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Status Offenses and the Juvenile Justice and Delinquency Prevention Act: The Exception that Swallowed the Rule

Patricia J. Arthur¹ and Regina Waugh²

INTRODUCTION

During 2004, more than four hundred thousand youth were arrested or held in custody in the United States for noncriminal behavior called a status offense.³ A status offense is defined as conduct that is unlawful only because the offender is a minor.⁴ Common status offenses include running away, skipping school, and breaking curfew, as well as ungovernability, underage drinking, and disorderly conduct.⁵

Adolescents who engage in status offense behaviors often come from broken homes, have suffered childhood trauma, and have unmet mental health and/or education needs.⁶ These troubled children are still growing into maturity, are prone to impulsivity, and are more vulnerable than adults to negative peer pressure.⁷ They need care, treatment, and services—not confinement—to address the underlying causes of their troubling behavior and to prevent deeper and more costly entanglement in the juvenile or criminal justice systems.

In 1974, Congress passed the Juvenile Justice and Delinquency Prevention Act (JJDP A) prohibiting the placement of status offenders in secure confinement. Unfortunately, this prohibition has been significantly undermined by a 1980 amendment to the act that allows the detention of status offenders for violations of a valid court order (VCO). A VCO might be an order entered by a judge in a dependency or status offense proceeding commanding a juvenile to desist specified noncriminal behavior. For example, a foster youth may be ordered at a dependency review hearing to stop running away from placement, or a truant may be ordered to stop

skipping school. If the juvenile continues the prohibited behavior, he or she may be incarcerated for violating the court's order.

Not surprisingly, the VCO exception to the JJDPa has increased the harmful use of detention for juveniles throughout the United States and should be repealed as part of the act's reauthorization process.

I. THE USE OF DETENTION FOR STATUS OFFENDERS⁸

Far too many youth who are arrested in the United States for a status offense end up in secure detention where their behavior is more likely to get worse than better.⁹ In thirty-three states, including Washington, D.C.,¹⁰ state law explicitly allows status offenders to be placed in secure detention. It is estimated that about one-third of all youth in secure detention facilities are confined, not for delinquent or criminal conduct, but for mere technical probation violations or status offenses.¹¹

On a single day in 2006, 4,717 youth were held in a juvenile residential placement in the United States for committing a status offense.¹² Of these, 1,917 were detained for incorrigibility, 894 were held for running away, and 863 were held for truancy.¹³

According to recent national juvenile court statistics, 55 percent of runaways who come into contact with law enforcement end up in court; the same is true for 14 percent of truants and 30 percent of young people labeled as ungovernable or unruly.¹⁴ As more status offenders are subjected to court process and placed under court supervision, more are likely to be subjected to harmful detention for violating a court's order.

In most states, juvenile courts are permitted to impose a detention sanction on youth who violate a valid court order prohibiting them from engaging in noncriminal conduct.¹⁵ For example, youth may be confined as a sanction for running away from home, skipping school, or breaking curfew if ordered by a court in a juvenile court proceeding to refrain from such conduct.¹⁶

States vary in the confinement period allowed as a sanction for a status offender's violation of a court order. Some states limit the number of days a youth may be confined for violating a juvenile court order.¹⁷ For example, the Washington State legislature has limited the amount of imprisonment time that may be imposed for violations of child-in-need-of-supervision orders to seven days.¹⁸ But even when statutory limitations are imposed on the duration of confinement, courts can and do incarcerate youth for longer, indeterminate periods for violating protective child-in-need-of-supervision or dependency orders pursuant to the court's inherent authority or criminal contempt powers.¹⁹

Several states limit the detention of status offenders for violating court orders to certain types of status offenses. For example, Kentucky exempts violators of curfew laws from secure detention,²⁰ and Indiana allows the detention of only truants and runaways for violations of court orders.²¹

Only a few states explicitly prohibit the secure confinement of status offenders in all circumstances, including violations of a valid court order. In Connecticut, the legislature has eliminated use of the valid court order exception entirely.²² New York also does not allow secure detention for violations of valid court orders entered for person-in-need-of-supervision proceedings.²³ The Alabama legislature, responding to data indicating that 40 percent of all youth in state custody were serving time for probation violations and status offenses, recently prohibited the commitment of status offenders to the state's juvenile justice agency.²⁴

II. THE INCARCERATION OF STATUS OFFENDERS IS HARMFUL AND COUNTERPRODUCTIVE

For several decades, research and best practices in the field have shown that placing troubled teens in detention for committing a status offense does not provide the help and support they so desperately need. In fact, detaining status offenders is likely to exacerbate the problems that cause a court to intervene.²⁵ Punitive programs that remove youth from their homes and

their communities make it harder to address the problems that led to the out-of-home placement in the first place.²⁶

Children are exposed to negative behavior models in detention, causing a greater likelihood of future delinquency.²⁷ Detention also removes them from treatment opportunities, school, and community ties and supports.²⁸ Numerous studies have shown that incarceration “has a profoundly negative impact on young people’s mental and physical well-being, their education,” and future prospects.²⁹

The effect of incarceration on mentally ill youth is particularly harmful. Incarceration disconnects them from sorely needed community mental health services³⁰ and has been shown “to generate higher rates of depression and suicide ideation.”³¹

Girls are also especially at risk for physical and sexual abuse in custody,³² and are disproportionately detained for status offenses. One recent study shows that 61 percent of all petitioned runaway status-offender cases are girls and that girls serve twice the amount of detention time for status offenses compared to boys.³³ It is especially common for girls who engage in status offense behaviors to have a history of victimization, family turmoil, mental health disorders, and poor school performance.³⁴ The problems that cause youth to run away, skip school, or otherwise act out, therefore, are particularly acute for adolescent girls. Girls are also more frequently viewed as needing protection from harm than boys. Unfortunately, detention is far too often the only way to connect troubled girls with needed services due to the lack of positive support and treatment alternatives for girls in the community.

A. A Failed Federal Response to the Criminalization of Status Offenders

More than thirty years ago, Congress recognized the dangers of confining status offenders when it enacted the deinstitutionalization of status-offender provisions of the Juvenile Justice and Delinquency Prevention Act (JJDP).³⁵

The JJDPa authorizes federal formula grants to states complying with the four core mandates of the act: (1) deinstitutionalization of status offenders, (2) separation of juvenile and adult offenders, (3) removal of juveniles from adult jails, and (4) reduction of disproportionate minority contact.³⁶

A basic premise underlying the JJDPa, last reauthorized in 2002, is that confinement is neither appropriate nor necessary to address the troubled behaviors of youth who commit status offenses.³⁷ To be eligible for federal funding, states are required to remove status offenders from detention facilities and instead offer prevention, diversion, and treatment alternatives in the community.³⁸

Prior to the enactment of the JJDPa, minors who engaged in acts that would not be unlawful if committed by an adult could be, and often were, incarcerated for noncriminal behaviors by juvenile and family court judges exercising protective supervision over the child.³⁹ However, with the passage of the JJDPa in 1974, Congress sought to encourage states to “decriminalize” status offenses.⁴⁰

Originally, the act prohibited the detention of status offenders, including children who were found in contempt of court orders entered in dependency or other nondelinquency proceedings.⁴¹ In 1980, however, in response to family and juvenile court judges’ frustration with their inability to enforce orders perceived to be in a child’s best interest, the JJDPa was amended to allow states to incarcerate status offenders for violations of a valid court order (VCO).⁴²

The VCO exception allows states to incarcerate certain status offenders without jeopardizing federal funding. Under the VCO exception, states can incarcerate status offenders for violations of court orders entered in dependency or other nondelinquency proceedings that prohibit the child from engaging in specified noncriminal behaviors, such as running away from home or a foster-care placement.⁴³

The prosecutors' and juvenile-court judges' rationale for creating a VCO exception to the act's original prohibition against incarcerating status offenders in secure detention falls into two main categories: protection and deterrence.⁴⁴ Prosecutors and judges were concerned about the dangers that status offenders face, particularly runaways.⁴⁵ In jurisdictions with insufficient alternative social supports and community-based treatment options, judges were especially anxious to incarcerate repeat status offenders when the alternative was homelessness or living on the streets.⁴⁶ For other prosecutors and juvenile judges, the VCO exception was viewed as an important tool to ensure that juveniles respect the court's authority and are deterred from committing further offenses by the threat of having to spend time in jail.⁴⁷

The tension between the act's prohibition on the incarceration of status offenders and the real world problem courts faced trying to address the needs of "chronic and habitual status offenders [who] . . . regularly come before these courts and are regularly released to repeat the very same offense"⁴⁸ was thus resolved by Congress in 1980 with the enactment of the VCO exception.

B. The Exception That Swallowed the Rule

Instead of promoting safety and deterrence, however, the use of the VCO exception has, over time, substantially undermined the act's original goal of eliminating the use of confinement to address status-offender behavior. In fact, the VCO may have encouraged greater court involvement in status-offender matters: between 1985 and 2004, the number of court-petitioned juvenile status offense cases more than doubled nationwide.⁴⁹ Most definitely, the VCO exception has resulted in the continued use of confinement as a response to status-offender behaviors, contrary to the original goal of the act.⁵⁰

As allowed under the VCO exception, states continue to use locked facilities for status offenses, causing harmful exposure to detention. Table 1

below provides a snapshot of the number of juveniles in residential placement (by locked and unlocked facilities) in each state on a single day in 2006. This data shows that all but one state, Rhode Island, had at least one status offender in locked facilities on the day the census was taken; New York had 606 juveniles in locked facilities, the most of any state.⁵¹

Table 1. Snapshot of number of juveniles in residential placement

State	Locked	Unlocked	Total
Alabama	231	90	321
Alaska	36	6	42
Arizona	48	0	48
Arkansas	54	6	60
California	99	39	138
Colorado	33	6	39
Connecticut	39	3	42
Delaware	9	0	9
DC	0	0	0
Florida	21	3	24
Georgia	111	21	131
Hawaii	21	0	21
Idaho	21	3	24
Illinois	9	24	33
Indiana	222	36	258
Iowa	69	21	90
Kansas	12	21	33
Kentucky	231	33	264
Louisiana	84	24	108
Maine	3	0	3
Maryland	27	0	27
Massachusetts	9	18	27
Michigan	267	45	312
Minnesota	93	42	135
Mississippi	9	0	9
Missouri	75	6	81

State	Locked	Unlocked	Total
Montana	6	6	12
Nebraska	153	3	156
Nevada	9	0	9
New Hampshire	18	15	33
New Jersey	12	39	51
New Mexico	12	0	12
New York	606	126	732
North Carolina	24	36	60
North Dakota	66	0	66
Ohio	102	9	111
Oklahoma	9	9	18
Oregon	27	3	30
Pennsylvania	276	78	354
Rhode Island	0	0	0
South Carolina	33	9	42
South Dakota	93	6	99
Tennessee	30	30	60
Texas	36	66	102
Utah	15	3	18
Virginia	63	3	66
Washington	48	0	48
West Virginia	84	45	129
Wisconsin	105	12	117
Wyoming	45	15	60
Total	3972	1056	5025

Source: Data from M. Sickmund, *Special Analyses of Census of Juveniles in Residential Placement Data, 1997–2006: Status Offenders by State, Adjudication Status and Locks* (Nat’l Ctr. for Juv. Just. 2008). Available from authors on request.

The JJDPa requires each state to assemble a State Advisory Group (SAG) to administer JJDPa funds and provide compliance reports to the federal government. According to the most recent national report on states' compliance with the JJDPa's status-offender requirement, only four jurisdictions had zero violations on a snapshot date in 2005, even allowing for the VCO exception to the rule.⁵² Forty-eight other jurisdictions were in compliance only by virtue of not having exceeded the de minimis exceptions level of violations.⁵³ Three states were not in compliance at all.⁵⁴

A review of the individual SAG websites for more recent data indicates that eighteen states have posted either their three-year plan or an annual report on JJDPa compliance.⁵⁵ Of those eighteen states, only four (Indiana, Iowa, Massachusetts, and Maine) reported that they were in compliance with the act's status-offender requirement in their most recent reports.⁵⁶ Fourteen states reported a specific number of violations of the act's requirement, ranging from three to 748 violations on a given day.⁵⁷ This means that these states are in violation of the act's requirement, even allowing for the VCO exception. During the period from 2004 to 2007, three states (Washington, Wisconsin, and Wyoming) reported being found totally out of compliance with this requirement.⁵⁸

Unfortunately, JJDPa's goal of eliminating the use of detention to address status-offender misbehavior has been unrealized. In practice, the VCO exception to the prohibition on the use of detention to punish adolescents for noncriminal conduct appears to have swallowed one of the main public policy rules of the act. Stronger federal guidance is needed to finally end the harmful practice of incarcerating status offenders.

C. Alternatives to Incarceration

Equally as important as the admonition against the use of detention for status offenders is the JJDPa's emphasis on the development of more effective interventions and community-based alternatives to confinement

for youth and their families.⁵⁹ The number of states that are out of compliance with the act's status-offender requirement is undoubtedly a by-product of the unavailability of alternative noncustodial interventions.

Many types of services have been proven effective in reducing rates of incarceration and status-offense misbehavior. For example, studies have found that therapeutic foster care reduces the likelihood that adolescents will run away or be incarcerated.⁶⁰ Research also suggests that status offenders and their families are best served by both individual and family counseling.⁶¹ Respite care and temporary crisis shelters offered on an emergency basis provide families the break they need to consider more permanent interventions such as counseling and case management.⁶² Children receiving "wraparound" services⁶³ have been proven to display fewer externalizing noncriminal misbehaviors.⁶⁴

There have been a variety of other innovative service models developed to address different types of status-offender behaviors and to reduce reliance on confinement. Some of the more effective programs are described below.

Project STRIVE, a family intervention program developed by researchers at UCLA, is designed to address unresolved family conflict that may lead youth to run away and stay away from home.⁶⁵ The program focuses on recognizing family strengths, problem solving, conflict resolution, and emotion management.⁶⁶ It has been shown to reduce the chances of teens becoming chronic runaways.⁶⁷

Families and Schools Together (FAST) was developed by researchers at the Wisconsin Center for Education Research to strengthen relations between parents and children and their connection to school.⁶⁸ The program is delivered in elementary schools and communities. It works to build a sense of accountability and individual responsibility in children, and it helps parents to understand their role in their child's education. FAST participants are often children who have been identified by their teachers as high risk; however, upon completing the program, these students have lower rates of

substance abuse and other factors that would have contributed to violence and delinquency.⁶⁹

In recent years, several states have also revised their approach to status offenses in an effort to reduce the use of confinement. The following state reforms are models for other states seeking to reduce the use of confinement to address status-offense misbehaviors.

1. Connecticut

In response to concerns about the number of girls who ended up in detention for being habitual runaways, Connecticut, in 2005, became one of the few states to specifically remove the valid court order as an option for detaining status offenders.⁷⁰ This amounted to a shift from “court involvement to a community-based approach for serving children and families in FWSN [Families With Service Needs] cases.”⁷¹ In 2007, the legislature funded four family support centers, which provide voluntary services for children and families, including crisis counseling, therapy, and respite care; district courts are required to refer FWSNs to these centers.⁷² In 2008, the Connecticut legislature considered funding for an additional six family support centers. The FWSN Advisory Group recommended the funding and stated that it was essential to fulfilling the mandate of Connecticut Public Act No. 05-250.⁷³

2. New York

In its Family Court Act, New York State requires all counties to refer most status offenders (with the exception of runaways who have been arrested pursuant to a warrant) to diversion services and to exhaust those services prior to issuing a petition with the family court.⁷⁴ As noted in the statute, the diversion services are intended to “provide an immediate response to families in crisis, to identify and utilize appropriate alternatives to detention, and to divert youth from being the subject of a petition in

family court.”⁷⁵ The required diversion services include both respite care and crisis intervention services.⁷⁶

The Vera Institute of Justice has highlighted several counties in New York that have successfully implemented the mandate of the Family Services Act.⁷⁷ For example, New York’s Orange County created a new cross-agency department, Family Keys, to receive referrals from the probation department of Families in Need of Services.⁷⁸ Family Keys provides prompt assessment and assistance to families in crisis. In the first few years of the program, the probation department noted a substantial drop in the number of persons-in-need-of-supervision intakes, from 762 in 2000 to 426 in 2003.⁷⁹ Albany County elected to work with juvenile court judges to develop alternatives to pretrial detention.⁸⁰ Through the Juvenile Release Under Supervision program, juveniles are given a risk and needs assessment to determine whether they can be placed in the community.⁸¹ Those juveniles who are able to remain in the community are connected to social services and monitored on a daily basis. In the first ten months of the program, only forty-six of 338 cases were referred to detention; of those that remain in the community, 82 percent completed the program without being remanded to detention.⁸²

3. New Mexico

In New Mexico, systemic change to status-offender policy was accomplished by transferring primary jurisdiction for status offenders from the juvenile justice system to the Children Youth and Families Department.⁸³ As was the case in New York, this change was designed to ensure that all diversion options were exhausted before petitioning the court. Likewise, the New Mexico law excluded a particular population, in this case truants, whose cases can still be referred directly to the juvenile probation office.⁸⁴

The magnitude of the impact of these state reforms is not made clear by simply reviewing data from the Census of Juveniles in Residential

Placement before and after these reforms, as illustrated in Tables 2 and 3 below. In two of these states, New York and Connecticut, other changes to state law—namely the increase in the maximum age of young people who could be considered status offenders (from sixteen to seventeen in Connecticut⁸⁵ and from fifteen to seventeen in New York⁸⁶)—contributed to the increase in the number of young people that may be detained for status offenses. Therefore, the fact that New York was able to reduce its total number of status offenders in residential placement from 2001 to 2006, despite the passage of legislation in 2001 which brought sixteen- and seventeen-year-olds into the system, is an additional accomplishment.

Table 2. Juveniles in locked and unlocked facilities on one day

State	2006		2003		2001	
	Locked	Unlocked	Locked	Unlocked	Locked	Unlocked
Conn.	39	3	27	57	24	15
New Mexico	12	0	15	9	18	3
New York	606	126	672	294	111	708

Source: Sickmund, *Special Analyses of Census of Juv. in Residential Placement Data, 1997–2006: Status Offenders by State, Adjudication Status and Locks* (Nat’l Ctr. for Juv. Just. 2008). Available from authors on request.

Table 3. Total juveniles in facilities on one day

State	2006	2003	2001
Connecticut	42	84	39
New Mexico	12	24	21
New York	732	966	819

Source: Sickmund, *Special Analyses of Census of Juv. in Residential Placement Data, 1997–2006: Status Offenders by State, Adjudication Status and Locks* (Nat’l Ctr. for Juv. Just. 2008). Available from authors on request.

As these states and programs have shown, through greater use of effective noncustodial interventions it is possible to reduce reliance on confinement in response to the problems of status offenders and their

families. Therefore, greater federal guidance and support are needed to assist states in developing these alternatives.

II. JJDP REAUTHORIZATION

The JJDP is up for reauthorization in the 111th Congress as Senate Bill 678. The VCO exception must be eliminated through the reauthorization process to ensure that status offenders are no longer subject to the harms of detention. In its current form, Senate Bill 678 proposes the elimination of the VCO exception to the DSO core requirement over a three-year phase-out period.⁸⁷ If passed, this would be an important step towards ending the use of secure detention for status offenders.

The Office of Juvenile Justice and Delinquency Prevention should also more aggressively monitor states' compliance with the status offender confinement prohibition of the act and more meaningfully support states in the development and funding of alternatives to detention. The key to finally eliminating the use of confinement to address status offense behavior—behavior that is more likely a cry for help than a cause for punishment—is the enhancement of noncustodial alternatives that address the underlying problems and needs of youth in trouble.

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³ See OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, STATISTICAL BRIEFING BOOK (2006), <http://ojjdp.ncjrs.gov/ojstatbb/crime/qa05101.asp?qaDate=2004>

⁴ David J. Steinhart, *Status Offenses: The Future of Child.*, 6 JUV. CT. 86, 86–89 (1996); see also 28 C.F.R. § 31.304(h) (defining status offender as a “juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.”).

⁵ ANNE STAHL, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, OJJDP FACT SHEET 2004: PETITIONED STATUS OFFENSE CASES IN JUVENILE COURT 1 (2008), available at <http://www.ncjrs.gov/pdffiles1/ojjdp/fs200802.pdf>.

⁶ Alecia Humphrey, *The Criminalization of Survival Attempts: Locking Up Female Runaways and Other Status Offenders*, 15 HASTINGS WOMEN'S L.J. 165 (2004).

⁷ NAT'L INST. OF MENTAL HEALTH, *TEENAGE BRAIN: A WORK IN PROGRESS* 2 (2008); see also *Roper v. Simmons*, 543 U.S. 551, 569–70 (2005) (recognizing that adolescents are developmentally different than adults, are more prone toward impulsivity, are vulnerable to peer pressure, and have a greater capacity to change).

⁸ A status offender can also be called a child-in-need-of-supervision or person-in-need-of-supervision.

⁹ See BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INST, *THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES* (2006); see also NAT'L INST. OF HEALTH, STATE-OF-THE-SCIENCE CONFERENCE STATEMENT: PREVENTING VIOLENCE AND RELATED HEALTH-RISKING SOCIAL BEHAVIORS IN ADOLESCENTS 13 (2004) (noting that the incarceration of juveniles raises “the hazard of ‘contagion’” because “[w]hen young people with delinquent proclivities are brought together, the more sophisticated can instruct the more naïve in precisely the behaviors that the intervener wishes to prevent.”).

¹⁰ ALA. CODE § 12-15-71 (1975); ALA. CODE § 12-15-208(a)(1) (2009); ALASKA STAT. § 47.10.141(1)(c) (2005) (referring to runaways); ARK. CODE ANN. § 9-27-336 (2005); COLO. REV. STAT. ANN. § 22-33-108(7)(b) (2007); D.C. CODE § 16-2313(a)(3) (2001); FLA. STAT. ANN. § 984.09(2) (2007); FLA. STAT. ANN. § 984.226(3) (2007); HAW. REV. STAT. § 571-32 (1993); IDAHO CODE ANN. § 20-520 (2008); 705 ILL. COMP. STAT. 405/1-4.1 (1999); IND. CODE § 31-37-22-5 (2008); KAN. STAT. ANN. § 38-2260(f)(2) (2008); KY. REV. STAT. ANN. § 630.070 (2008); LA. CHILD CODE ANN. art. 1509.1 (2004), MICH. COMP. LAWS ANN. § 712A.15 (1972); MO. ANN. STAT. § 211.063 (Vernon 2004); MISS. CODE ANN. § 43-21-301(6)(a) (2006); N.C. GEN. STAT. ANN. § 7B-2505 (2001); N.D. CENT. CODE § 27-20-16 (1987); NEB. REV. STAT. § 43-250(3)(f) (2004); NEV. REV. STAT. §§ 62C.050 (1) & (3) (2003); OHIO REV. CODE ANN. § 2151.354 (2002); OKLA. STAT. ANN. tit. 10 § 7304-1.1 (2007); OR. REV. STAT. § 419C.145 (2003); R.I. GEN. LAWS § 14-1-11(C) (2001); S.C. CODE ANN. § 20-7-72109 (E) & (F) (2000); S.D. CODIFIED LAWS § 26-8B-6 (2008); TENN. CODE ANN. § 37-1-114 (b) & (c)(6) (1999); TEX. FAM. CODE ANN. § 54.04 (2007); VA. CODE ANN. § 16.1-292 (2000); WASH. REV. CODE ANN. § 13.32A.250 (2000); WIS. STAT. § 938.355(6m)(1g) (2007) (specific to truants); WYO. STAT. ANN. § 14-6-438 (1999).

¹¹ JAMES AUSTIN, KELLY D. JOHNSON, & RONALD WEITZER, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, *JUVENILE JUSTICE BULLETIN: ALTERNATIVES TO SECURE DETENTION AND CONFINEMENT OF JUVENILE OFFENDERS* (2005), <http://www.ncjrs.gov/pdffiles1/ojjdp/208804.pdf>.

¹² OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, *CENSUS OF JUVENILE IN RESIDENTIAL PLACEMENT DATABOOK* (2006), http://ojjdp.ncjrs.org/ojstatbb/Cjrp/asp/Ofense_Adj.asp (defining residential placement as any publicly or privately operated facility, excluding those exclusively for mental health or drug treatment); see also OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, *CENSUS OF JUVENILES IN RESIDENTIAL PLACEMENT DATABOOK METHODS*, <http://ojjdp.ncjrs.org/ojstatbb/Cjrp/asp/methods.asp> (last visited Mar. 10, 2009).

¹³ *Id.*

- ¹⁴ ANNE L. STAHL ET AL., *JUVENILE COURT STATISTICS 2003–2004* (2007).
- ¹⁵ AM. BAR ASSOC., CTR. FOR CHILD. & THE LAW, *JUVENILE STATUS OFFENSES FACT SHEET* (2007), http://www.act4jj.org/media/factsheets/factsheet_17.pdf.
- ¹⁶ See Steinhart, *supra* note 4, at 91.
- ¹⁷ FLA. STAT. § 984.09 & 984.226; GA. CODE ANN § 15-11-39(A); HAW. REV. STAT. § 571-32; LA. CHILD. CODE ANN. art. 1509.1; MO. ANN. STAT. § 211.063; MISS. CODE ANN. § 43-21-301(6)(a); N.C. GEN. STAT. § 7B-2505; N.D. CENT. CODE § 27-20-17; NEB. REV. STAT. § 43-250(3)(f); R.I. GEN. LAWS § 14-1-11(c); TENN. CODE. ANN. § 37-1-114 (b) & (c)(6); TEX. REV. FAM. STAT. ANN. § 54.011.
- ¹⁸ See WASH. REV. CODE ANN. § 13.32A.250 (2000).
- ¹⁹ See, e.g., *In re A.K.*, 162 Wash. 2d 632, 174 P.3d 11 (2007) (imposing thirty- to sixty-day detention sentence on girls who repeatedly ran away from foster placements, pursuant to the inherent contempt powers of the court, even though the Washington legislature limited the remedial sanction for contempt to seven days); see also Maggie Hughey, *Holding a Child in Contempt*, 46 DUKE L.J. 353 (1996).
- ²⁰ See KY. REV. STAT. ANN. § 610.265 (2008).
- ²¹ See IND. CODE § 31-37-22-6 (2005).
- ²² “No child whose family has been adjudicated as a family with service needs in accordance with section 46b-149 may be processed or held in a juvenile detention center as a delinquent child, or be convicted as a delinquent, solely for the violation of a valid order that regulates future conduct of the child that was issued by the court following such an adjudication.” CONN. GEN. STAT. § 46b-148 (2008).
- ²³ See N.Y. FAM. CT. ACT § 720(2) (2005); see also *In the Matter of Jennifer G.*, 26 A.D. 3d 437, 437-38, 811 N.Y.S.2d 85 (N.Y. App. Div. 2006) (upholding the constitutionality of this provision of the Family Court Act).
- ²⁴ See ALA. CODE § 12-15-201(4), -208(a)(1) (1975) (effective Oct. 2009).
- ²⁵ *In re Dependency of A.K.*, 162 Wash.2d 632, 655, 174, P.3d 11 (2007) (“numerous studies indicat[e] detention does not have an ameliorative effect on runaway behavior, and, in fact, exacerbates the problem.”).
- ²⁶ THOMAS SEXTON & JAMES ALEXANDER, *OJJDP JUV. JUST. BULLETIN: FUNCTIONAL FAMILY THERAPY* (2000), <http://www.ncjrs.gov/pdffiles1/ojjdp/184743.pdf>.
- ²⁷ See generally Humphrey, *supra* note 6.
- ²⁸ SEXTON & ALEXANDER, *supra* note 26 at 7.
- ²⁹ See, e.g., HOLMAN & ZIEDENBERG, *supra* note 9 (linking incarceration to decreased participation in the labor market.); NAT’L INST. OF HEALTH, *STATE-OF-THE-SCIENCE CONFERENCE STATEMENT: PREVENTING VIOLENCE AND RELATED HEALTH-RISKING SOCIAL BEHAVIORS IN ADOLESCENTS* (2004).
- ³⁰ HEATHER BARR, CTR. ON CRIME, COMMUNITIES & CULTURE, *PRISONS AND JAILS: HOSPITALS OF LAST RESORT* 19 (1999), <http://www.prisonpolicy.org/scans/MIRreport.pdf>.
- ³¹ HOLMAN & ZIEDENBERG, *supra* note 9, at 8.
- ³² Humphrey, *supra* note 6, at 7; see also Am. Bar Assoc. & the Nat’l Bar Ass’n, *Justice by Gender: The Lack of Appropriate Prevention, Diversion and Treatment Alternatives for Girls in the Justice System: A Report Jointly Issued by the American Bar Ass’n and the*

Nat'l Bar Ass'n, 9 WM. & MARY J. WOMEN & L. 73, 6-7 (2002) [hereinafter *Justice by Gender*].

³³ HOWARD SNYDER & MELISSA SICKMUND, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT, (2006), <http://ojjdp.ncjrs.org/ojstatbb/nr2006/downloads/NR2006.pdf>.

³⁴ *Justice by Gender*, *supra* note 32.

³⁵ Juv. Just. Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1122.

³⁶ *Id.*

³⁷ BLAS NUNEZ-NETO, CONG. RESEARCH SERV., JUVENILE JUSTICE: LEGISLATIVE HISTORY AND CURRENT LEGISLATIVE ISSUES (2007), http://njjn.org/media/resources/public/resource_889.pdf.

³⁸ 42 U.S.C. § 5601 (2006).

³⁹ Barry C. Feld, Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, and Sentencing Policy, 88 J. CRIM. LAW & CRIMINOLOGY 68-136 (1997).

⁴⁰ DAVID W. ROUSH, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, DESKTOP GUIDE TO JUVENILE DETENTION PRACTICE: RESEARCH REPORT (1996).

⁴¹ *See* Juv. Just. Delinquency Prevention Act *supra* note 35.

⁴² Juv. Just. Amends. of 1980, Pub. L. No. 96-509, 42 U.S.C. 5633(a)(11) (1980).

⁴³ *Id.*

⁴⁴ *Juvenile Justice Amendments of 1980: Hearing on H.R. 6704 Before the Subcomm. on Human Resources of the House Comm. on Labor and Education*, 96th Cong. 125 (1998).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ CHARLES PUZZANCHERA, OJJDP BRIEFING PAPER: TRENDS IN THE JUV. JUST. SYS. RESPONSE TO STATUS OFFENDING (2007), http://www.trc.eku.edu/jj/docs/conf33/status_briefingpaper.pdf.

⁵⁰ In Washington State, when state officials expanded the permissive use of secure and semisecure confinement to address status-offense behavior, status-offender detention rates increased by 835 percent. Mistee Pittman, *The Becca Bill: A Step Toward Helping WA Families*, 34 GONZ. L. REV. 384, 405 (1998-99).

⁵¹ M. SICKMUND, SPECIAL ANALYSES OF CENSUS OF JUV. IN RESIDENTIAL PLACEMENT DATA, 1997-2006: STATUS OFFENDERS BY STATE, ADJUDICATION STATUS AND LOCKS (2008). Available from authors by request.

⁵² American Samoa, Delaware, Montana, and New Mexico were in full compliance by having zero violations. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, OJJDP ANNUAL REPORT 2005 (2005), <http://www.ncjrs.gov/pdffiles1/ojjdp/215560.pdf>.

⁵³ The de minimis exception has three criteria. Criterion A considers the extent to which noncompliance is insignificant in terms of the total juvenile population in the state. States that institutionalize fewer than 5.8 status offenders per one hundred thousand juveniles qualify for the de minimis exception without having to meet any additional criteria. States that have a higher institutionalization rate must address Criterion B, which measures the extent to which noncompliant detentions are in violation of state law or policy or, in other words, are aberrations. These states must also address Criterion C, which measures the

extent to which the state has an acceptable plan for eliminating noncompliant incidents that were part of a pattern or practice consistent with the existing state law or policy. 46 Fed. Reg. 2566 (Jan. 9, 1981), *available at*, www.ojp.usdoj.gov/about/pdfs/deminimis_exceptions_guidelines.pdf. Those 48 jurisdictions that were in full compliance by not exceeding the de minimis exceptions level include Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wisconsin. OFFICE OF JUV. JUST. AND DELINQUENCY PREVENTION, *OJJDP 2005 Annual Report*, FY 2005, at 73, *available at* <http://www.ojjdp.ncjrs.org/publications/PubResults.asp#2008>.

⁵⁴ Not in compliance: Mississippi, Washington, and Virgin Islands. Note: Wyoming did not participate in the grant program in fiscal year 2005. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *supra* note 53.

⁵⁵ Alaska, Colorado, Idaho, Indiana, Iowa, Kansas, Massachusetts, Maine, Montana, Nebraska, North Carolina, Ohio, South Carolina, South Dakota, Virginia, Washington, Wisconsin, and Wyoming.

⁵⁶ IND. CRIM. JUST. INST., INDIANA'S THREE YEAR DELINQUENCY PREVENTION AND SYS. IMPROVEMENT PLAN: PLAN UPDATE & APPLICATION 7 (2007), http://www.in.gov/cji/files/2007_3_year_plan_update.pdf; JDIV. OF CRIM. AND JUV. JUST. PLANNING & IOWA'S JUV. JUST. ADVISORY COUNCIL, SERVING IOWA YOUTH AND FAMILIES WITH A YOUTH DEVELOPMENT APPROACH, JJDP ACT FORMULA GRANT APPLICATION AND THREE YEAR PLAN 70 (2006), http://www.iowa.gov/dhr/cjip/images/pdf/06_pub/2006-3YRFormulaRepFinal.pdf; MASS. JUV. JUST. ADVISORY COMMITTEE, ANNUAL REPORT TO THE GOVERNOR 5 (2006), http://www.mass.gov/Eeops/docs/programs/fjj/2006_jjac_annual_report.pdf; STATE OF ME JUV. JUST. ADVISORY GROUP, COMPREHENSIVE THREE YEAR PLAN FOR JUVENILE JUSTICE DELINQUENCY PREVENTION FOR FISCAL YEARS 2006–2008 27 (2006), <http://www.state.me.us/corrections/jjag/ReportsPubs/06-08Plan.doc>.

⁵⁷ Arkansas (2006), Colorado (2006), Idaho (2006), Kansas (2007), Montana (2007), Nebraska (2006), North Carolina (2006), Ohio (2006), South Carolina (2004), South Dakota (2007), Virginia (2005), Washington (2006), Wisconsin (2007), and Wyoming (2007).

⁵⁸ Pittman, *supra* note 50, at 405 (stating that in Washington State, after the legislature passed the Becca Bill permitting the detention of status offenders in secure and semisecure facilities, the number of youth placed in detention for status offenses increased by 835 percent); *see also* GOVERNOR'S JUV. JUST. COMM'N, 2007 REPORT TO THE GOVERNOR AND LEGISLATURE 6 (2008), <http://oja.wi.gov/docview.asp?docid=13016&locid=97> ("In the fall of 2006, OJJDP informed Wisconsin that it was out of compliance on the deinstitutionalization of status offenders requirement. That meant Wisconsin lost 20 percent of its federal juvenile justice funds and was required to spend 50 percent of the remaining funds to address DSO."); WYO. STATE JUV. JUST. ADVISORY COUNCIL, ANNUAL REPORT TO THE GOVERNOR (2008), <http://www.wyjuvenilejustice.co>

m/PDF/2008%20Annual%20Report.

pdf. Wyoming is the only state in the United States that is not a participant in the JJDP. Rather than comply with the JJDP requirements, Wyoming processes many status offenders in adult courts.

⁵⁹ See 42 U.S.C. § 5633(a)(9)(A) and (B).

⁶⁰ U.S. DEP'T OF HEALTH & HUMAN SERVICES, MENTAL HEALTH: A REPORT OF THE SURGEON GENERAL (1999), <http://www.surgeongeneral.gov/library/mentalhealth/home.html>.

⁶¹ CAREN KAPLAN, CHILD. MISSING FROM CARE 38 (2004) (citing Samuel J. Fasulo, et al., *Adolescent Runaway Behavior in Specialized Foster Care*, 24 CHILD. & YOUTH SERV. REV. 623-40 (2002)).

⁶² FIZA QUARAISHI, HIEDI J. SEGAL & JENNIFER TRONE, VERA INST. OF JUST., RESPITE CARE: A PROMISING RESPONSE TO STATUS OFFENDERS AT RISK OF COURT-ORDERED PLACEMENTS (2002), http://www.vera.org/publication_pdf/188_356.pdf.

⁶³ Wrap-around providers engage the child, family, and multiagency teams to marshal community and natural supports for children, offering an array of individualized therapeutic interventions, which may include crisis planning and intervention, parent coaching, medications monitoring, and counseling. *Katie A. v. Bonta*, 433 F. Supp. 2d 1065, 1071-72 (C.D. Cal. 2006).

⁶⁴ See generally LYNN MARSENICH, CAL. INST. FOR MENTAL HEALTH, EVIDENCE-BASED PRACTICES IN MENTAL HEALTH SERVICES FOR FOSTER YOUTH (2002), <http://www.cimh.org/downloads/Fostercaremanual.pdf>.

⁶⁵ Powerpoint Presentation, David A. Polio, Sanna J. Thompson, & Norweeta Milburn, Family Interventions for Runaway Youth, <http://www.endhomelessness.org/content/article/detail/1242> (July 17, 2006).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Lynn McDonald, et. al, *Families and Schools Together: An innovative substance abuse prevention program*, 13 SOC. WORK IN EDUC., 188-128 (1991); see Lynn McDonald, et. al, *Families and Schools Together (FAST): Integrating Community Development with Clinical Strategy*, 78 FAM. IN SOC'Y 140-55 (1997).

⁶⁹ *Id.*

⁷⁰ See 2005 CONN. PUB. ACTS 05-250, codified at CONN. GEN. STAT. ANN. §§ 46b-120; 46b-148 (West 2006).

⁷¹ FAMILY WITH SERV. NEEDS ADVISORY BOARD, REPORT TO THE CT GENERAL ASSEMBLY 29 (2008), http://www.ctjja.org/media/resources/resource_287.pdf.

⁷² *Id.*

⁷³ See CONN. S.B. 342.

⁷⁴ N.Y. FAM. CT. ACT § 735 (2005).

⁷⁵ *Id.*

⁷⁶ N.Y. FAM. CT. ACT § 712 (2005)

⁷⁷ TINA CHIU & SARA MOGULESCU, VERA INST. FOR JUST., CHANGING THE STATUS QUO FOR STATUS OFFENDERS: N.Y. STATE'S EFFORT TO SUPPORT TROUBLED TEENS, http://www.vera.org/publication_pdf/253_496.pdf.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ N.M. STAT. ANN. § 32A-3A-1 (West 2005).

⁸⁴ N.M. STAT. § 22-12-7 (2006).

⁸⁵ 2005 CONN. ACTS 07-04.

⁸⁶ Chapter 596 of the Laws of 2000, amending N.Y. FAM. CT. ACT § 712. *See* Tables 2 and 3, *infra* p. 15.

⁸⁷ Juv. Just. and Delinquency Prevention Reauthorization Act of 2009, S. 678, 111th Cong., as introduced in the Senate, *available at* <http://thomas.loc.gov/cgi-bin/query/z?c111:S.678> (proposing legislation to reauthorize the Juv. Just. and Delinquency Prevention Act (JJDP) of 1974).