WASHINGTON'S JUVENILE STATUS OFFENSE LAWS

Juvenile status offense laws give courts authority over children's acts, like parental defiance and truancy, that have no adult equivalents.¹ Rooted in archaic paternalism, these often harsh, vague, and inequitable laws have been the subject of constitutional challenges² and calls for their abolition.³ Although some jurisdictions have modified their status offense laws in recent years,⁴ all jurisdictions still retain authority over status offenders.⁵ The Washington State Legislature, in a broad revision

¹ The term "status offense laws" derives from the fact that historically some of the laws have punished a child's status or condition rather than specific behavior. A former Washington statute, for example, defined as dependent a child "in danger of growing up to lead an idle, dissolute or immoral life." Juvenile Court Law, ch. 160, § 1(16), 1913 Wash. Laws 520 (formerly codified at WASH. REV. CODE § 13.04.010(8) (1976)) (repealed 1977) (repeal effective July 1, 1978). The state could institutionalize all dependent children until the age of 21. Id. §§ 8, 10 (amended 1967). See note 54 infra.

² As used in juvenile law literature and in this comment, "status offense laws" means all juvenile legislation governing acts that are not criminal if adults commit them. See Board of Directors, National Council on Crime and Delinquency, Jurisdiction over Status Offenses Should Be Removed from the Juvenile Court, 21 CRIME & DELINQUENCY 97 (1975).

³ For a comprehensive analysis of the types and characteristics of status offense laws, see Rosenberg & Rosenberg, The Legacy of the Stubborn and Rebellious Son, 74 Mich. L. REV. 1097, 1098-1109 (1976).

⁴ See, e.g., Blondenheim v. State, 84 Wash.2d 874, 529 P.2d 1096 (1975); In re Jackson, 6 Wash. App. 962, 497 P.2d 259 (1972).


of its juvenile laws effective July 1, 1978, replaced the state's status offense laws with procedures emphasizing voluntary social services for rebellious children and their families. Reflecting modern theories of child behavior, the new laws depart from traditional juvenile court philosophy and offer generally superior solutions to the problem of unruly children. The legislature, however, also instituted a new status offense applicable if the voluntary procedures fail. Ambiguous and impractical, the legislation's new status offense represents a partial retention of the harsh paternalism of past juvenile laws.

This comment discusses the history and characteristics of traditional status offense laws, demonstrates why the laws are a poor response to juvenile misbehavior, and examines proposals to improve them. In subsequently analyzing the new Washington laws, this comment concludes that the legislature, though implementing some of these proposals, failed to apply a consistently progressive approach to its new legislation. Inadequate protection for some children and inequitable application of provisions in the new laws may result. Finally, this comment suggests ways to improve the Washington legislation.


6. Wash. Rev. Code §§ 13.04.005-.40.300, 28A.27.070, 74.13.031(3), (4) (Supp. 1977). In addition to making the changes in the state's status offense laws that are the subject of this comment, the Washington Legislature instituted a form of determinate sentencing for juveniles who commit crimes and revised the grounds and procedures for termination of parental rights over abandoned, abused, and neglected children. See Krajick, A Step Toward Determinacy for Juveniles, Corrections, Sept., 1977, at 37; Comment, Termination of Parental Rights in Washington, 2 U.P.S. L. Rev. 155 (1978).


8. Id. § 13.34.030(2)(d). See text accompanying notes 118-52 infra.
I. TRADITIONAL JUVENILE STATUS OFFENSE LAWS

Laws to control unruly children are an ancient idea that found early and ultimately universal acceptance in this country. Following the language of the Old Testament, a 1625 colonial Massachusetts law prescribed the death penalty for "a stubborn and rebellious son . . . which will not obey the voice of his father or the voice of his mother." By the nineteenth century, laws in various jurisdictions permitted the institutionalization of "incorrigible" children. In the late nineteenth and early twentieth centuries, many legislatures enacted lengthy statutes giving the newly-established juvenile courts authority over many kinds of juvenile misbehavior. Today, all United States jurisdictions have status offense laws governing children's noncriminal misconduct.

12. E.g., Act of Feb. 15, 1905, ch. 18, §§ 1, 7, 1905 Wash. Laws 34 (repealed 1909). This legislation, establishing a special "juvenile court session" of the superior court, permitted the institutionalization of a child under age 17 who is incorrigible [sic] or who knowingly associates or lives with thieves, vicious, immoral or disreputable persons; or who is growing up in idleness or crime; or habitually begs or receives alms; or who is found living in any house of ill fame; or who knowingly visits or enters a house of ill repute; or who knowingly patronizes or visits any policy shop or place where any gambling device is or shall be operated; or who patronizes or visits any saloon or dram shop where intoxicating liquors are sold; or who patronizes or visits any public pool room or bucket shop; or who wanders about the streets at night without being on any lawful business or occupation; or who habitually wanders about any railroad yards or tracks, or jumps or hooks onto any moving train, or enters any car or engine without any lawful authority; or who habitually uses vile, obscene, vulgar, profane or indecent language; or is guilty of immoral conduct in any public place, or about any school house; and any child under the age of eight years who is found peddling or selling any articles; or singing or playing any musical instrument upon the street or giving any public entertainment.
13. See note 5 supra. Although juvenile court proceedings are civil rather than criminal, see In re Gault, 387 U.S. 1, 17 (1967), this comment uses "noncriminal" to describe...
Many status offense laws are ambiguous and overly punitive. By using broad terms like "incorrigible child" or "juvenile in need of supervision," many of the laws enable courts to exercise jurisdiction over a wide variety of behavior. Additionally, some juvenile laws fail to provide different penalties for status offenses and delinquent acts, acts violating the criminal law. Connecticut courts, for example, may impose identical sentences on a runaway child and a juvenile burglar. Secure detention and institutional commitments of status offenders have been frequent in many jurisdictions.

The purposes of status offense laws explain their characteristics. Status offense laws in America originally enabled colonial society to maintain children as disciplined members of the family work force. Since the early nineteenth century, defenders of the acts that are not criminal if adults commit them.

16. A study by Yale University law students of status offense cases in New York City found such allegations as having undesirable boyfriends, refusing to bathe regularly, and sleeping all day were sufficient to justify official intervention in the lives of children under New York's "person in need of supervision" statutes, N.Y. FAM. CT. ACT §§ 711-784 (McKinney 1975 & Supp. 1977-1978). The most frequent bases for intervention were "short run away," "refusal to obey," and truancy. Note, Ungovernability: The Unjustifiable Jurisdiction, 83 YALE L.J. 1383, 1387 n.33 (1974) [hereinafter cited as Ungovernability].
17. See STANDARDS, supra note 3, at 5.
19. Juvenile detention facilities are children's jails designed for the short-term housing of children involved with the juvenile justice system. Accused and convicted status offenders and delinquents are typically housed together in these facilities, sometimes with abused and neglected children. Placement in these facilities is always "temporary," but many children, especially status offenders, remain in detention for long periods awaiting other placements or their return home. See The Detention and Jailing of Juveniles: Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary, 93rd Cong., 1st Sess. (1973) [hereinafter cited as 1973 Hearings]. Institutions provide longer-term housing of adjudicated juveniles. These facilities include training schools (the most prevalent and most secure type), forestry camps, ranches, and farms. Juvenile institutions also typically house status offenders and delinquents together. LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, U.S. DEP'T OF JUSTICE, CHILDREN IN CUSTODY 5-8 (1974). On a typical day in 1971, juvenile detention facilities and institutions in the United States held approximately 50,000 adjudicated children. Of the approximately 31,000 inmates for whom offense data were available, 70 per cent of the girls and 23 per cent of the boys were status offenders. Id. at 6-8.
20. Sidman, supra note 10, at 43-44. Colonists found this need greater in America than in England. Here, farms were larger, requiring the labor of children and servants. The abundance of land, moreover, coupled with the scarcity of labor, reduced the economic dependence of colonial children upon their parents. Laws arose to keep children
laws have claimed the laws are necessary to prevent unruly children from becoming delinquents or criminals. 21 Confidence in the effectiveness of institutionalization and other forms of state intervention to reform wayward children reached its zenith with the advent of the juvenile court movement in the late nineteenth and early twentieth centuries. 22 Broadly written laws permitted courts wide discretion in selecting children believed most in need of reform. Status offenders could receive the same sentences as delinquent children because the courts’ concern supposedly was with the children’s social or emotional needs rather than with the acts the children committed. The juvenile court founders did not consider these sentences punishment, but rather means to mold wayward youths into responsible citizens. 23

In the midst of attacks on the juvenile court system in recent years, 24 however, critics have shown status offense laws rest on mistaken beliefs about adolescent behavior. Although defenders of status offense laws claim the laws help courts identify potential

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21. An 1839 Pennsylvania court, for example, defended the institutional commitment of an unruly girl as necessary to prevent inevitable and more serious misbehavior: “The infant has been snatched from a course which must have ended in depravity; and, not only is the restraint of her person lawful but it would be an act of extreme cruelty to release her from it.” Ex parte Crouse, 4 Whart. 9, 11 (Pa. 1839). See Fox, Juvenile Justice Reform: An Historical Perspective, 22 Stan. L. Rev. 1187, 1189 (1970).


Why is it not the duty of the state, instead of asking merely whether a boy or girl has committed a specific offense, to find out what he is, physically, mentally, morally, and then if it learns that he is treading the path that leads to criminality, to take him in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen.

Id. at 107.

delinquents or criminals,25 behavior punishable by status offense laws is an unreliable indicator of future delinquent or criminal acts.26 Defying one’s parents is not necessarily deviant behavior, but rather is often a normal indication of adolescent striving for independence.27 When this defiance escalates into behavior such as running away from home, inadequate parents, and not the child, may be primarily to blame.28 The culpability of parents is even more likely when such behavior results in referrals to the juvenile court.29 In perhaps the majority of status offense cases,

25. See notes 21-23 supra and accompanying text.

26. A study of high school and college students who, when younger, had repeatedly disobeyed their parents, showed these young people seldom became delinquent. Legal Action Support Project, Bureau of Social Science Research, Research Memorandum on “Status Offenders” 22 (March, 1972), cited in Ungovernability, supra note 16, at 1406 n.139. In another study, a psychiatrist and two social workers attempted to predict delinquency in a group of youths whom teachers, police, and others had identified as potential troublemakers, the type of youths for whom juvenile courts typically invoke their status offense jurisdiction. A follow-up survey some 20 years later showed the predictions were incorrect in about 50 per cent of the cases. E. Schur, supra note 24, at 47. A study of runaway children showed they are also unlikely to graduate to delinquency or crime. R. Shellow, J. Schamp, E. Liebow, & E. Unger, Suburban Runaways of the 1960’s (Monographs of the Society of Research in Child Development, 1967), reprinted in Hearings on S.2829, the Runaway Youth Act, Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary, 92d Cong., 1st Sess. 210, 223-24 (1972). Cf. President’s Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 55 (1967) (claiming 90 per cent of the population of the United States have committed acts referable to juvenile courts).

27. See J. Goldstein, A. Freud, & A. Solnit, Beyond the Best Interests of the Child 34 (1973). “On the whole [“teenage culture”] is a rebellious, oppositional society, dedicated to the proposition that the grownup world is a sham.” Task Force Report, supra note 24, at 41. See Rosenheim, Notes on Helping: Normalizing Juvenile Nuisances, 50 Soc. Services Rev. 177 (1976). Contra, Marra & Sax, note 22 supra. The authors report the results of two studies of Washington State status offenders and conclude “the personality structure of many status offenders is not unlike that found in adults who are described as dangerous and unpredictable.” Id. at 30.

28. We have all seen situations . . . in which the child beyond control [of his or her parents] is sound and healthy, and the lack of control is due to attempts at excessive control, to highly disciplinary or authoritarian attitudes in control, or to some ignorance or neurotic need on the part of the parent that a normal child may naturally resist.


29. Inadequate and irresponsible parents may find juvenile courts convenient dumping grounds for their problems. The traditional juvenile court system invites parents unable to control their children to invoke legal sanctions to insure their wishes prevail. See Bazelon, Beyond Control of the Juvenile Court, 21 Juv. Ct. Judges J. 42, 43 (1970). Many children processed in the courts as status offenders are, in fact, victims of parental neglect. See, e.g., Ungovernability, supra note 16, at 1392 n.67 (concluding that 50 per cent of the New York status offenders studied were neglected children). Many “runaway” children are “push-outs,” whom their parents forced to leave home. See Office of Human Development Services, Dept’ of Health, Education, & Welfare, Runaway Youth 28 (1978) [hereinafter cited as Runaway Youth] (stating that 10 per cent of the children served in fiscal year 1977 in HEW-funded runaway youth projects were “push-outs”);
however, one cannot accurately apportion blame; these cases arise from the mutual inability of parent and child to resolve conflicts with each other.\textsuperscript{30} Accordingly, because parents may share the responsibility for their child's status offenses, the standard juvenile court practice of placing responsibility for status offense violations on the offending child alone, by institutional commitment or other penalty, is unfair and unlikely to correct the problems underlying the child's behavior.\textsuperscript{31}

Juvenile court intervention in status offense cases frequently is counter-productive and may encourage delinquency rather than prevent it. Airing family disagreements in court may polarize parent and child instead of bringing them together,\textsuperscript{32} and the humiliation of court involvement may turn a child towards more serious misbehavior.\textsuperscript{33} The dispositional alternatives available in these cases also may make court intervention harmful. The stigma of institutional commitment may contribute to converting a rebellious child into a delinquent or criminal.\textsuperscript{34} Moreover, many states permit the institutionalization of status offenders with delinquent children,\textsuperscript{35} from whom the status offenders may learn delinquent habits.\textsuperscript{36} Other coercive court intervention, such as court-ordered counseling, also is likely to be ineffective because the sensitive and complex nature of family conflicts, which produce many status offenses, makes these conflicts poorly suited to forced resolutions.\textsuperscript{37} Ironically, the very existence of juvenile court

\textsuperscript{30} See Standards, supra note 3, at 36; Ungovernability, supra note 16, at 1394.

\textsuperscript{31} See Standards, supra note 3, at 11-12; Feeley, The PINS Problem—A "No Fault" Approach, in Beyond Control, supra note 20, at 249, 257.

\textsuperscript{32} Status offense proceedings frequently are the scene of efforts by parent and child to denounce and humiliate each other before the judge. Mahoney, PINS and Parents, in Beyond Control, supra note 20, at 161, 167. For anecdotal illustrations of this phenomenon, see Ungovernability, supra note 16, at 1394-97.

\textsuperscript{33} If a youth commits a juvenile act . . . and is not apprehended or labeled, he may grow out of his . . . behavior. But if social control agencies respond to his behavior as "bad," the youth may come to define it and himself as "bad." . . . The court appearance may be considered a "status degradation ceremony," where the youth is transformed into a different person.


\textsuperscript{34} See Rosenberg & Rosenberg, supra note 1, at 1128-29.

\textsuperscript{35} See Standards, supra note 3, at 74-83 app.


\textsuperscript{37} "Using legal compulsion to restore (or provide) parent-child understanding and
authority over status offenses may have hindered development of more effective responses to juvenile misbehavior. 38

In addition to attacking the philosophical basis and the ineffectiveness of status offense laws, critics have pointed to the laws' frequently inequitable application and consequences. Juvenile courts sometimes invoke their status offense jurisdiction when evidence is inadequate to bring delinquency charges against a child. 39 Accused status offenders generally receive fewer procedural rights at trial than accused delinquents, 40 are more likely to be girls than boys, 41 and are disproportionately the children of the poor. 42 Convicted status offenders may serve longer terms in institutions than delinquents, 43 although in many states both groups ostensibly are subject to the same sentences. 44

tolerance and to build up mechanisms for conflict resolution within the family unit is akin to doing surgery with a spade.” Standards, supra note 3, at 11.

38. One author contends that, although defenders of traditional status offense laws claim continued court authority over nondelinquent youth is necessary because no other social institutional will act in such cases, “precisely the opposite is the case; because you act, no one else does.” Bazelon, supra note 29, at 44. The Joint Commission on Juvenile Justice Standards of the Institute of Judicial Administration and the American Bar Association predicts removal of status offense jurisdiction will stimulate the creation of voluntary services. Standards, supra note 3, at 15.


40. Some jurisdictions deny accused status offenders the right against self-incrimination, see, e.g., In re Spalding, 273 Md. 690, 332 A.2d 246 (1975) and the right to counsel, see, e.g., In re Walker, 282 N.C. 28, 191 S.E.2d 702 (1972). Most jurisdictions judge status offenders by a preponderance of the evidence standard rather than by the more rigorous standard of beyond a reasonable doubt. See Standards, supra note 3, at 74-83 app. The Supreme Court has guaranteed certain procedural rights in the adjudicatory phase of trials of delinquents facing institutionalization. In re Winship, 397 U.S. 358 (1970) (beyond a reasonable doubt evidentiary standard); In re Gault, 387 U.S. 1 (1967); (rights to counsel, against self-incrimination, to notification of the charges against them, and to cross-examination of witnesses). The Court has held delinquents do not have a constitutional right to a jury trial. McKeiver v. Pennsylvania, 403 U.S. 526 (1971).

41. See Standards, supra note 3, at 13; Ungovernability, supra note 16, at 1387 & n.26. The apparent reason for this statistic is that parents, police, and courts use status offense laws to enforce standards of sexual conduct against girls while virtually ignoring boys' sexual behavior. See Gilman, supra note 3, at 51; Sussman, Sex-Based Discrimination and PINS Jurisdiction, in Beyond Control, supra note 20, at 179, 182-84.

42. See, e.g., Ungovernability, supra note 16, at 1387. Wealthier parents having problems with their children are able to afford nonjudicial kinds of help, such as family counseling or private schools. See Mahoney, supra note 32, at 165; Rosenberg, Youth Service Bureaus: A Concept in Search of Definition, 20 Juv. Ct. Judges J. 69, 70 (1969).

43. See Rosenberg & Rosenberg, supra note 1, at 1121 n.116. Release from institutions often depends on the willingness of parents to accept their children home. Because status offense violations often arise from parent-child conflict, status offenders' parents may be more reluctant than parents of delinquents to have their children return home. Id. Contra, Martin & Snyder, supra note 22: “If [status offenders are] indeed the group which is 'incarcerated' longest . . . is it not probable that these youngsters are more difficult to help than juveniles directly charged with delinquent acts?” Id. at 45.

44. For an example of equal sentencing for delinquents and status offenders, see note
II. PROPOSALS FOR REFORM

Dissatisfaction with traditional status offense laws has led to proposals for a less coercive approach toward status offenders. Congress has provided funding incentives to states to abolish the detention and institutionalization of nondelinquent children. Critics have suggested replacing status offense laws with programs of voluntary services to rebellious children and their families. Proposed programs include crisis intervention to resolve family conflicts at their onset, nonsecure residences for children at odds with their parents, and temporary shelters and counseling services for runaways.

These voluntary programs are encouraging, but not totally satisfactory, responses to the problems of traditional status offense laws. The programs' lack of coercion should make them more palatable, and hence more effective, than court-ordered services. Moreover, providing services to both parents and children eliminates the traditional system's unfairness of singling out the offending child for attention and should be effective in resolving the family conflicts underlying many status offenses.

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18 supra and accompanying text.
45. See note 4 supra.
46. See, e.g., STANDARDS, supra note 3, at 20; Board of Directors, supra note 1, at 99; Gilman, supra note 3, at 51.
47. See, e.g., STANDARDS, supra note 3, at 53-54. Crisis intervention, as the Joint Commission on Juvenile Justice Standards defines it, consists of

an interview or series of interviews with the juvenile or his or her family, as needed, conducted within a brief period of time by qualified professional persons, and designed to alleviate personal or family situations which present a serious and imminent threat to the health or stability of the juvenile or the family . . . [and] should include the arrangement of temporary alternative nonsecure residential care . . .

. . . [and] the provision of or referral to services for suicide prevention, psychiatric or other medical care, psychological, welfare, legal, educational, or other social services, as appropriate to the needs of the juvenile and the family.

Id. at 53. Calling crisis intervention a "potent force," one writer has said its power derives from two factors:

First, it treats the issue not as the fault of the runaway or beyond-control child, but rather as a problem with which the whole family must deal. Secondly, it focuses on the general relationships and decision-making process in the family rather than the specific event which triggered the crisis. The theory here is that if the relationships and communication in the family can be placed in good working order, the family itself will be able to deal with the specific problem.

Feeney, supra note 31, at 259.
48. See, e.g., STANDARDS, supra note 3, at 55-60.
50. See STANDARDS, supra note 3, at 15; note 37 supra and accompanying text.
51. See text accompanying notes 27-31 supra.
intervention, in particular, has proven successful in restoring harmony between parents and children and in preventing the children's involvement with the juvenile courts. A totally voluntary program, however, may have some problems. For all its abuses, the traditional approach does provide secure care for those children truly in need of state protection. A voluntary program may not reach those children in sufficient numbers. The cost and organizational difficulties of establishing and maintaining a satisfactory network of voluntary services pose additional problems in implementing this alternative to traditional status offense laws.

III. THE NEW WASHINGTON LEGISLATION

Although its status offense legislation had changed only gradually since 1913, Washington State instituted sweeping

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52. In a Sacramento County, California program, for example, unruly children and their parents received intensive family counseling from probation counselors as soon as possible after the children's referral to the juvenile court. The first year of the program produced significant differences between over 500 children receiving these crisis intervention services and a similar number in a control group handled by traditional methods. Children receiving crisis intervention services had 80 per cent fewer court petitions filed against them, 50 per cent fewer overnight stays in detention, 14 per cent fewer subsequent court referrals, and 25 per cent fewer referrals for delinquent behavior. Additionally, the new techniques were less than half as expensive as previous procedures. R. BARON & F. FEENEY, JUVENILE DIVERSION THROUGH FAMILY COUNSELING 3, 8 (1976).

53. This is the thrust of the dissenting view of a member of the Joint Commission on Juvenile Justice Standards. STANDARDS, supra note 3, at 67.

54. The early history of status offense laws in Washington was consistent with the national pattern in both the wording of the laws and the penalties for their violation. The state's first status offense law was simply worded, authorizing the commitment of "incorrigible," "mendicant," and "vagrant" children to the new state reform school. Act of Mar. 7, 1891, ch. 103, 1891 Wash. Laws 195 (no longer in effect) (subsequent history unclear). A 1905 act, in keeping with the trend of the era, see text accompanying note 12 supra, greatly expanded the list of noncriminal offenses for which courts could institutionalize a child. Act of Feb. 15, 1905, ch. 18, § 1, 1905 Wash. Laws 34 (repealed 1909). See note 12 supra. In 1913, in an act which endured unchanged for nearly 50 years, the legislature expanded status offense categories even further. Juvenile Court Law, ch. 160, § 1, 1913 Wash. Laws 520 (amended 1961). Some of the categories proscribed specific kinds of behavior: for example, habitual truancy, id. § 1 (14), liquor, tobacco, and drug usage, id. § 1(15), and frequenting "the company of reputed criminals, vagrants, or prostitutes," id. § 1 (8). Other categories could encompass a variety of behavior. These included being "incorrigible," id. § 1(12), and being "in danger of growing up to lead an idle, dissolute or immoral life," id. § 1(16). Violation of any of the categories could result in a finding of dependency and wardship, id. § 1, meaning the court took responsibility for the child's "custody, care, guardianship, and control," id. Courts could institutionalize all status offenders. Id. § 8. Institutional sentences for status offenders, as for delinquents, lasted until the age of 21 or until the juveniles' "reformation [was] complete." Id. § 10. The statute did not prohibit institutionalization of status offenders with delinquents, though it did prohibit institutionalization of children with adult convicts. Id. § 11.

Legislative and judicial actions between 1961 and 1977 drastically limited the scope and severity of this 1913 legislation. In 1961, the legislature amended the 1913 laws,
changes in 1978 embodying many of the proposed reforms. The state legislature replaced Washington’s traditionally broad status offense laws with legislation restricted to two kinds of behavior: truancy and running away from home. Running away is the


These legislative and judicial actions placed Washington among the nation’s leaders in status offense law reformulation. As of November, 1975, only 15 jurisdictions had statutory restrictions on placement of status offenders with delinquents. None restricted institutionalization to a single category of status offender as did the Washington statute, and none restricted institutionalization to 30 days as Washington did. See STANDARDS, supra note 3, at 74-83 app.

With its new legislation, see text accompanying notes 56-152 infra, Washington has moved further than possibly every other state but Maine in reforming its status offense laws. Maine, in legislation effective July 1, 1978, removed from the jurisdiction of its juvenile courts all acts, except for liquor and certain marijuana and traffic violations, that are not criminal if adults commit them. See ME. REV. STAT. ANN. tit. 15, §§ 3101, 3103 (West Supp. 1965-1978). The state has statutes governing runaways, id. §§ 3501-3508, and truants, id. tit. 20, § 911.6-A, but virtually all procedures under those statutes are nonjudicial. Maine provides voluntary placements for runaways apprehended by police, id. tit. 15, § 3504, and voluntary social services for runaways and their families, id. tit. 22, §§ 3703, 3891-B.


One Washington county earlier had chosen to bypass the state’s status offense laws for many offenders, using instead a program emphasizing voluntary services. The King County juvenile court referred many status offenders to community-based “juvenile court conference committees.” These committees interviewed children and their parents and made recommendations for dealing with the problems that precipitated the status offenses. The committees could refer uncooperative children to juvenile court for formal proceedings. Aaron, Juvenile Justice: A Community Concern, 61 JUDICATURE 15, 20-22 (June-July 1977); Comment, Juvenile Court: The Legal Process as a Rehabilitative Tool, 51 WASH. L. REV. 697, 717-19 (1976).

56. For a discussion of the repealed legislation, see note 54 supra.

57. WASH. REV. CODE § 28A.27.070 (Supp. 1977). Truancy is the only repealed status
only one of these two acts now referrable to juvenile court and then only if nonjudicial procedures to reunite parent and child have failed. By restricting court referral, the new legislation forces nonjudicial, and thus generally more effective, solutions for other kinds of noncriminal misbehavior. As an alternative to court referral, the new laws make voluntary services from the state’s Department of Social and Health Services (DSHS) available to rebellious children and their parents.

Washington’s new status offense laws focus primarily on runaways. A 1976 survey estimated 733,000 American children run away from home annually. Their leaving home frequently sig-

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59. For a discussion of the juvenile court’s role under the new legislation, see text accompanying notes 94-152 infra.

The new legislation did not affect the laws establishing minimum ages for possession and consumption of alcoholic beverages, WASH. REV. CODE § 66.44.270 (1976), and driving motor vehicles, id. § 46.20.031 (Supp. 1977). These laws are like the repealed status offense statutes in their exclusive applicability to minors but different in their importance to public safety and, carrying only minor penalties, in their consequences to children violating them. Because of these differences, this comment does not include these laws in its discussion of Washington’s status offense legislation.

60. For a discussion of the relative merits of judicial and nonjudicial intervention in status offense cases, see text accompanying notes 32-53 supra.

61. WASH. REV. CODE § 74.13.031(4) (Supp. 1977). The new legislation repeatedly refers to a child’s “parent or custodian.” Id. § 13.30.030(3) passim. The legislation does not define “custodian.” The Joint Commission on Juvenile Justice Standards of the Institute of Judicial Administration and the American Bar Association, upon whose standards the legislature obviously based much of the new legislation, see note 55 supra, defines “custodian” as “any person other than a parent having legal or de facto responsibility for the minor’s ongoing care by reason of parental consent, express or implied, or pursuant to court order.” STANDARDS, supra note 3, at 43. This definition appears to fit the term as used in the new legislation. For brevity, this comment employs “parent” when the new legislation refers to “parent or custodian.”

62. This statistic includes children of ages 10 through 17 who leave home for at least one night without parental permission. The National Statistical Survey on Runaway Youth, cited in RUNAWAY YOUTH, supra note 29, at 4.
nals serious family disharmony. While away from home, these children are vulnerable to emotional and physical abuse, drug and alcohol abuse, and exploitative adults. They frequently need personal counseling, in addition to food, shelter, and medical care. The new Washington legislation offers four responses to the problems of runaways: (1) the Runaway Youth Act, (2) DSHS services, (3) juvenile court referral to settle placement disputes, and (4) dependency proceedings.

A. The Runaway Youth Act

The Runaway Youth Act details procedures for law enforcement officers to follow when dealing with runaway children. Specific procedures for runaways were absent from previous Washington statutes, allowing each locality to formulate its own policies. Authorities often confined runaways in secure detention facilities. The Runaway Youth Act and companion sections in the new Washington legislation, however, mandate measures calculated to ensure the safety of apprehended runaways, usually without incarceration, and to aid in resolving conflicts that precipitated the children's leaving home. The Runaway Youth Act authorizes law enforcement officers to take runaways into limited custody for up to twelve hours. Apprehended runaways may choose to return home or to go to the home of a relative or other

63. Standards, supra note 3, at 48.
64. Of those children seeking assistance at HEW-funded runaway projects, the majority primarily sought help for "intrafamily problems." Runaway Youth, supra note 29, exhibit G. On the problems of runaways, see L. Ambrosino, Runaways (1971).
66. Id. § 74.13.031(3), (4).
67. Id. § 13.32.010-.050.
68. Id. § 13.34.030(2)(d), .040, .110, .140.
69. Interview with Don Meath, deputy prosecutor of Pierce County, Wash., in Tacoma, Wash. (Sept. 7, 1977). Though conditions vary widely, many juvenile detention facilities nationally, like jails for adults, are overcrowded, understaffed storage facilities, where violence is commonplace and medical and psychological treatment inadequate. See 1973 Hearings, supra note 19. For more information on these facilities, see note 19 supra.
Proponents of juvenile detention argue it is a valuable resource for some status offenders, ensuring the children's presence at court proceedings and for medical and rehabilitative care and, as an ultimate sanction, helping to enforce court orders to participate in treatment programs. See, e.g., Arthur, Should Status Offenders Go to Court?, in Beyond Control, supra note 20, at 235, 238, 242. See also text accompanying notes 79-83 infra.
70. Officers may take into custody reported runaways and children reasonably believed to be "in circumstances which constitute a substantial and immediate danger to the [juveniles'] physical safety." Wash. Rev. Code § 13.30.020 (Supp. 1977). The Act gives no guidance to officers in determining whether those circumstances are present. Officers have 12 hours from the time of their "initial contact" with the runaway to take the child home or to an alternative placement. Id.
responsible person. Law enforcement officers must transport or arrange transportation for children who agree to one of these alternatives. If a child refuses these alternatives, if the place chosen is at an unreasonable distance, or if the officers are unable to arrange a safe release, the law directs the officers to take the child to a temporary, nonsecure, residential facility licensed by DSHS. The law also mandates the offering of social services to runaways and their families who need them.

The Runaway Youth Act has alarmed some juvenile court judges and administrators. They criticize the legislature's failure to appropriate money to implement the new procedures. They charge the new law gives runaways too much power to determine their placements, power that children may be unable to exercise wisely. These critics predict the limited coerciveness of the new procedures will undermine parental authority, and that police, unhappy with the new law's philosophy and unwilling to be saddled with placement responsibilities, will be reluctant to take runaways into custody.

Some of these fears are valid. The new legislation does not provide adequately for those runaways most in need of state pro-

71. Id. § 13.30.030(1).
72. Id.
73. Id. § 13.30.030(5). If the child does not return home, the Act requires officers or the residential facility staff to notify parents of the child's apprehension and release. Id. §§ 13.03.030(3), 74.13.031(4).
74. If officers return the runaway home or place him or her with a relative or other responsible person, they must advise the child and the person to whom the child is released of the availability of social services if needed. Id. § 13.30.030(2). DSHS child welfare staff must offer services to children placed in DSHS homes and to the children's parents. Id. § 74.13.031(4).
75. See, e.g., Layton, New Juvenile Law Has Problems, Seattle Post-Intelligencer, April 3, 1978, § A, at 6, col. 1. The only state funds appropriated for implementing the new juvenile code were $983,600 for diversion units required under the code's delinquency provisions. See WASH. REV. CODE § 13.40 (Supp. 1977) (introductory material). Proponents of the new code anticipated Washington's governor would call a special legislative session in 1978, at which they would seek additional appropriations. The governor did not call the special session, however, and additional state funding proposals must await the legislature's regular session in 1979. See Layton, supra. In the meantime, the Federal Law Enforcement Assistance Administration has awarded the state $3.6 million for crisis intervention services, temporary residential care, and other programs established by the new status offense legislation. Seattle Post-Intelligencer, Sept. 16, 1978, § A, at 3, col. 2.
76. See Jones, New Juvenile Code: A Legal Box, The Seattle Times, Oct. 2, 1977, § A, at 11, col. 1. One judge feared the new law does not provide properly "for handling the kid of 13, 14, or 15 who wants to live in an inappropriate setting, with say an older alcoholic or pimp." Layton, supra note 75.
77. See Jones, supra note 76; Layton, supra note 75; Mottram, Controversial Law Takes Effect July 1, Tacoma News Tribune, Dec. 25, 1977, § D, at 7, col. 1.
tection. Employing their old status offense jurisdiction, courts could detain mentally and physically ill runaways until they could receive needed treatment, and could order unwilling children to submit to treatment. Although coercive status offense legislation lent itself to many abuses,79 life-saving medical or mental health treatment for children is an area in which coercion may be necessary and proper. The new legislation does not allow courts to detain seriously physically ill runaways who refuse treatment.80 Although another Washington statute permits the brief detention and the institutionalization of mentally ill children in state-owned or licensed facilities,81 few of these facilities exist in the state.82 Washington's voluntary mental health agencies, which ideally should bolster their programs to reach mentally ill children formerly treated under the status offense jurisdiction, are sorely underfunded. The legislature has not increased appropriations sufficiently to these facilities and agencies to establish them as adequate alternatives to juvenile court control over mentally ill status offenders.83 Accordingly, some of these children will not receive needed treatment. Another concern expressed about the Runaway Youth Act, that of police enforcement of the Act, is also troublesome. Because the reforms of the new legislation benefit primarily those runaways police apprehend,84 active police support for the Act is necessary if those reforms are to reach satisfactory numbers of children. Perhaps demonstrated success with the Act and relief from some of the placement responsibilities will ensure that support.85

Notwithstanding the validity of some of the criticism of the

79. See text accompanying notes 14-19 and 24-44 supra.
80. These children might include, for example, diabetics, cancer patients, and children needing kidney dialysis.
82. The state has only a single 32-bed institution for psychotic children and a 16-bed ward for mentally ill delinquents. Private hospitals in the state have an additional 37 places for mentally ill children. Perkins, Patient or Victim of State Mental Health Care?, Seattle Post-Intelligencer, Sept. 10, 1978, ¶ B, at 3, col. 1.
83. The National Institute of Mental Health ranks Washington, the 22nd most populous state, 44th nationally in spending for mental health care. In 1977, the Washington Legislature appropriated $1.3 million for new children's mental health programs. Yet, a survey by a governor's panel found only six per cent of Washington children receive needed mental health treatment. Id.
84. See text accompanying notes 103-06 infra.
85. Larger police forces may be able to delegate placement responsibilities to civilian employees. Seattle uses "community service officers," who have no arrest powers, to deal with many juvenile and family-related police problems, including the placement of runaway children. Interview with Alvin R. Elliott, Law Enforcement Liaison Officer, King County, Wash. Prosecuting Attorney's Office, Juvenile Division, in Seattle, Wash. (Aug. 31, 1978).
Runaway Youth Act, critics' concerns about the Act's permissiveness are exaggerated. The new procedures make sense for the vast majority of runaways. In allowing runaways to refuse to let police take them home, the legislature has recognized that running away from home, like other status offenses, often stems from family conflicts that forced return of the runaways is unlikely to resolve.\(^{86}\) Also, the Act's provision for counseling to parents as well as children should strengthen the family.\(^{87}\) The new procedures, furthermore, are not without their coercive aspects. They permit, for example, the continued use of secure detention for some runaways,\(^{88}\) in addition to the initial twelve-hour period of limited custody.\(^{89}\) Also, a child's control over his or her placement is short-lived; ultimate legal control rests with parents or the courts.\(^{90}\) The new procedures merely give preference to voluntary reconciliations of runaways and parents.

\(^{86}\) See text accompanying note 37 supra.

\(^{87}\) See note 29 and text accompanying notes 24-31 and 51-52 supra. Early experience with the new law supports this conclusion. Bryant, Runaway Kids With No Place to Go, Seattle Post-Intelligencer, Sept. 3, 1978, § A, at 6, col. 1.

\(^{88}\) The law authorizes the secure detention for 72 hours, excluding Sundays and holidays, of children, apprehended by police, who have either run away from a previous placement and whom DSHS staff believe would run away from a different placement or who refuse to return home or be placed in alternative residential care. WASH. REV. CODE § 74.13.031(4)(g) (Supp. 1977). Past Washington law permitted detention for up to 144 hours, excluding Sundays and holidays, without a court order, and unlimited detention with a court order. Juvenile Court Law, ch. 302, § 2, 1961 Wash. Laws 2473 (formerly codified at WASH. REV. CODE § 13.04.053 (1976)) (repealed 1977) (repeal effective July 1, 1978). See notes 19 & 69 supra for more information about secure detention.

During a runaway's detention, DSHS staff must try to effect a placement agreeable to both child and parents. If the parties reach no agreement, the statute states a petition "shall be filed" for juvenile court approval of an alternative placement for the child and mandates the release of the child from detention if the court does not hear the petition within 72 hours of the child's initial confinement, exclusive of Sundays and holidays. WASH. REV. CODE § 74.13.031(4)(g) (Supp. 1977).

This last provision is ambiguous. The statute states a petition "shall be filed" within 48 hours of the child's detention, pursuant to WASH. REV. CODE § 74.13.031(4)(f). That subsection provides that child or parent "may file" a petition to approve alternative placement. It does not authorize anyone else to file such a petition. Section 74.13.031(4)(g), then, would appear to compel the child or parent to file a petition. The statute, however, does not provide a means to compel a filing nor does it state the consequences to the child if no one files a petition. Presumably, the child will still be free to leave detention after 72 hours if neither he nor his parent files a petition.

For a discussion of the alternative placement procedures of the new legislation, see text accompanying notes 94-117 infra.


\(^{90}\) Parents of children whom officers place with relatives or other responsible persons do not lose custody of their children. The new legislation does not give children the right to remain in these placements. Should persons receiving the children refuse to relinquish them, the parents' appropriate remedy is a writ of habeas corpus. See Wade v. State, 39 Wash. 2d 744, 238 P.2d 914 (1951). See also STANDARDS, supra note 3, at 59. Courts will
B. DSHS Services

To try to achieve voluntary reconciliations, the statute requires that DSHS offer runaways and their parents services, including crisis intervention, to facilitate the child's return home or placement in a living arrangement agreeable to both parents and child.91 While seeking such an agreement, DSHS must offer temporary, nonsecure residential care to runaways police take into limited custody.92 If these services do not produce an agreement on where a runaway is to live, either parent or child may petition the juvenile court for approval of an alternative placement.93

C. Juvenile Court Referral for Placement Disputes

The hearing of petitions for approval of alternative residential placements is a new concept in Washington juvenile legislation.94 The new legislation confers a "special jurisdiction" upon juvenile courts, allowing them to decide the issue of a child's placement without making any other legal determination regarding child or parent.95 Under previous law, in cases not involving charges of delinquency, the court could decide a child's placement pursuant only to a petition alleging dependency96 because of either parental abuse or neglect, or the child's commission of a status offense.97 This procedure failed in cases of parent-child

determine the ultimate placement of children placed in DSHS-licensed facilities who continue to disagree with their parents about where they should live. See WASH. REV. CODE § 13.32.010-050 (Supp. 1977). For a discussion of the courts' placement role under the new legislation, see text accompanying notes 94-152 infra.

91. Crisis intervention is available on a voluntary basis to all families "who are in conflict." WASH. REV. CODE § 74.13.031(3) (Supp. 1977). The Washington definition of "crisis intervention" repeats virtually verbatim the definition in the IJA-ABA juvenile justice standards. STANDARDS, supra note 3, at 53. See note 47 supra. The key difference in the Washington statute is the omission of the standards' provision of temporary residential care to all juveniles in conflict with their families.


93. Id. § 74.13.031(4)(f). The legislation does not explain the consequences to the child if no one files a petition. See note 88 supra. If the parent refuses to permit the child to return home and parent and child cannot agree on another living arrangement, the legislation directs the child welfare services staff to file a dependency petition on behalf of the child. WASH. REV. CODE § 74.13.031(4)(d) (Supp. 1977).

94. This provision reflects heavy influence from the IJA-ABA juvenile justice standards. See STANDARDS, supra note 3, at 55-60.


97. Id., as amended by 1961 Wash. Laws, ch. 302, § 1 (formerly codified at WASH.
conflict not involving abuse or neglect because it required courts to determine fault before considering the central issue of the child's placement. In instances of family conflict, the requirement of such a fault determination could exacerbate family tensions rather than calm them.\textsuperscript{98} It could also encourage children seeking to escape unhappy home situations to petition the court to declare them status offenders\textsuperscript{99} or induce children to allege, without justification, parental abuse or neglect. The linking of a placement determination with dependency had unfavorable consequences for both the state and the child. The state became burdened with the care and legal responsibilities\textsuperscript{100} of many children who did not need such protection.\textsuperscript{101} For the child, a finding of dependency resulted in loss of freedom, including possible institutionalization.\textsuperscript{102} The new alternative placement procedure, addressing only the issue of placement, corrects many of these problems by abandoning the requirement of a fault determination, and saves the state the legal entanglements of dependency.

The alternative placement procedure, however, like the provision for temporary residential care for runaways,\textsuperscript{103} is unnecessarily restrictive in its availability only to runaways police take into limited custody under the Runaway Youth Act. Runaways who escape police detection are unable to take advantage of these provisions voluntarily. Because of limited police resources, the ambiguities of the grounds for apprehension of runaways,\textsuperscript{104} and possible police dissatisfaction with the new law,\textsuperscript{105} police may not

\textsuperscript{98} See Feeney, supra note 31, at 257-58. Feeney analogizes status offense laws to traditional divorce laws because of their shared "requirement that the court make a determination concerning the acrimonious and destructive issue of fault." \textit{Id.} at 258. He urges the adoption of a "no fault" approach toward family conflicts similar to the philosophy of "no fault" divorce laws. See notes 32 & 37 supra and accompanying text on the damaging effects of status offense proceedings on family harmony.

\textsuperscript{99} See, \textit{e.g.}, \textit{In re Snyder}, 85 Wash. 2d 182, 532 P.2d 278 (1975), in which a teenaged girl, whose dependency petition the juvenile court previously denied, was successful in having herself declared incorrigible so the court could approve her placement away from her parents. See \textit{STANDARDS}, supra note 3, at 37; Comment, \textit{Status Offenses: Do Children Have the Legal Right to be Incorrigible?}, 1976 B.Y.U. L. Rev. 659.

\textsuperscript{100} See, \textit{e.g.}, Evangelical United Brethren Church v. State, 67 Wash. 2d 246, 260, 407 P.2d 440, 447 (1965) (stating that in a tort action the state responsibility for wards of the court "may be likened to that of parent to child").

\textsuperscript{101} See \textit{generally} notes 26, 28, \& 29 and text accompanying notes 24-31 supra.

\textsuperscript{102} Washington courts could institutionalize all dependent status offenders prior to 1967, all "incorrigibles" prior to 1976, and certain "incorrigibles" until the new legislation took effect July 1, 1978. See note 54 supra.

\textsuperscript{103} WASH. REV. CODE \S 74.13.031(4) (Supp. 1977). See text accompanying note 92 supra.

\textsuperscript{104} See note 70 supra.

\textsuperscript{105} See text accompanying note 78 supra.
apprehend a satisfactory portion of runaways. Those runaways not apprehended will be denied access to temporary residential care and alternative residential placements.\textsuperscript{106}

For apprehended runaways who do secure a hearing for approval of alternative placement, the court may approve their alternative placement or return them home.\textsuperscript{107} If the court approves alternative placement, it may either approve the child's choice of residence or send the child to a DSHS-licensed, nonsecure residence, such as a foster or group home.\textsuperscript{108} The statute also provides:

Prior to approving an alternative residential placement, the court shall find by a preponderance of the evidence that the reasons for request of alternative residential placement are not capricious and that there is a conflict between the parent and the child that cannot be remedied by counseling, crisis intervention, or continued placement in the parental home.\textsuperscript{109}

In allowing the court to order continued placement in the parental home, the legislature has rejected critics' recommendations against forced reconciliation of a runaway and his or her parents.\textsuperscript{110} Voluntary reconciliations are more likely to endure than court-ordered reconciliations because voluntary reconciliations indicate at least temporary resolution of the problems that provoked the child's leaving home. If a child left home for a trivial reason, a forced return may legitimately affirm parental authority, but truly "capricious" acts of running away are the exception.\textsuperscript{111} Although this provision allows courts to deal with that

\textsuperscript{106} But cf. Bryant, The New Deal for Runaways, Seattle Post-Intelligencer, July 4, 1978, § B, at 1, col. 1 (quoting a DSHS administrator that denying DSHS residences to these children may deter acts of running away).

Many runaways, one may safely assume, would take advantage of freely available DSHS residences. Significant numbers of troubled children seek assistance voluntarily. Of the first 2,000 families receiving crisis intervention services under the new law, about 350 were families of children who went independently to DSHS for help. Only 454 were families of runaways apprehended by police. Bryant, supra note 87. More importantly, the most vulnerable runaways are those most likely to seek assistance. A disproportionately large number of young, female, and "push-out" children seek help at HEW-funded runaway projects. RUNAWAY YOUTH, supra note 29, at 28-30.

\textsuperscript{107} WASH. REV. CODE § 13.32.040 (Supp. 1977).

\textsuperscript{108} Id.

\textsuperscript{109} Id.

\textsuperscript{110} See, e.g., STANDARDS, supra note 3, at 59.

\textsuperscript{111} For a discussion of runaways' motivations, see Note, California Runaways, 26 HASTINGS L.J. 1013, 1014-17 (1975). "From whatever perspective the runaway is defined, running away cannot be seen solely as a negative, unbalanced, and impulsive response. In many instances it may be the most intelligent, rational act possible in the face of an intolerable situation." Id. at 1016 (footnote omitted). See note 29 supra on the phenomenon of the "push-out" child.
exception, it should not become a loophole whereby courts may avoid acknowledging the family problems underlying many acts of running away.\textsuperscript{112}

A court order to return home under the new law, however, will not result in a truly forced return because the law does not include enforcement provisions. A child disagreeing with the order may disobey it without fear of more serious sanctions. Instances of such defiance will inevitably arise in a system that generally abolishes physical restraint of status offenders. Coping with this defiance will be difficult but is preferable to the alternatives of detention or institutional commitment of uncooperative children.\textsuperscript{113} The new law, however, does not provide adequately for the needs of children who defy a court order to return home. Although they will have access to crisis intervention services,\textsuperscript{114} children unwilling to remain with their parents and denied alter-

\begin{footnotes}
\begin{enumerate}
\item The placement hearing statute includes procedural safeguards for children and their parents. The statute requires the appointment of legal counsel for the child and provides the parent may also have legal counsel at the hearing. \textit{Wash. Rev. Code} § 13.32.030 (Supp. 1977). The lack of guaranteed counsel for parents is presumably because the hearing determines only the child’s placement and not legal custody. The Washington Supreme Court has required court-appointed counsel for indigent parents in permanent child deprivation proceedings. \textit{In re Liscier}, 84 Wash. 2d 135, 524 P.2d 906 (1974). The court subsequently held the \textit{Liscier} ruling applicable to dependency proceedings from which permanent deprivation proceedings are likely to follow. \textit{In re Myricks}, 85 Wash. 2d 252, 533 P.2d 841 (1975).

Additionally, the placement hearing statute provides for a review of the alternative placement within six months of the hearing and for subsequent hearings at least every six months thereafter. During the child’s placement, DSHS must continue to offer social services to child and parents in hopes of effecting a reconciliation. At review hearings, the court will determine whether DSHS has complied with this requirement. \textit{Wash. Rev. Code} § 13.32.050 (Supp. 1977). The statute provides no enforcement procedure for this requirement.

\item For information about detention and institutional commitments, see notes 19 & 69 and text accompanying notes 19 and 34-36 \textit{supra}. See \textit{Standards}, \textit{supra} note 3:

[I]t is inevitable that there will be some hard cases where the juvenile refuses to go home, and refuses to agree to any acceptable alternative living arrangements or refuses to stay in the temporary facility. These standards do not provide coercive sanctions to keep the juvenile there, on the conviction that the existence of such sanctions will inevitably lead back to a status offense jurisdiction . . . . Moreover, it is reasonable to expect that the vast majority of runaway youth will be amenable to acceptable alternative living arrangements if they are not ordered to accept them and are not ordered to return home. Some juveniles will simply flee, and keep fleeing. Some will commit crimes in flight. If they do, they will be subject to and should be dealt with under the delinquency jurisdiction. As with the rest of the status offense jurisdiction, it is submitted that the social costs of retaining it to provide for secure detention or other sanctions in what is expected to be a relatively small number of cases, are too great.

\textit{Id.} at 52.

\item See \textit{Wash. Rev. Code} § 74.13.031(3) (Supp. 1977); note 91 \textit{supra}.
\end{enumerate}
\end{footnotes}
native placement by the courts will have no state-provided home unless police apprehend them and take them to DSHS temporary facilities.\textsuperscript{115} This further exemplifies the need to extend access to those facilities to all runaways.\textsuperscript{116} In contrast to the lack of provisions for children refusing a court order to return home, the new legislation provides complete and comparatively harsh procedures for children who refuse to remain in a court-approved alternative placement.\textsuperscript{117}

\textbf{D. Dependency Proceedings}

A juvenile court may declare children dependent and commit them to an institution for thirty days if they refuse to obey an alternative placement order.\textsuperscript{118} The new Washington legislation permits dependency findings for abused, neglected, abandoned, and orphaned children.\textsuperscript{119} Retaining some language from prior law,\textsuperscript{120} the dependency statute also authorizes a finding of dependency against any child:

(i) Who is in conflict with his or her parent, guardian or custodian;
(ii) Who refuses to remain in any nonsecure residential placement ordered by a court pursuant to RCW 13.32.040;
(iii) Whose conduct evidences a substantial likelihood of degenerating into serious delinquent behavior if not corrected; and
(iv) Who is in need of custodial treatment in a diagnostic and treatment facility.\textsuperscript{121}

A court may institutionalize a child it finds dependent under this section for up to thirty days for diagnosis and treatment.\textsuperscript{122}

In contrast to other sections of the new legislation confining official intervention against status offenders to narrowly defined situations,\textsuperscript{123} this dependency provision invites broad application

\textsuperscript{115} See WASH. REV. CODE § 13.30.030(5) (Supp. 1977); text accompanying notes 69-74 supra.
\textsuperscript{116} See text accompanying notes 103-06 supra.
\textsuperscript{117} WASH. REV. CODE § 13.34.030(2)(d), .040, .110, .140 (Supp. 1977).
\textsuperscript{118} Id.
\textsuperscript{119} Id. § 13.34.030(2)(a)-(2)(c).
\textsuperscript{121} WASH. REV. CODE § 13.34.030(2)(d) (Supp. 1977).
\textsuperscript{122} Id. § 13.34.140.
\textsuperscript{123} Id. §§ 13.30.010-.32.050, 74.13.031(3), (4). See text accompanying notes 54-117 supra.
because it does not define "serious delinquent behavior." The new Washington legislation on delinquency abandons the term "delinquent" for the term "juvenile offender." The legislation specifically defines a "serious" juvenile offender, but the dependency statute does not refer to that definition. Thus, a court interpreting the dependency statute may freely apply its own definition of "serious delinquent behavior." Nor does the legislation provide a standard for determining "substantial likelihood of degenerating into serious delinquent behavior." This lack of guidance is understandable because the prediction of delinquency is a complex and imprecise art. Some social scientists have claimed moderate success in delinquency prediction, but their methods involve extensive research into a child's formative years and are impractical for the average juvenile court. In any event, because the statute is silent on the method by which a court is to predict delinquency, a court applying the dependency statute to runaways is likely to rely on instinct or intuition.

124. Wash. Rev. Code § 13.40.020(11) passim (Supp. 1977). In other places, the legislation uses the term "youthful offenders." E.g., id. § 13.40.010(2). Another section states "All references to juvenile delinquents or juvenile delinquency in other chapters of the Revised Code of Washington shall be construed as meaning juvenile offenders or the commitment of an offense by juveniles as defined by this chapter." Id. § 13.40.240.

125. (1) "Serious offender" means a person fifteen years of age or older who has committed an offense which if committed by an adult would be:

(a) A class A felony, or an attempt to commit a class A felony;
(b) Manslaughter in the first degree, rape in the first degree, or rape in the second degree; or
(c) Assault in the second degree, extortion in the first degree, indecent liberties, kidnapping in the second degree, burglary in the second degree, statutory rape in the first degree, or statutory rape in the second degree, where such offenses include the infliction of grievous bodily harm upon another or where during the commission of or immediate withdrawal from such an offense the perpetrator uses a deadly weapon or firearm as defined in RCW 9A.04.110.

Id. § 13.40.020(1).


127. Critics have also disputed the validity of the Glueck's methods. See, e.g., E. Schur, supra note 24, at 49-50.

128. For a discussion of how vague status offense laws force judges applying them to rely on personal values, see Ungovernability, supra note 16, at 1402-05. Their observations of New York judges led the authors to conclude:

The [status offense] jurisdiction affords less protection against the intrusion of the judge's personal predilections than do other legal proceedings that consider narrower issues; and because the persons dealt with are youths, the personal predilections of judges as adult decisionmakers are more likely to be subject to inaccuracies and misconceptions. Youths are often seen as less than full persons, whose problems judges and adults generally assume are easily understood and readily remedied. Judges are also more likely to universalize unconsciously their own experiences and standards with juveniles than with
The dependency statute’s vague language and its reliance on delinquency prediction may result in inequitable application of the statute. Historically, courts have construed vaguely written status offense laws broadly to include relatively innocent behavior. Some courts, adhering to the discredited notion that status offenses themselves predict delinquency, may feel any runaway is in danger of “degenerating into serious delinquent behavior.” Another court may require a past history of delinquency to satisfy the statute or may rule that adolescent sexual conduct leads to delinquency. It appears likely, therefore, that the statute’s imprecision will lead courts to misidentify some children as potential delinquents.

The beyond a reasonable doubt standard of proof required to find a status offender dependent under the new legislation is an inadequate safeguard against such errors because the statute’s vagueness lessens the effect of the standard. A minimum of evidence could sustain the burden of proof if a court adopts a sufficiently broad definition of “substantial likelihood of degenerating into serious delinquent behavior.” The judge who believes that any runaway is a potential delinquent may find the burden of proof easily satisfied in every case. In addition to finding potential delinquency, a court must find a parent-child conflict, a re-

adults; the consequence is a foreclosing of receptivity to the individual juvenile’s particular social and personal circumstances.

*Id.* at 1403-04 (footnotes omitted).

129. See, e.g., note 16 supra.

130. See note 26 supra and accompanying text.

131. Courts have used status offense laws to impose their sexual standards on juveniles. See note 41 supra.

132. For criticism of this result of predictive juvenile court laws, see Glen, *Juvenile Court Reform: Procedural Process and Substantive Stasis*, 1970 Wis. L. Rev. 431, 441-47. Glen points out that by restricting the liberty of children on the basis of their potential delinquency, juvenile courts unjustly punish children who will not become delinquent. He urges the restriction of juvenile court jurisdiction to violations of the criminal law. “[O]ne could then be sure that he is coercing only those children who have in fact, and not merely as a matter of prediction, broken the law.” *Id.* at 444. See Note, *Parens Patriae and Statutory Vagueness in the Juvenile Court*, 82 YALE L.J. 745, 761 (1973).

133. WASH. REV. CODE § 13.34.140 (Supp. 1977). Other subsections of the dependency statute, which do not allow for the institutionalization of a child, require the less stringent preponderance of the evidence standard. *Id.* § 13.34.130.

134. In voiding for vagueness a California statute governing minors “in danger of leading an idle, dissolve, lewd, or immoral life,” a three-judge federal district court commented that the statute “defines the substance of the offense so broadly that the procedural safeguard of proof beyond a reasonable doubt becomes meaningless. Standards of proof depend upon standards of relevance and probativeness, and these are precluded when the substantive offense covers the entire moral dimension of one’s life.” Gonzales v. Mailliard, No. 50424 (N.D. Cal., Feb. 9, 1971) at 12, vacated & remanded on other grounds, 416 U.S. 918 (1974), quoted in Note, *supra* note 132, at 756 n.71.
fusal to stay in a court-ordered placement, and a need for custodial treatment in a diagnostic and treatment facility.\textsuperscript{135} The requirements of a conflict and a refusal to stay in a placement will virtually always be clear-cut factual determinations, satisfied by asking whether the child did or did not run away. The final requirement, the need for custodial treatment, like the delinquency prediction requirement, lends itself to subjective interpretation. Judges adhering to the traditional juvenile court belief in the effectiveness of institutionalization for reforming wayward children\textsuperscript{136} will have little difficulty in finding "beyond a reasonable doubt" a need for custodial treatment.

Appellate court review, however, may restrain lower courts from construing the dependency requirements too liberally. The new legislation's guarantee of counsel for runaways at virtually every step of their contact with the judicial system\textsuperscript{137} should lead to rapid appeals of dependency findings.\textsuperscript{138} Like courts nationally,\textsuperscript{139} however, Washington courts have been deferential toward status offense laws.\textsuperscript{140} Courts have relied on the doctrine of parens patriae—the notion that the state is a super-parent of its children—in upholding sweeping laws for the "protection" of juveniles.\textsuperscript{141} Because of the new legislation's emphasis away from the traditional paternalism of juvenile laws, however, appellate courts reviewing findings under the dependency statute should not seek automatic refuge in parens patriae. The courts, rather, should interpret the statute with the realization that the predominant philosophy of Washington's status offense laws is no longer paternalism but the belief that juveniles are important members of their families and society.

Although stringent appellate review may restrain lower courts from construing the dependency requirements too liberally, the dependency provisions for runaways suffer from defects

\textsuperscript{135} WASH. REV. CODE § 13.34.030(2)(d)(i), (ii), (iv) (Supp. 1977).
\textsuperscript{136} See text accompanying notes 22 and 23 supra.
\textsuperscript{137} WASH. REV. CODE §§ 13.32.030, .34.090, 74.13.031(4)(d) (Supp. 1977).
\textsuperscript{138} For a discussion of the role attorneys can play in protecting children against sweeping status offense laws, see Rosenberg & Rosenberg, supra note 1, at 1130-44.
\textsuperscript{139} See STANDARDS, supra note 3, at 9-11; Rosenberg & Rosenberg, supra note 1, at 1121-30.
\textsuperscript{140} See, e.g., In re Snyder, 85 Wash. 2d 182, 532 P.2d 278 (1975); Blondheim v. State, 84 Wash. 2d 874, 529 P.2d 1096 (1975); In re Jackson, 6 Wash. App. 962, 497 P.2d 259 (1972). The courts in these cases upheld the constitutionality of the former Washington "incorrigibility" statute, Juvenile Court Law, ch. 160, § 1(12), 1913 Wash. Laws 520 (formerly codified at WASH. REV. CODE § 13.04.010(7) (1976)) (repealed 1977) (repeal effective July 1, 1978).
\textsuperscript{141} See, e.g., S*** S**** v. State, 299 A.2d 560 (Me. 1973); In re Hudson, 13 Wash. 2d 673, 126 P.2d 765 (1942); Note; supra note 132 at 748-49.
beyond their vagueness. A court's options after it finds runaways dependent under the new statute are illogical and impractical. Courts may send such children to either a nonsecure residential facility or a custodial diagnostic and treatment facility.\textsuperscript{142} To make the initial dependency finding, however, a court must find runaways in need of "custodial treatment in a diagnostic and treatment facility."\textsuperscript{143} Sending the children to a nonsecure residential facility denies them the very treatment the court has found they need. Moreover, the legislation allows a court to commit a child to a diagnostic and treatment facility for only thirty days and then only if "diagnosis and treatment is [sic] reasonably expected to prevent degeneration of the child's conduct into serious delinquent behavior."\textsuperscript{144} Although the thirty-day limit protects children against the long and damaging institutional commitments traditionally given many status offenders,\textsuperscript{145} the expectation that any treatment, especially one limited to thirty days, will "prevent" delinquency is unrealistic given the present capabilities of the behavioral sciences.\textsuperscript{146} Following their commitment, children who have been adjudged potentially serious delinquents will return to the community, presumably "cured," after what will have been at best superficial treatment of their purported problems. This absurd result represents a failed attempt at a compromise between the legislature's interests in protecting society against crime and protecting the rights of children.

The new legislation contains further potential for abuse in the application of the dependency provisions for runaways. The court's disposition alternatives and the vagueness of the delinquency prediction language enable courts to use the dependency statute not to ensure treatment for delinquency-bound children, but to coerce them into accepting court-ordered nonsecure placements. Interpreting the dependency requirements broadly, a court could find dependent any child who refuses a court-ordered placement.\textsuperscript{147} Faced with a thirty-day institutional commitment,

\textsuperscript{142} WASH. REV. CODE § 13.34.140 (Supp. 1977).

\textsuperscript{143} Id. § 13.34.030(2)(d)(iv).

\textsuperscript{144} Id. § 13.34.140 (emphasis added).

\textsuperscript{145} For information on the institutionalization of status offenders and its effects, see notes 19 & 43 and text accompanying notes 19, 34-36, and 43 supra.

\textsuperscript{146} See, e.g., Fox, supra note 21, at 1234-35; Fox, Predictive Devices and the Reform of Juvenile Justice, in IDENTIFICATION OF PREDELINQUENTS 107, 108 (1972); Toby, An Evaluation of Early Identification and Intensive Treatment Programs for Predelinquents, 13 SOC. PROB. 160 (1965). Toby describes the Cambridge-Somerville youth study which disclosed that, after a minimum of four years of treatment, 41 per cent of the boys treated were subsequently convicted of a major crime compared to 37 per cent in a control group receiving no treatment. Id. at 162-63.

\textsuperscript{147} See text accompanying notes 123-32 supra.
the child would likely agree to the original court-ordered placement. The court could then accept the child's change of heart and send him or her to a nonsecure placement, despite the court's having found beyond a reasonable doubt that the child is on the brink of "serious delinquent behavior" and in need of custodial diagnosis and treatment. Although nonsecure placement may very well be a better alternative than institutionalization, the disposition alternatives should reflect, not ignore, the dependency requirements. The need for custodial treatment should not be a requirement for dependency unless provision of that treatment is mandatory upon a finding of dependency.

The dependency statute, then, is inconsistent with the new legislation's generally progressive approach towards status offense problems. The truancy statute and the other provisions for runaways generally forsake the vague language and the potential for broad judicial intervention that have proved troublesome in traditional status offense legislation. The dependency statute, however, retains these troublesome characteristics and seems likely to produce the same ineffectiveness and inequities associated with traditional status offense laws. This possibility is especially likely because the dependency statute is the only provision in the new legislation that allows prolonged confinement of runaways. Proponents of confinement are likely to seize upon the statute, despite its inadequacies, as the only means available to "protect" runaways.

IV. CONCLUSION

The Washington Legislature, in revising its status offense legislation, reduced the scope of the juvenile court's authority over children's noncriminal misbehavior. The legislature provided for nonjudicial help for troubled families, temporary shelter for some runaways, and a means of obtaining court-sanctioned placement without a finding of dependency for children in conflict with their parents. Although access to some of these services is unnecessarily restrictive, these reforms made Washington a leader in the correction of abuses of status offense jurisdiction.

148. See generally text accompanying notes 54-117 supra.
150. Id. §§ 13.30.010-.32.050, 74.13.031(3), (4).
151. See text accompanying notes 14-19 and 32-38 supra.
152. "Protection," in some cases, may be the correct word to use. See text accompanying notes 79-94 supra for a discussion of the deficiencies in the new legislation's treatment of physically and mentally ill status offenders.
The legislature, however, failed to abolish the status offense jurisdiction altogether and created a new and ill-defined class of status offender whom courts may punish with a finding of dependency and short-term institutional commitment. This category perpetuates, though to a lesser degree, many defects of traditional status offense legislation. The category is ambiguous, impractical, and out of place in legislation otherwise generally commendable for its reforms. The legislature can improve its new juvenile laws by applying a consistently progressive approach to its status offense legislation. It should repeal the anachronistic dependency provisions. It should make temporary residential care and alternative residential placement hearings available to all runaways, not just those police apprehend. Finally, the legislature should enact legislation and appropriate sufficient funds to ensure the provision of emergency medical and mental health treatment to runaways who need it. These changes would eliminate anomalies in the present laws and complete Washington’s ambitious reform of its status offense legislation.

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