

STATEMENTS OF POLICY

Title 37—LAW

COMMISSION ON CRIME AND DELINQUENCY [37 PA. CODE CH. 411]

Crime Victims Compensation

The Office of Victims' Services (OVS) of the Commission on Crime and Delinquency (Commission) rescinds §§ 411.101—411.103 to read as set forth in Annex A.

Purpose

The text of §§ 411.101—411.103 has been amended and incorporated in the remaining OVS regulations in Chapter 411 (relating to crime victims compensation). Therefore, §§ 411.101—411.103 are now obsolete.

Authority

The powers and duties of OVS are set forth in the Crime Victims Act (18 P. S. §§ 11.101—11.5102).

Fiscal Impact

There is no fiscal impact.

Affected Persons

No persons will be affected by this statement of policy.

Paperwork Requirements

There are no paperwork requirements.

Effective Date

This statement of policy will take effect upon publication in the *Pennsylvania Bulletin*.

(*Editor's Note:* Title 37 of the *Pennsylvania Code* is amended by deleting statements of policy in §§ 411.101—411.103 to read as set forth in Annex A)

MICHAEL J. KANE,
Executive Director

Fiscal Note: 35-30. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 37. LAW

PART VI. COMMISSION ON CRIME AND DELINQUENCY

CHAPTER 411. CRIME VICTIMS COMPENSATION

§§ 411.101—411.103. (Reserved).

[Pa.B. Doc. No. 07-637. Filed for public inspection April 13, 2007, 9:00 a.m.]

JUVENILE COURT JUDGES' COMMISSION [37 PA. CODE CH. 200]

Standards Governing the Use of Secure Detention Under the Juvenile Act; Standards Governing Hearings and Administrative Reviews for Juveniles Held in Secure Detention

The Juvenile Court Judges' Commission (Commission) amends Chapter 200, Subchapters A and B (relating to standards governing the use of secure detention under the Juvenile Act; and standards governing hearings and administrative reviews for juveniles held in secure detention) to read as set forth in Annex A.

Authority

This statement of policy is issued under section 4 of the act of December 21, 1959 (11 P. S. § 270-4).

Purpose and Requirements

This statement of policy sets forth minor amendments to the standards in Subchapters A and B. These standards provide guidance to juvenile court judges, juvenile court masters and juvenile probation officers regarding the use of secure detention and in conducting hearings and administrative reviews following a juvenile's admission to secure detention. All 67 county juvenile probation departments are required to comply with this statement of policy as a condition for participation in the Commission's Grant-In-Aid Program.

The amendments were made primarily to ensure conformity with relevant provisions of the Pennsylvania Rules of Juvenile Court Procedure. Other revisions were needed to ensure conformity with amendments to 18 Pa.C.S. (relating to the Crimes Code). The following is a summary of changes to the aforementioned standards in this statement of policy. In addition to the amendments listed, "child" and "children" have been replaced with "juvenile" and "juveniles," so that the standards are consistent with the terms used in the Pennsylvania Rules of Juvenile Court Procedure.

Subchapter A. Standards Governing the Use of Secure Detention Under the Juvenile Act

Section 200.3 (relating to detention required to protect the person or property of others or of the juvenile) has been amended to include two additional offenses under 18 Pa.C.S. Chapter 31 (relating to sexual offenses). These offenses were added to reflect amendments to 18 Pa.C.S. Chapter 31 that occurred after the adoption of this subchapter.

Sections 200.7 and 200.8 (relating to postdisposition detention awaiting placement; and detention pending or subsequent to a dispositional review proceeding) have been amended to replace incorrect references to § 200.6(a)(3) (relating to postadjudication detention pending disposition) with references to § 200.6(3).

Subchapter B. Standards Governing Hearings and Administrative Reviews for Juveniles Held in Secure Detention

Section 200.101(b) (relating to preadjudication detention) requires that the petition shall be filed with the clerk of courts within 24 hours or the next court business day when a juvenile remains in secure detention following a detention hearing, consistent with Pa.R.J.C.P. 242(D)

(relating to detention hearing). Language was added to subsection (c) to provide that if the juvenile is detained, an adjudicatory hearing will be held within 10 days of the filing of the petition, consistent with Pa.R.J.C.P. 404(A) (relating to prompt adjudicatory hearing). Additionally, language was added to provide that if a juvenile is detained and the adjudicatory hearing is not held, or notice of request for transfer is not submitted within the 10-day period, the juvenile shall be released from detention, consistent with Pa.R.J.C.P. 240(D) (relating to detention of juvenile). Language was also added to reflect the requirements for additional 10-day periods of detention, consistent with Pa.R.J.C.P. 240(D).

Language was added to § 200.102(a) (relating to postadjudication/predisposition detention) to clarify that a disposition hearing or a hearing to determine the need for continued secure detention shall be held within 20 days of the date of a ruling on the offenses, consistent with Pa.R.J.C.P. 510 (relating to prompt dispositional hearing).

In § 200.104 "Detention pending a disposition review proceeding for failure to adjust in placement," language was deleted from (a) which had provided an exception to the requirement for an informal detention hearing in cases where a juvenile had been in a secure placement facility immediately prior to admission to secure detention.

Section 200.105(b) (relating to detention pending a disposition review proceeding for violation of probation) was added to require that within 10 days of the informal detention hearing, a hearing on the motion to modify or revoke probation shall be held, consistent with Pa.R.J.C.P. 612(B)(1) (relating to modification or revocation of probation). Also, language in subsection (c) was amended to provide that unless a new dispositional order is entered, a hearing to determine the need for continued secure detention shall be held within 20 days of the hearing on the motion to modify or revoke probation.

Section 200.107(a) (relating to responsibility of probation officer) was amended to provide that the chief juvenile probation officer or designee is to provide to the court information as necessary to ensure that all juveniles placed in secure detention have the continued appropriateness of the detention is reviewed by the court. Language was deleted from subsection (a) which permitted a designee to the court to make these determinations.

Affected Parties

This statement of policy will affect courts of common pleas in this Commonwealth.

Cost and Paperwork Estimates

The amendments to these statements of policy may require changes to standardized paperwork in each jurisdiction.

Effective Date

This statement of policy will become effective upon publication in the *Pennsylvania Bulletin*.

Contact Person

For further information regarding this statement of policy, contact Lisa J. Freese, Director of Policy and Program Development, Juvenile Court Judges' Commission, 401 Finance Building, Harrisburg, PA 17120-0018, (717) 705-9003.

Findings

The Commission finds that amendments to these statements of policy are necessary for the effective use of

secure detention under 42 Pa.C.S. Chapter 63 (relating to the Juvenile Act) and for hearings and administrative reviews for juveniles held in secure detention.

Order

The Commission, acting under the authorizing statute, orders that:

(a) Title 37 of the Pa. Code Chapter 200, is amended by amending the statements of policy in §§ 200.1—200.9 and 200.101—200.107 to read as set forth in Annex A.

(b) The Executive Director of the Commission will certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) The order shall take effect upon publication in the *Pennsylvania Bulletin*.

JAMES E. ANDERSON,
Executive Director

Fiscal Note: 23-7. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 37. LAW

PART III. AGENCIES AND OFFICES

Subpart N. JUVENILE COURT JUDGES' COMMISSION

CHAPTER 200. JUVENILE COURT JUDGES' COMMISSION

Subchapter A. STANDARDS GOVERNING THE USE OF SECURE DETENTION UNDER THE JUVENILE ACT

Preamble

The purpose of Pennsylvania's juvenile justice system is to provide programs of supervision, care and rehabilitation which are consistent with the protection of the public interest and which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable juveniles who come within the jurisdiction of the court to become responsible and productive members of the community.

Secure detention services must be understood within the context of the services available within the juvenile justice system, and within the broader context of the purpose of the system, and of the juvenile justice process. A juvenile admitted to a juvenile detention center is provided access to a wide range of services, custody, supervision and assessments.

The "Standards Governing the Use of Secure Detention Under The Juvenile Act" adopted by the Juvenile Court Judges' Commission were developed with an understanding that overcrowding in juvenile detention centers presents danger to both residents and staff and can severely disrupt programs and services. Consequently, juvenile court judges and chief juvenile probation officers should take a leadership role in advocating for adequate juvenile detention services and alternatives, in monitoring detention center populations at the local level, and in developing strategies to be undertaken as facilities approach capacity.

These standards were also developed on the premise that decisions regarding admissions to secure detention facilities must be based on a commitment to utilize the most appropriate level of care consistent with the circumstances of the individual case. When the admission of a

juvenile to a secure detention facility is being considered by a judge, master or juvenile probation officer, preference should be given to nonsecure alternatives which could reduce the risk of flight or danger to the juvenile or community.

§ 200.1. Scope.

(a) These standards shall be applied in determining whether a juvenile who is alleged to be or has been found to be delinquent may be detained. A juvenile who is alleged to be or has been found to be a dependent child may not be detained in a secure detention facility unless the child is also alleged to be or has been found to be delinquent.

(b) Even though eligibility criteria may indicate that a particular juvenile may be detained, detention is not mandatory. In every situation in which secure detention is to be considered, forms of control short of secure detention which could substantially reduce the risk of flight or danger to the juvenile or the community shall be given preference.

(c) Preadjudication detention may never be imposed as a means of punishment or to apply sanctions.

(d) Secure detention is not to be used when a juvenile alleged to be delinquent cannot be released solely because there is no parent, guardian or custodian able to assume responsibility or adequately supervise the juvenile.

§ 200.2. Statement of reasons requirement.

(a) If secure detention is ordered or authorized, except as provided in subsections (b) and (c), whether at intake or at a detention or other hearing before a juvenile court judge or juvenile court master, a contemporaneous written statement of reasons and facts shall accompany the detention decision specifying the following:

(1) There is a reasonable basis to believe that the juvenile has committed the act for which he is being detained—in the case of judicial authorities, that probable cause exists—and that the juvenile is not excluded from the jurisdiction of juvenile court by age or another reason.

(2) The juvenile's detention is permitted under this subchapter.

(3) The alternatives to secure detention which were considered and rejected.

(4) The reasons why secure detention is required and alternatives are not appropriate. Separate reasons need not be given for each alternative considered.

(b) If secure detention is ordered after the juvenile is found to have committed a delinquent act but prior to the court's determination that residential placement will be ordered at disposition, the court shall indicate on the record or in a court order why secure detention is required and alternatives are not appropriate. Separate reasons need not be given for each alternative considered.

(c) Once the court has determined that residential placement will be ordered or continued, if previously ordered, no statement of reasons is required regarding the use of secure detention pending placement.

§ 200.3. Detention required to protect the person or property of others or of the juvenile.

A juvenile may not be detained in secure detention under 42 Pa.C.S. §§ 6325, 6326 and 6331 (relating to detention of child; release or delivery to court; and release from detention or commencement of proceedings) for the purpose of protecting the person or property of others or of the juvenile unless one of the following exists:

(1) The juvenile is alleged to be delinquent on the basis of acts which would constitute the commission of, conspiracy, solicitation or an attempt to commit any of the following crimes:

(i) Criminal homicide, 18 Pa.C.S. § 2502, § 2503 or § 2504 (relating to murder; voluntary manslaughter or involuntary manslaughter).

(ii) Rape, 18 Pa.C.S. § 3121 (relating to rape).

(iii) Robbery, 18 Pa.C.S. § 3701 (relating to robbery).

(iv) Robbery of motor vehicle, 18 Pa.C.S. § 3702 (relating to robbery of motor vehicle).

(v) Aggravated assault, 18 Pa.C.S. § 2702 (relating to aggravated assault).

(vi) Statutory sexual assault, 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

(vii) Involuntary deviate sexual intercourse, 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(viii) Sexual assault, 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(ix) Aggravated indecent assault, 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(x) Kidnapping, 18 Pa.C.S. § 2901 (relating to kidnapping).

(xi) Arson, 18 Pa.C.S. § 3301 (relating to arson and related offenses).

(xii) Burglary, 18 Pa.C.S. § 3502 (relating to burglary) involving a structure adapted for overnight accommodation.

(xiii) Terroristic threats, 18 Pa.C.S. § 2706 (relating to terroristic threats).

(xiv) Stalking, 18 Pa.C.S. § 2709.1 (relating to stalking).

(xv) Causing or risking catastrophe, 18 Pa.C.S. § 3302 (relating to causing or risking catastrophe).

(xvi) Riot, 18 Pa.C.S. § 5501 (relating to riot).

(xvii) Felonious violations of The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-143).

(xviii) Felonious intimidation of witnesses or victims, 18 Pa.C.S. § 4952 (relating to intimidation of witnesses or victims).

(xix) Felonious retaliation against witness, victim or party, 18 Pa.C.S. § 4953 (relating to retaliation against witness, victim or party).

(2) The juvenile is alleged to be delinquent on the basis of an offense which involved the use or possession of a firearm or explosives, or an offense—other than mere possession—which involved the use or possession of a deadly weapon—other than a firearm or explosives—as defined in 18 Pa.C.S. § 2301 (relating to definitions).

(3) The juvenile is alleged to be delinquent on the basis of an offense which is classified as a felony and one of the following exists:

(i) The juvenile is currently on probation, being supervised under a consent decree, or otherwise under the supervision of the court following an adjudication of delinquency.

(ii) The juvenile has been found to be delinquent within the preceding 18 months.

(4) The juvenile is alleged to be delinquent and is in violation of conditions of house arrest, in-home detention, electronic monitoring, shelter care or other nonsecure placement, ordered or authorized as an alternative to secure detention.

(5) The juvenile is on probation or is otherwise under the supervision of a court following an adjudication of delinquency, based on a felony, and is alleged to have committed a delinquent act or to have twice violated technical conditions of probation or other postadjudication supervision.

(6) The juvenile or juvenile's attorney has voluntarily and in writing requested placement in secure detention for the protection of the juvenile, in which case immediate release shall occur upon the request of the juvenile or attorney.

§ 200.4. Detention required because the juvenile may abscond or be removed from the jurisdiction of the court.

A juvenile may not be detained in secure detention under 42 Pa.C.S. §§ 6325, 6326 and 6331 (relating to detention of child; release or delivery to court; and release from detention or commencement of proceedings) because the juvenile may abscond or be removed from the jurisdiction of the court unless one of the following occurs:

(1) The juvenile is an absconder from an institution or other placement to which the juvenile was committed as a result of a previous adjudication of delinquency.

(2) The juvenile has willfully failed to appear at the hearing on the petition or other hearing after having been served with a court order or summons to appear.

(3) The juvenile has a recent demonstrable record of willful failure to appear at previous juvenile proceedings.

(4) The juvenile has been verified to be a fugitive from another jurisdiction, an official from which has requested that the juvenile be detained.

(5) The juvenile absconded from secure detention, shelter care, in-home detention, house arrest or other nonsecure placement, or while subject to electronic monitoring, ordered or authorized pending a court hearing or placement.

(6) The juvenile presents extraordinary circumstances requiring secure detention to prevent the juvenile from absconding. The circumstances may include, but are not limited to, the juvenile's age, character, mental condition, ties to the community, the nature of the juvenile's family relationships, drug or alcohol addiction or substance abuse.

§ 200.5. Detention required because the juvenile has no parent, guardian or custodian.

A juvenile may not be detained in secure detention under 42 Pa.C.S. §§ 6325, 6326 and 6331 (relating to detention of child; release or delivery to court; and release from detention or commencement of proceedings) solely because the juvenile has no parent, guardian, custodian or other person able to provide supervision and care and capable of returning the juvenile to the court when required.

§ 200.6. Postadjudication detention pending disposition.

A juvenile whom the court has found to have committed the act by reason of which the juvenile was alleged to be delinquent or whom the court has found to be delinquent

may not be held in secure detention pending disposition unless one of the following exists:

(1) The adjudication or finding was based on an offense for which detention was or could have been authorized or ordered under § 200.3 (relating to detention required to protect the person or property of others or of the juvenile).

(2) The juvenile was initially detained, was eligible for detention, or, based on more recent information, would now be eligible for detention under § 200.4 (relating to detention required because the juvenile may abscond or be removed from the jurisdiction of the court) and the court determines detention to be required.

(3) The court has determined that placement of the juvenile at disposition is probable and continued detention is required prior to disposition based upon consideration of the following factors:

(i) The nature of the substantiated offense.

(ii) The juvenile's employment and student status.

(iii) The nature of the juvenile's family relationships.

(iv) The juvenile's past and present residences.

(v) The juvenile's age, character, mental condition, previous juvenile record, and drug or alcohol addiction or substance abuse.

(vi) If the juvenile has previously been released pending a court proceeding, whether the child appeared as required.

(vii) Other facts relevant to whether the juvenile has strong ties with the community or is likely to flee the jurisdiction.

§ 200.7. Postdisposition detention awaiting placement.

A delinquent juvenile whom the court has committed to an institution or other placement, who was otherwise ordered removed from his home at disposition may not be held in secure detention pending transfer to the placement unless one of the following exists:

(1) The juvenile was found to be delinquent on the basis of an offense for which detention would be permitted under § 200.3 (relating to detention required to protect the person or property of others or of the juvenile).

(2) The juvenile was initially detained, was eligible for detention or based on more recent information would now be eligible for detention under § 200.4 (relating to detention required because the juvenile may abscond or be removed from the jurisdiction of the court).

(3) The juvenile is awaiting placement in a Youth Development Center secure unit or other secure residential treatment program.

(4) The juvenile is awaiting placement and the court has determined that secure detention is required pending transfer to the placement based upon consideration of the factors delineated in § 200.6(3) (relating to postadjudication detention pending disposition).

§ 200.8. Detention pending or subsequent to a dispositional review proceeding.

A juvenile may not be detained in secure detention pending or subsequent to a dispositional review proceeding unless one of the following occurs:

(1) The juvenile is in placement or is awaiting transfer to a Youth Development Center secure unit or other secure residential treatment program.

(2) The juvenile was returned from placement for failure to adjust.

(3) Secure detention is otherwise required based upon consideration of the factors delineated in § 200.6(3) (relating to postadjudication detention pending disposition).

§ 200.9. Authorization for detention in cases of extraordinary and exceptional circumstances.

(a) A juvenile may be detained in secure detention even if this subchapter does not otherwise authorize detention if the following are met:

(1) The facts present extraordinary and exceptional circumstances which require the use of secure detention.

(2) A statement of reasons accompanying the detention includes an explanation of why an exception was warranted and why nonsecure options were rejected.

(b) Detention under this section may not be authorized routinely or because nonsecure alternatives do not exist in adequate numbers, but only in the exceptional and extraordinary case.

(c) Secure detention is not to be used when a juvenile alleged to be delinquent cannot be released solely because there is no parent, guardian or custodian able to assume responsibility or adequately supervise the juvenile.

Subchapter B. STANDARDS GOVERNING HEARINGS AND ADMINISTRATIVE REVIEWS FOR JUVENILES HELD IN SECURE DETENTION

§ 200.101. Preadjudication detention. (See Pa.R.J.C.P. 242(D), 391 and 404(A))

(a) Within 72 hours of the admission of a juvenile to secure detention, the informal detention hearing shall be held.

(b) If a juvenile remains detained after the hearing, a petition shall be filed with the clerk of courts within 24 hours or the next court business day.

(c) If a juvenile is detained, an adjudication hearing shall be held no later than 10 days after the filing of the petition.

(d) Except as provided in paragraphs (1) and (2), if the adjudicatory hearing is not held or notice of request for transfer is not submitted within the 10-day period, the juvenile shall be released.

(1) A juvenile may be detained for an additional single period not to exceed 10 days when the court determines that the following exist:

(i) Evidence material to the case is unavailable.

(ii) Due diligence to obtain the evidence has been exercised.

(iii) There are reasonable grounds to believe that the evidence will be available at a later date.

(iv) The detention of the juvenile would be warranted.

(2) A juvenile may be detained for successive 10-day intervals if the delay is caused by the juvenile. The court shall state on the record if failure to hold the hearing resulted from delay caused by the juvenile. Delay caused by the juvenile includes, but is not be limited to, one or more of the following:

(i) Delay caused by the unavailability of the juvenile or the juvenile's attorney.

(ii) Delay caused by any continuance granted at the request of the juvenile or the juvenile's attorney.

(iii) Delay caused by the unavailability of a witness resulting from conduct by or on behalf of the juvenile.

§ 200.102. Postadjudication/predisposition detention. (See Pa.R.J.C.P. 510)

(a) Within 20 days of a finding by the court that a juvenile has committed a delinquent act, a disposition hearing or a hearing to determine the need for continued secure detention shall be held.

(b) Within 20 days of this hearing, if the disposition hearing has not been held or a final dispositional order entered, a hearing shall be held to review the status of the case and to determine the need for continued secure detention.

(c) Until a disposition or a specific placement is ordered by the court, the court shall hold a hearing by the 20th day from the most recent court proceeding to review the status of the case and to determine the need for continued secure detention.

§ 200.103. Postdisposition/preplacement detention.

(a) At the 10th and 20th days from the most recent court proceeding, the court or designee shall administratively review the status of the case and determine the need for continued secure detention.

(b) Within 30 days of the most recent court proceeding, a hearing shall be held to review the status of the case and to determine the need for continued secure detention.

(c) Subsequent administrative reviews and hearings shall continue to be held pursuant to these time frames until the child is admitted to a dispositional placement or is otherwise released from secure detention.

§ 200.104. Detention pending a disposition review proceeding for failure to adjust in placement. (See Pa.R.J.C.P. 605 and 610)

(a) Within 72 hours of the admission of a juvenile to secure detention, an informal detention hearing shall be held.

(b) Within 20 days of the most recent court proceeding, or from the date of admission to secure detention if no informal detention hearing was required, the disposition review hearing or a hearing to determine the need for continued secure detention shall be held.

(c) Until a specific disposition order is entered, the court shall hold a hearing by the 20th day from the most recent court proceeding to review the status of the case and to determine the need for continued secure detention.

§ 200.105. Detention pending a disposition review proceeding for violation of probation. (See Pa.R.J.C.P. 605, 610 and 612)

(a) Within 72 hours of the admission of a juvenile to secure detention for a violation of probation, an informal detention hearing shall be held.

(b) Within 10 days of the informal detention hearing, a hearing on the motion to modify or revoke probation shall be held.

(c) Unless a new dispositional order is entered, a hearing to determine the need for continued secure detention shall be held within 20 days of the hearing on the motion to modify or revoke probation.

(d) Until a new dispositional order is entered, the court shall hold a hearing by the 20th day from the most recent

court proceeding to review the status of the case and to determine the need for continued secure detention.

§ 200.106. Detention subsequent to an order resulting from a disposition review proceeding, where a specific placement or disposition has been ordered.

(a) At the 10th and 20th days from the most recent court proceeding, the court or designee shall administratively review the status of the case and determine the need for continued secure detention.

(b) Within 30 days of the most recent court proceeding, a hearing shall be held to review the status of the case and to determine the need for continued secure detention.

(c) Subsequent hearings and reviews shall be held pursuant to these time frames until the juvenile is admitted to a dispositional placement, or is otherwise released from secure detention.

§ 200.107. Responsibility of probation officer.

(a) The chief juvenile probation officer or designee shall provide to the court information necessary to ensure that juveniles placed in secure detention have the continued appropriateness of their detention determined by the court in accordance with this subchapter.

(b) Note: An administrative review of a case should entail consideration of the information relevant to an understanding of why the juvenile is being held in secure detention, whether secure detention services or an alternative thereto continue to be required and what must occur to enable the juvenile to be released or transferred to another facility. It is not intended that the juvenile be present during these reviews.

(c) Administrative reviews should serve to minimize delays in the release or transfer of a juvenile by helping to ensure that individuals are carrying out their respective responsibilities related to the juvenile's case. At the conclusion of each review, the juvenile's anticipated date of release or transfer should be noted, together with the date of the next administrative review or hearing and any actions which are to occur prior thereto. Administrative reviews are to be documented in the juvenile's case file or record.

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