promotes injustice by treating serious offenders less harshly than their non-criminal and less

10. R. SARRI, *UNDER LOCK AND KEY: JUVENILES AND JAILS AND DETENTION* (1974).

11. Lerman, *Discussion of Differential Selection of Juveniles for Detention*, 14 *J. OF RESEARCH IN CRIME AND DELINQUENCY* 168 (1977).

dangerous peers, and youth with similar backgrounds are dealt with unequally.

EFFECTS OF CHARACTERISTICS OF JUVENILES

The variables of prior court contact, type of offense, sex and race were selected for an analysis of their effects on detention.

Prior Court Contacts

The number of prior court contacts of a juvenile is a significant determinant of detention, regardless of sex, race, and offense type.¹² The probability of a juvenile being detained increases as the number of prior court contacts increases. The latter is also related to the likelihood of detention in jail; as the number of prior court contacts increase the percentage of juveniles who are jailed increases. This increase occurs even in courts with detention homes, although the increases are smaller than in nondetention counties.¹³

Table 4
CARE PENDING DISPOSITION OF WHITE MALE RESIDENT
OFFENDERS IN JUVENILE COURTS WITHOUT DETENTION
HOMES BY PRIOR COURT CONTACTS, AND OFFENSE TYPE
(Percent)

Prior Court Contacts	Offense Type	No Detention or Shelter Care Overnight	Detention Home	Detained Jail or Police Station	Other	Total
None	Persons	88.4	4.9	5.1	1.5	527
	Property	93.0	3.0	3.3	0.7	3386
	Drugs	92.3	3.1	4.2	0.4	455
	Juvenile	82.9	9.0	7.0	1.1	1013
One	Persons	75.0	11.7	10.8	2.5	120
	Property	86.2	8.1	6.0	0.7	744
	Drugs	79.3	10.3	10.3	0.0	116
	Juvenile	78.0	13.9	7.6	0.4	223
Two or More	Persons	63.9	16.7	17.6	1.9	108
	Property	58.9	17.7	20.0	3.4	696
	Drugs	57.8	19.6	18.6	3.9	102
	Juvenile	63.9	17.3	13.0	5.8	208

12. See Table 6, *infra* p. 806.

13. See Table 4, and Table 5, *infra* pp. 803-04.

Table 5
CARE PENDING DISPOSITION OF RESIDENT OFFENDERS IN JUVENILE
COURTS WITH DETENTION HOMES BY SEX, RACE, PRIOR COURT
CONTACTS AND OFFENSE TYPE
(Percent)

Prior Court Contacts	Offense Type	No Detention or Shelter Care Overnight	Detention Home	Detained Jail or Police Station	Other	Total
White Males						
None	Persons	75.7	13.1	1.7	9.6	2420
	Property	80.9	9.5	0.7	8.9	10386
	Drugs	81.7	9.3	0.6	8.4	2960
	Juvenile	65.4	27.7	1.7	5.2	2273
One	Persons	83.3	10.6	0.5	5.6	2903
	Property	80.6	9.0	0.5	9.8	7611
	Drugs	80.4	8.6	0.4	10.6	2294
	Juvenile	72.3	25.1	0.7	1.9	2091
Two or More	Persons	66.7	24.5	3.2	5.6	1482
	Property	65.3	23.9	2.8	8.0	5008
	Drugs	74.0	15.0	2.0	9.0	1107
	Juvenile	53.8	39.9	3.4	2.9	1341
Non-White Males						
None	Persons	67.0	16.5	1.5	15.1	1238
	Property	61.8	16.0	1.0	21.2	2545
	Drugs	67.3	11.5	1.8	19.5	113
	Juvenile	50.0	36.0	1.1	12.8	358
One	Persons	70.0	28.7	0.1	1.1	8427
	Property	88.1	8.6	0.1	3.2	9861
	Drugs	93.8	5.0	0.3	0.8	1202
	Juveniles	68.2	30.5	0.0	1.3	1328
Two or More	Persons	49.8	47.4	1.0	1.7	4644
	Property	70.4	25.2	1.1	3.2	5668
	Drugs	84.5	12.6	0.2	2.7	522
	Juvenile	55.1	41.6	1.2	2.1	906
White Females						
None	Persons	83.8	11.9	0.2	4.1	462
	Property	86.8	8.4	0.8	4.0	894
	Drugs	82.0	10.4	0.0	7.6	645
	Juvenile	53.9	41.2	1.1	3.8	2416
One	Persons	86.7	8.6	0.5	4.2	406
	Property	88.1	8.3	0.3	3.3	779
	Drugs	75.2	8.4	0.5	16.0	431
	Juvenile	59.4	37.1	0.7	2.7	1737

	Persons	69.8	17.9	1.9	10.4	106
Two or	Property	60.6	34.2	1.0	4.1	193
More	Drugs	66.7	14.6	2.1	16.7	96
	Juvenile	36.6	58.7	1.1	3.6	647
Non-White Females						
	Persons	85.2	9.0	0.3	5.5	345
None	Property	78.9	9.4	0.8	11.0	374
	Drugs	57.9	31.6	0.0	10.5	19
	Juvenile	47.9	41.1	0.7	10.3	445
	Persons	82.0	14.3	0.3	3.4	1273
One	Property	93.2	5.0	0.0	0.7	1669
	Drugs	90.4	7.4	0.0	0.2	135
	Juvenile	56.5	42.1	0.1	1.4	1310
	Persons	58.7	32.8	1.9	6.6	259
Two or	Property	77.0	18.7	0.0	4.3	257
More	Drugs	39.5	58.6	0.9	0.9	215
	Juvenile	46.6	19.8	0.4	3.3	273

These findings coincide with the state's detention guidelines. A juvenile with a prior court contact may be viewed as a threat to the community, as likely to become involved in further offenses, and as one who should therefore be detained.

Effect of Type of Offense

As already observed, there is a greater tendency to detain children who commit violations of the juvenile code than those who commit criminal code violations. Status (juvenile) offenders are more likely to be detained than are juvenile criminals, particularly females.

Some students of the administration of justice approve the greater use of detention for juvenile code offenders on the grounds that several criteria are required to evaluate detention practices. Although it can be argued, for example, that any crime against a person is more serious than truancy or incorrigible behavior, it does not follow that the former need to be detained more than the latter. In addition to seriousness of the offense or threat to the community, another criterion for detention is children in need of secure custody. For example, a policeman, probation officer or judge may determine that a runaway be kept in detention rather than released to parents who may be unable to prevent another "running away," or who may mistreat the youth.

Most students of juvenile justice, however, view the more frequent detention of juvenile code offenders as misguided. Their objections are based on the argument that juveniles with

less serious offenses (juvenile code violations) should not be detained at a higher rate than juveniles who commit more serious offenses (criminal code violations and particularly crimes against persons). The scale of seriousness is based on the social evaluation that acts which inflict injury are more serious than acts which do not. Thus, murder, assault and robbery are more serious than truancy, incorrigible behavior, curfew violations, and running away.

Effects of Sex and Race

Females who commit juvenile code offenses, regardless of race or prior court contacts, suffer a larger percentage of detentions than males who commit such offenses. Males are more frequently detained for crimes against persons and have a higher probability of being jailed than females. Black males, in particular, are likely to be detained for crimes against persons, probably reflecting definitions of young black males as more dangerous and more likely to recommit violent acts. For the most part, however, the variable of race has little overall effect on detention practices.

The finding that females are more frequently detained for status offenses but less likely to be detained for criminal offenses, reflects stereotypic notions about proper sex role behavior. Compared to males, females receive lighter sentences for criminal offenses they have committed because judges, who are mostly male, view them as weaker, less responsible, less dangerous, and more likely to be harmed by a harsh disposition.¹⁴

In the case of status offenses, however, stereotypic notions may work to the disadvantage of female juveniles. Running away, incorrigibility, truancy, and similar designations commonly constitute euphemisms for sexual offenses. Male juveniles are allowed a greater latitude of freedom in sexual behavior than are females. Female juveniles are expected to be sexually pure while males are expected to experiment sexually. This double standard of sexual morality and sexualization of female offenses provides the framework for understanding the

14. Steffensmeier, *The Effects of the Judge's and Defendant's Sex on the Sentencing of Offenders*, 14 *PSYCHOLOGY: A JOURNAL OF HUMAN BEHAVIOR* 3-9 (1977).

more frequent detention of females than males for juvenile code violations. Female juveniles require more "protection" from "immoral" but non-criminal conduct than males.

SUMMARY AND CONCLUSIONS

The major findings of this study are that juveniles are more likely to be detained if a detention home is available and that status offenders are more likely to be detained than are juvenile criminals, particularly if the status offender is female. These findings bear out the considerable disillusionment that has been building among intellectuals, social scientists, and the legal profession regarding detention practices and the latent functions it serves. Over the years, short-term detention/jailing has become America's primary "correctional" response to arrested juveniles. The fact that this has gone unrecognized is due, in part at least, to the method in which national correctional data are gathered and presented. Most of our national correctional data tend to be based on one-day, or daily average, counts—rather than yearly admissions data. Sociologist, Paul Lerman, a nationally recognized expert on juvenile detention, recently observed that, "one-day counts and admissions data yield sharply different perceptions of the relative dominance of correctional responses."¹⁵ The data summarized in Table 6 are provided by Lerman to illustrate his point.¹⁶

Table 6

SOME FACTS ABOUT THE CUSTODY OF JUVENILES IN 1971¹⁷

Census Categories	Location of Custody in 1971			Total
	Detention	Jail	Training School, etc.	
1. Residence				
a. No. present on census day	(11,748)	(7,800)	(45,128)	(64,676)
b. Percent distribution	18.2%	12.0%	69.8%	100%
2. Admissions				
a. No. admitted during year	(494,286)	(100,000)	(85,080)	(679,366)
b. Percent distribution	72.8%	14.7%	12.5%	100%
3. Average length of stay	11 days	unknown	7.8 months	
4. Proportion adjudicated delinquent	29%	34%	100%	
5. Per capital cost	\$7,541	unknown	\$6,760	
6. Cost per admission	\$227.26	unknown	\$4,394	

15. Lerman, *supra* note 11, at 171.

16. See Table 6.

17. U.S. DEPARTMENT OF JUSTICE, LAW ENFORCEMENT ASSISTANCE ADMINIS-

As Table 6 reveals, on a specific census date, about 70 percent of all institutional residents are held in custody in a training school type of facility. However, during the year only about 13 percent of all correctional admissions enter the long-term part of the institutional system. In contrast, about 73 percent are involuntarily placed in detention facilities and about 15 percent are placed in jail. Only 29 percent of those detained, however, are held in custody as a consequence of formal adjudication. The fiscal cost of detention is more on an annual basis (\$7,541 to \$6,760), but far less than when computed on the basis of an average length of admission stay (\$227 to \$4,394).

According to Lerman, the relative difference in costs/admission (about \$19 to \$1) may unwittingly influence public policy preferences more so than is commonly recognized. Moreover, it is possible that fiscal costs, rather than only ideology, influence the reluctance of some counties to build and/or use a special detention facility. The conclusion that Lerman and others are drawing from evidence such as that presented in this report is that on social and fiscal grounds the non-detention counties may have evolved the least costly social control policy.

Even though non-detention counties tend to rely more on jails, there are reasons for believing that theirs is a more reasonable policy than that of detention. Most crucially, the detention/jailing rates of the non-detention counties are considerably less for all categories, and do not include a disproportionate locking up of status offenders. Thus, injustice and unnecessary sanctions, it can be argued, are reduced. Moreover, the policy of non-detention counties is more economical.

TRATION AND U.S. BUREAU OF CENSUS, CHILDREN IN CUSTODY—1971 4, 7, 11, 19 (1974). Jail data are for 1970. See U.S. DEPARTMENT OF JUSTICE, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION AND U.S. BUREAU OF CENSUS, NATIONAL JAIL CENSUS—1970 10, 11 (1971) and R. SARRI, UNDER LOCK AND KEY: JUVENILES IN JAILS AND DETENTION 4, 5 (1974).

