

## **The Pods of Elmore County: A Glimpse Into the Rhetoric Behind the Juvenile Crime Bill**

### *Introduction*

The authors of recent federal juvenile justice legislation have argued that their bill will give flexibility to states in general, and rural counties in particular, to design policies to curb violent youth crime. New mandates to expand juvenile detention beds, and perilous changes to the Juvenile Justice and Delinquency Prevention Act (JJJPA) that would make it easier to jail children with adults are being driven by the belief that the current rules are preventing police from locking up juvenile murderers, rapists and predators. "It [the bill] will do one thing that we have to do, and that is to increase bed space for violent juvenile offenders," says Sen. Jeff Sessions (R-AL), co-sponsor of The Violent and Repeat Juvenile Offender Act.<sup>1</sup> Sen. Orrin Hatch, chair of Senate Judiciary Committee, recently told CBS Evening News that "we think that we have to have some flexibility so that these smaller towns can handle these problems and not let the violent criminal go."

To support this view, Hatch and Sessions brought several law enforcement officials from Alabama and other small states to testify that the JJJPA's requirements to separate children from adults in jails needs to be watered down. In all, only six law enforcement officials, representing states that account for 16 percent of the population, called on the Senate to ease the JJJPA restrictions against jailing kids with adults.<sup>2</sup> By contrast, 26 law enforcement and corrections officials signed onto an advertisement run in The Washington Times, urging Congress not to allow children and adults to be co-mingled in jails.<sup>3</sup>

One study conducted around the time when it was still permissible to incarcerate children with adults found that children were eight times more likely to commit suicide when incarcerated with adults, than if they were held in secure juvenile detention.<sup>4</sup> Another more recent study which looked at what happens to kids when they are transferred to adult jails for serious offenses found they are 5 times more likely to be raped, and 50 percent more likely to be attacked with a weapon.<sup>5</sup> In another series of studies, it has been shown that juveniles who are incarcerated with adults are more likely to reoffend than those who serve out their sentences in juvenile centers.<sup>6</sup>

Nevertheless, Sheriff Edmund M. Sexton of Tuscaloosa, Alabama, neatly summed up the testimony of the small group of rural law enforcement officials who say the current JJJPA's emphasis on keeping kids separate from adults is preventing them from curbing

violent crime: "For those hard core offenders, the local communities need to have the flexibility to detain them in the local county jail until a disposition of their case."<sup>7</sup>

Yet previous research shows that the majority of "hard core" violent juvenile offenders reside in a handful of major urban centers "not small rural counties."<sup>8</sup> One in three juvenile homicides in the entire country, for example, occur in just four cities "Detroit, New York, Los Angeles, and Chicago" far away from the county seats in Alabama, Wyoming and Arizona where sheriffs have pled their case for new legislation.<sup>9</sup> By contrast, eighty-two percent of counties across the country experienced no juvenile arrests for homicides in 1994.<sup>10</sup>

With this in mind, the Justice Policy Institute set about to find out if violent juvenile crime was a significant problem in places where law enforcement officials like Sheriff Sexton said that, "juvenile offenders are committing more violent crimes than ever before, and they are committing them at younger ages."<sup>11</sup>

What we found is that if this bill is being driven to serve those who said that there was a violent juvenile crime wave in their communities, then it is attempting to fix a problem that does not exist. The real story from Tuscaloosa County is that the overwhelming number of youth offenses are non-violent and petty. In Elmore County, Alabama, where the Sheriff testified that the JJDP rules were preventing him from opening a new series of juvenile "pods," we found that the center is already open for business, and that it is likely that the overwhelming majority of its inhabitants will be non-violent offenders. In Casper, Wyoming where a city councilwoman testified that the state desperately needs bed space to lock up violent youths with adults, there were no juveniles arrested for murder, rape or robbery.

To juvenile justice experts, this is not much of a surprise, as it has long been known that 93 percent of all juvenile arrests in America are for non-violent offenses.<sup>12</sup> The surprise is that those who have complained most loudly about the violent juvenile crisis in their counties have the least to worry about in terms of actual arrests.

## *Methodology*

Each year, for their Uniform Crime Reports, the FBI asks law enforcement agencies throughout the country to report how many arrests for "violent index offenses" "murders, rapes, robberies, and aggravated assaults" as well as non-violent offenses, are made in their jurisdictions. For this report, we analyzed the juvenile crime statistics gathered for the FBI's Uniform Crime Reports by state agencies to find out the real story in Elmore County, Alabama, Tuscaloosa, Alabama, and select counties in Wyoming "places which sent representatives to Congress over the past two years to protest what they consider to be onerous federal provisions which prevent them from jailing juveniles with adults. The purpose of this research was to examine the real urgency for respite from what those county officials claim are burdensome federal rules to separate children from adults in jails, especially given the documented impact of mixing those populations on juvenile suicides, rapes and assaults, and reoffense rates.

## *The Pods of Elmore County, Alabama*

On May 6th, 1997 Sheriff Bill Franklin of Elmore County, Alabama, testified before the Senate Judiciary Committee to the need for the juvenile crime bill. Sheriff Franklin is well-known in his home state for his proposal that drug dealers should face capital punishment. He recently told a local newspaper that, if he had his way, he would take the first drug dealer convicted each month "and hang him--on the court house steps. After about the third month after you hanged three drug dealers, I assure you the drug dealers would say, 'I'm going to deal drugs, but I ain't going to deal drugs in Elmore County'."<sup>13</sup>

Sheriff Franklin complained that the JJDPa regulations, which prohibit the incarceration of children alongside adult prisoners, were inhibiting his ability to round up juvenile offenders.<sup>14</sup> To dramatize the point, Sheriff Franklin held up a diagram of his "Pods" "a series of special juvenile holding cells attached to the county jail, which were designed to incarcerate violent juvenile offenders. The pods, he told, were empty, as he did not have the funds to meet the "counterproductive" JJDPa rules against juvenile "sight and sound" contact with adults, and could not afford to train separate staff for the facility.<sup>15</sup>

Yet, according to Jane Autrey, who licenses juvenile detention centers for Alabama's Department of Youth Services, Elmore County's pods opened for business on August 28, 1997.<sup>16</sup> She reports that her department trained Sheriff Franklin's staff, and that 16 of a total of 32 pods are now open for a three month trial period. "I don't know why he would say that there is a problem," Autrey said.<sup>17</sup>

Furthermore, even if Elmore County did not have this new short-term juvenile detention facility, this sleepy suburb of Montgomery, Alabama is only 15 miles away from two facilities equipped to hold juveniles, including the state capital's 52-bed youth detention center. If these juvenile jails were full, there is another holding facility that meets the JJDPa standards a little more than 30 miles away, in Opelika.

But even if these facilities were near capacity, Elmore County officials would not be too hard pressed to house juveniles arrested for "violent index offenses" in Elmore County. In Sheriff Franklin's jurisdiction, there were only three violent index arrests of juveniles in 1996.<sup>18</sup> Only two percent of all juvenile arrests in Elmore County (see graph, below) were for violent crimes—a full five percent lower than the national rate of seven percent.

In a state where counties are allegedly turning violent juvenile offenders away for lack of bed-space, Sheriff Franklin recently boasted to *The Montgomery Advertiser* that their jail would only need average four juveniles a day to break even.<sup>19</sup> "If we fill it up, it should be a source of revenue for the county," said one county commissioner.<sup>20</sup> The facility costs \$89,000 a year to run, and Elmore County officials plan to charge \$50 per day to house out of county youth in the facility.<sup>21</sup> If the facility were filled with out of county children all the time—as may be the case, due to the low number of violent index offenses in Elmore—it could net the county huge profits.

While this may be beneficial to Elmore County residents, it is hardly the foundation upon which federal legislation should be based. In other words, Sheriff Franklin's Pods are a cash cow for Elmore County, not the needed solution to a burgeoning crime wave.

### *The real story from Tuscaloosa County, Alabama.*

Barely a hundred miles away, in Tuscaloosa County, where the area sheriff said he needed the power to lock up large numbers of violent juveniles in adult jails, the violent crime wave is not much larger than in Elmore County.

After you account for those youths 16 and over who are automatically charged as adults for murder—and thus, can be jailed with adults under current law—there were no juveniles arrested for homicide in Sheriff Sexton's county in 1996.<sup>22</sup> Just under 5% of Tuscaloosa County's juvenile arrests were for violent index offenses. Of the 41 violent index offenses committed by juveniles in Tuscaloosa County, twenty-seven were robberies, two were arrested for rape, and eleven, assault.<sup>23</sup> Since detention facilities are only designed to hold juveniles for the short periods between arrest and conviction, the 27-bed Tuscaloosa County Regional juvenile holding facility should have no trouble housing Sheriff Sexton's 41 violent youth offenders.

The real problem is that the Tuscaloosa regional facility is reportedly filled to capacity with non-violent offenders. The Sheriff, along with the two local juvenile court judges, the juvenile court referee, and local school officials, are currently prosecuting a "zero-tolerance" policy with respect to various forms of school misbehavior.<sup>24</sup>

Instead of suspension or expulsion, new rules in Tuscaloosa allow school principals to petition juvenile judges to transfer youths to the custody of the county, which then passes them along to the sheriff to be incarcerated in the regional facility. The juvenile court referee, in turn, is following the zero-tolerance policy by keeping anyone charged with any drug offense or simple assault (e.g. fighting in the school-yard) in the detention center until their case can be heard.

In Tuscaloosa, that can take six to eight weeks. Kids are reportedly being incarcerated in Sheriff Sexton's juvenile jail for possession of drugs, or for fighting, for up to two months before their case is heard. Gary Blume, a local lawyer who specializes in juvenile justice, says that he recently represented one 13-year-old girl who faced 6 to 8 weeks in the juvenile jail for possessing what a principal thought was marijuana, but which turned out to be oregano.<sup>25</sup> If the Tuscaloosa Sheriff were allowed to mix juveniles with adults, then oregano possession could have turned into a two month jail sentence—possibly with adult inmates.

Given the number of secure juvenile beds that are available in Tuscaloosa County, the only reason why Sheriff Sexton should have a "revolving door policy" for violent juvenile offenders is that he is jailing too many youth for school misbehavior.<sup>26</sup> Rather than change the JJDP rules to allow him to jail more kids with adults, Tuscaloosa's Sheriff should clear the local juvenile facility of petty delinquents, and refer them to community based programs, leaving secure bed spaces for the few violent offenders in

the county. Congress could help by funding counties to establish rigorous community based programs for youth, rather than jailing non-violent children with adults.

### *Juvenile Crime In Wyoming*

Wyoming, a sparsely populated state of 500,000 citizens, has been held out as another example of where it is necessary to allow children to be jailed with adults to curb violent crime. Carol Crump, a City Councilwoman from Casper, Wyoming, testified that juvenile crime in her city had increased 47 percent since 1993.<sup>27</sup> She explained that the Natrona County jail, which serves Casper, frequently breaks the JJDPA ban against jailing juveniles with adults. She called for a crime bill that would make this condition permanent. "Mr. Chairman, this solution addresses the problem of what to do with our violent juveniles on any given Saturday night," Crump testified.<sup>28</sup>

While Councilor Crump paints a picture of routine juvenile violence in Casper, there were only 6 juveniles arrested for violent index offenses in Natrona County in 1995, all of them were aggravated assaults.<sup>29</sup> There were no juvenile arrests for murder, rape, or robbery in Casper. This is not surprising, when you consider that in the entire of state of Wyoming, there were only 83 juvenile arrests for violent index offenses in 1995.<sup>30</sup> Measured against the total number of juvenile arrests, this means that only one percent of all youths arrested in Wyoming are arrested for violent index offenses. The Division of Criminal Investigation, the state agency which files the FBI's uniform crime report each year, warns against drawing the kinds of conclusions that Councilwoman Crump made on behalf of Wyoming: given the comparatively low volume of the index offenses, caution must be used when interpreting 'percent change' figures...."<sup>31</sup>

To add substance to her testimony, Councilwoman Crump attached a letter from Jeffrey M. Pfau, Chief of Police in the city of Gillette, and President of the Wyoming Association of Sheriffs and Police Chiefs. Pfau argued that Wyoming was struggling with a juvenile crime problem.<sup>32</sup> Yet even under Chief Pfau's watch, the city of Gillette only experienced two juvenile violent index arrests in 1995:<sup>33</sup> Outside of two arrests for robbery, there were no arrests for murder, rape or aggravated assault by juveniles in Gillette in 1995.<sup>34</sup>

Wyoming is one of the only states that currently does not meet JJDPA requirements forbidding the jailing of kids alongside adults. Exemptions were granted to Wyoming as late as 1996, which allowed law enforcement officials to incarcerate youth with adults in jail for short periods of time. In fact, Chief Pfau's letter called for a continuation of that very specific Wyoming exemption "not for the complete gutting of the JJDPA to serve the less than 100 violent juvenile offenders his state deals with each year.

### *Conclusions*

According to Sen. Orrin Hatch, "people are expecting us to do something about these violent teenagers. We've got to move on this."<sup>35</sup> Yet, crime statistics from those counties where law enforcement officials are clamoring for the power to jail kids with adults show no pressing reason to "move" on jailing juveniles with adults. The real story from Casper

and Gillette Wyoming, and Elmore County and Tuscaloosa, Alabama is that the number of violent index offenses committed by juveniles can be contained with resources law enforcement already have at their disposal. Some tinkering may be attempted to fine tune the system, but there is no reason for the wholesale gutting of a juvenile justice act which has provided some minimal level of protection and security for juveniles. Currently, out of the some 100,000 juveniles in secure detention around the country, the death rate for incarcerated kids is well beneath one percent, and the suicide rate is extremely low.<sup>36</sup> It did not always use to be that way. Sen. Birch Bayh (D-IN), who presided over the Judiciary Committee in 1973 which first authorized the requirement to separate juveniles from adults in jails, made clear at the time why the Senate passed the JJDP: "We have conducted numerous hearings on the juvenile justice system in this country, and we have learned all too well that children in trouble rarely receive the kind of help they need. Instead, they are locked up in large, antiquated institutions where they are frequently beaten, neglected and homosexually assaulted."<sup>37</sup> If we ignore these facts, and the recent history which has led to at least some minimum standard of treatment of youth offenders, we ought to have a better reason for doing so than prosecuting a war against a "violent juvenile crime" wave where it does not exist.

The authors would like to thank Professor Meda Chesney-Lind for her assistance with this report, and acknowledge and thank Heather Lynn Kane and Natasha Harvin for their research assistance.

This research is funded in part by a grant from [The California Wellness Foundation](#) (TCWF). Created in 1992 as a private and independent foundation, TCWF's mission is to improve the health of the people of California through proactive support of health promotion and disease prevention programs.

This study was funded by the [Center on Crime, Communities and Culture](#) and the [Public Welfare Foundation](#).

## *Endnotes*

1 The Congressional Record, Senate, June 18, 1997

2 On April 16, and May 5-6, the Senate Sub-Committee on Youth on Violence heard testimony favoring the watering down of the JJDP from law enforcement officials and judges representing Virginia, Alabama, Arizona and Wyoming.

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13 Lackeos, Nick. "Sheriff Defends Drug Stand." *The Montgomery Advertiser*, August 21, 1997.

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18 The Alabama Criminal Justice Information Center, Montgomery, Alabama (1996), *Crime in Alabama, 1996*. Some of the following data, which reveals the breakdown of how many "violent index offenses" were committed by juveniles, was prepared for the Justice Policy Institute by staff with the Alabama Criminal Justice Information Center.

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25 Ibid.

26 Sheriff Edmund Sexton, The Subcommittee on Youth Violence, April 16, 1997.

27 Testimony of Carol Crump, before the Subcommittee on Youth Violence of the Senate Judiciary Committee, Wednesday, May 6, 1997.

28 Ibid.

29 Attorney General, Division of Criminal Investigation, Cheyenne, Wyoming (1995). *Crime in Wyoming*, 1995., p. 46.

30 Ibid.

31 Ibid., p. 21.

32 Correspondence from Jeffrey M. Pfau, Chief of Police, the City of Gillette, March 7, 1996, attached to Carol Crumps testimony before the Subcommittee on Youth Violence of the Senate Judiciary Committee, Wednesday, May 6, 1997.

33 Attorney General, Division of Criminal Investigation, Cheyenne, Wyoming (1995). *Crime in Wyoming*, 1995, p. 32.

34 Ibid.

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**Suggested citation format for this report:** Schiraldi, Vincent and Ziedenberg, Jason. (1997) *The Pods of Elmore County: A Glimpse Into the Rhetoric Behind the Juvenile Crime Bill*.