

PROGRAM MEMO #14-2005

December 22, 2005

Program Memo: Title 390, Detention Services for Juvenile Offenders #14- 2005

From: Kim B. Hawekotte, Administrator
Office of Juvenile Services/ Office of Protection and Safety

Todd Reckling, Administrator
Office of Protection and Safety

Signed by _____, Director
Nebraska Department of Health and Human Services

Effective Date: January 1, 2006

Duration: Until regulation is revised

Contact person: If you have questions about this program memo, please contact Kim Hawekotte at (402) 471-8403 or kim.hawekotte@hss.ne.gov

Applicable State Statutes

Neb. Rev. Stat. §43-408 (4)(b). This statute references juveniles placed in OJS facilities or non-state owned facilities. This section allows for a temporary placement change (i.e. detention) without court approval when the juvenile is in a harmful or dangerous situation.

Neb. Rev. Stat. § 43-410. This statute allows a protection and safety/ juvenile services worker to detain a juvenile absconder or a juvenile attempting to abscond from a placement of evaluation or OJS commitment.

Neb. Rev. Stat. § 43-418 (1). This statute grants the authority for a protection and safety/juvenile services worker to detain juveniles who are violating parole, attempting to leave the jurisdiction, or placing lives and/or property in danger.

Applicable HHS Policy and Guidebook

Regulation: Title 390 NAC 11-002.03A. This regulation designates that HHS staff may apprehend and detain children committed to HHS-OJS as juvenile offenders.

Guidebook: See section entitled "Case Management for Juvenile Offenders and Status Offenders – Apprehension and Detention" Section X page 54.

Mission of the Juvenile Detention Facility

The American Correctional Association outlines the mission of the juvenile detention facility as:

1. A facility to provide short-term care in; or
2. A facility to secure custody to juveniles who are accused or adjudicated pending court action; or
3. Are awaiting transfer to another facility and who can not be served in an open setting.

A detention center is designed for youth that are of high risk and a danger to themselves or the community.

HISTORY

Past and Present Detention Practices

Originally, a detention facility for juvenile offenders, under the care and custody of the Department of Correctional Services, was used in the strictest sense of the mission statement above. The detention facility was used to provide short-term care to juveniles on parole from a Youth Rehabilitation and Treatment Center (YRTC). These juveniles violated terms of their juveniles parole agreement and were returning to a YRTC. The length of stay of detention was only the time necessary to coordinate the return of the youth to the YRTC. The preliminary hearing process leading to revocation of parole was completed at the YRTC rather than at a detention facility.

State statutes in 1994 created the Office of Juvenile Services (OJS). These statutes gave the court the ability to commit a youth to OJS for placement in the community. These statutory provisions have changed the use of detention facilities. Since most of these youth are in detention when the court orders an out-of-home placement, the youth remain detained until placement is located. In some cases, the courts have ordered that a youth remain in a detention facility pending placement. These statutes also outline a return process to the courts for the purpose of increasing the level of care for juveniles not succeeding in their placement. These types of case have most generally required detention services. The statutes mandate a preliminary hearing as soon as possible but within 72 hours of detaining a parole violator and further encourage an on-site hearing at a detention facility for expediency and availability of the family. Another reason youth are being detained is to complete an OJS evaluation prior to full commitment to HHS-OJS.

Each of these practices has led to juveniles spending more time in detention facilities to the detriment of their receiving rehabilitative services.

Purpose: The purpose of this program memo is to clarify and describe the types of juvenile offenders placed in detention facilities and to establish maximum time frames for those juveniles to remain in detention. This memorandum will explain the mission of detention facilities in relationship to their use today with juveniles

committed to the Department of Health and Human Services, Office of Juvenile Services.

This program memo must not be used to increase or justify the use of Emergency Shelter Care for these youth. This program memo must be read and utilized in conjunction with Program Memo #13-2005 - Use of Emergency Shelter Care Placements. Program Memo #13 –2005 is incorporated by reference into this program memo.

REQUIREMENT FOR AUTHORIZING DETENTION

A Juvenile Services Officer /Protection and Safety worker will place no juvenile offender or parolee in a detention facility without consultation and written approval of his/her supervisor as outlined in 390 NAC 11-002.03A.

DETENTION DESCRIPTION – TIME FRAMES: Seven types of detention descriptions are listed below and are as follows:

1. Juveniles receiving an OJS evaluation while in a detention facility.

Service Areas will ensure that juveniles committed to HHS-OJS for a residential evaluation in a detention facility will not be detained more than 10 days without the authorization of the Protection and Safety Administrator or his/her designee. Information pertaining to juveniles committed to HHS-OJS for a residential evaluation will be accumulated and sent to the Administrator for the Office of Juvenile Services of his/her designee every 3 months.

2. Juveniles directly committed to OJS awaiting Initial Level of Care.

Juveniles ordered to HHS-OJS for placement in the community will be removed from detention immediately, upon the Department becoming aware of the court order for “out-of-home level of care.”

If the juvenile has not been removed from detention within 72 hours, there will be a review by the worker’s supervisor and written documentation will be placed in the juveniles file including the reasons why the juvenile still requires detention. This supervisory review, including the required documentation, will continue to occur every 72 hours thereafter. No juvenile must remain in a detention facility more than 15 days without the written authorization of the Protection and Safety Administrator of his/her designee.

If the court orders that the juvenile must remain in detention until placement is located and/or approved by the court, the Service Area, either through the Juvenile Services Officer/Protection and Safety Case Manager or HHS-OJS attorney, will contact the court

to request that the court order be rescinded so that the juvenile can be placed in a less restrictive alternative placement that is more consistent with the youth's permanency plan.

If the court order does not require court approval of the placement for the youth, the youth will be moved as soon as a placement is available.

3. Juveniles directly committed to OJS who are awaiting a higher level of placement or have violated their Conditions of Liberty Agreement.

When the need for a higher level of placement is required or there has been a violation of the Conditions of Liberty Agreement the Juvenile Services Officer/Protection and Safety Case Manager/Worker may place the juvenile in detention **ONLY** if the juvenile is in a harmful or dangerous situation.

In order to detain a juvenile, the Juvenile Service Officer/Protection and Safety Worker will deliver to the county attorney an Affidavit detailing the reasons why detention is required for the juvenile and what the case plan is regarding the juvenile's release from detention.

If the county attorney does not file the appropriate documents with the court within 24 hours of receiving the Affidavit, the juvenile must immediately be removed from the detention facility.

If the county attorney does not file the appropriate documents with the court within 24 hours of receiving the Affidavit, this does meet the statutory requirements of obtaining court approval within 15 days of the immediate temporary change of placement.

The Juvenile Services Officer/Protection and Safety worker will be present at the hearing and present a case plan that must include what is in the best interest of the juvenile so that the juvenile may be removed from the detention facility immediately.

If the juvenile has not been removed from the detention facility within 72 hours from the hearing before the juvenile court, there will be a review by the worker's supervisor and written documentation will be placed in the juvenile's file including the reason that the juvenile still requires detention. This supervisory review, including the required documentation will occur every 72 hours thereafter.

No juvenile must remain in a detention facility more than 15 days without the written authorization of the Protection and Safety Administrator or his/her designee.

If the court orders that the juvenile must remain in detention until placement is located and/or approved by the court, the Service Area will contact the court to request that the order be rescinded so the juvenile may be placed in a less restrictive alternative placement that is more consistent with the youth's permanency plan.

If the court order does not require that the court approval of the placement for the youth, the youth will be moved as soon as a placement is available.

4. Juveniles directly committed to OJS who are detained for committing new law violations and are being prosecuted in juvenile court.

If the juvenile is being detained by the juvenile court on the case involving the new law violations, the county must be responsible for any and all costs of detention.

If the juvenile is being detained by the juvenile court on the case that originally placed the juvenile in the custody of HHS-OJS, the necessity for detention must be reviewed immediately by the Supervisor. If the juvenile has not been removed from detention with 72 hours, there will be a further review by the worker's supervisor and written documentation will be placed in the juvenile's file including the reasons the juvenile still requires detention. This supervisory review, including the required documentation will continue to occur every 72 hours thereafter. A juvenile must not remain in a detention facility more than 15 days without the written authorization of the Protection and Safety Administrator of his/her designee.

If the court orders that the juvenile must remain in detention until a placement is located and/or approved by the court or until the new law violations have been adjudicated, the Service Area will contact the court to request that the order be rescinded so that the juvenile may be placed in a less restrictive alternative placement that is more consistent with the permanency plan.

If the court does not require court approval of the placement for the youth, the youth will be moved as soon as a placement is available.

5. Juveniles on conditional release from a YRTC that have committed a violation of their Conditions of Liberty Agreement when a revocation proceeding is not being filed.

When there has been a violation of the Conditions of Liberty Agreement the Juvenile Services Officer/Protection and Safety Worker may place the juvenile in detention **ONLY** if the juvenile is in a harmful or dangerous situation.

This group of juveniles must not remain in detention more than 48 hours. A Behavioral Accountability meeting will be held at the time the juvenile is released from detention. The Department will prepare a detailed written plan at the conclusion of the Behavioral Accountability meeting. This meeting does not have to occur in a detention facility.

If the decision is made at the Behavioral Accountability meeting that a revocation proceeding is going to be pursued, the Preliminary Hearing must be held within 72 hours from the date and time of detention and not from the date and time of the Behavioral Accountability meeting.

6. Juveniles on conditional release from a YRTC that have committed a violation of the Conditions of Liberty Contract or Conditions of Liberty Agreement with a revocation proceeding being filed.

This group of juveniles must have a Preliminary Hearing conducted within 72 hours from the time of apprehension and/or detention. If after the Preliminary Hearing the juvenile is being returned to YRTC, the juvenile will be returned to the community in an appropriate placement within 24 hours from the decision of the hearing officer. Any exception to the above, must be at the written authorization of the Protection and Safety Administrator or his/her designee.

7. Juveniles on conditional release from a YRTC that are detained for committing a new law violation and are being prosecuted in juvenile court.

If the juvenile is being detained by the juvenile court on the case involving new law violations, the county must be responsible for any and all costs of detention.

OTHER DETENTION SCENARIOS

1. There are no time restrictions for juveniles that are placed in detention by law enforcement for adult offenses to be disposed of in adult court. The same is true if the juvenile is being detained pursuant to an adult court hold. In these cases, the Service Area will not file a juvenile hold order unless it appears that the charges will be dismissed and/or not prosecuted and the Service Area still is responsible to resume handling the case as a juvenile. During the time these cases are prosecuted in the adult court system, there will not be any financial responsibility for the payment of detention costs for HHS-OJS.
2. Staff must never place juveniles that are solely adjudicated for a status offense or an abuse/neglect in a detention facility. Staff will discourage the court from ever placing this category of youth in a detention facility. If the youth has multiple adjudications under Ne. Rev. Stat. § 43-247, one of the adjudications must be based upon the delinquency provisions in order for the youth to be held in a detention facility. If for any reason a status offense or abuse/neglect youth will be placed in a detention facility, the above referenced time frames will apply.
3. Juvenile offenders from other states arrested in Nebraska may be placed in detention and held in a detention facility for up to 5 working days after the youth has appeared in court and signed the consent to return form. HHS-OJS is not financially obligated for any detention costs unless the juvenile judge places temporary care and custody with HHS pending his/her return to the home state. If this situation arises, the Protection and Safety Administrator will be made aware of the orders of the court.
4. HHS-OJS is not financially obligated to pay detention costs to other states when HHS-OJS juveniles are apprehended in other states and held at their respective detention facilities. Upon placement in detention in a Nebraska facility, the Service Area will complete a preliminary hearing within 72 hours and follow the time frames set above.
5. Any and all time references made in this Program Memorandum will be defined as calendar days and not judicial days.