



## Deinstitutionalization of Status Offenders (DSO) *Facts and Resources*

### Who are status offenders?

Every day across the United States and its territories, thousands of children and teens are placed in locked confinement because they have been charged with “status offenses.” Status offenses are acts that are not deemed criminal when committed by adults, but carry juvenile court sanctions for youth because of their legal status as minors. Commonly charged status offenses include truancy, running away, curfew violations and behaviors that are considered ungovernable and/or incorrigible or beyond the control of one’s parents.

Although national data on juvenile status offenses are limited, the most recent statistics illustrate areas where changes in policy and practice are needed. Court petitioned status offense cases increased by almost 30% between 1995 and 2007.<sup>i</sup> In 2007 alone, an estimated 150,700 status offense cases were petitioned in juvenile courts; of these, 13,000 involved locked confinement of the youth at some stage between referral to the court and disposition.<sup>ii</sup> The most recent data from the Census of Juveniles in Residential Placement show that more than 4,700 status offenders were held in residential placement centers on the census date in 2006.<sup>iii</sup> However, when coupled with the number of status offenders held for technical violations – or behaviors that are not new offenses, but violations of a

youth’s probation or release – this number undoubtedly increases.<sup>iv</sup>

**One-day Residential Placement Population Count for Status Offenses, United States, Feb. 22, 2006**

	Placement Status			
	Total	Committed	Detained	Diverted
<b>Offense</b>	<b>4,717</b>	<b>3,635</b>	<b>836</b>	<b>240</b>
Runaway	894	574	230	85
Truancy	863	709	135	18
Incorrigibility	1,917	1,586	250	81
Curfew viol.	96	68	18	10
Alcohol	524	396	102	26
Other	423	302	101	20

The actions associated with status offenses are seldom isolated incidences and instead are often manifestations of underlying personal, familial, community and systemic issues, as well as other unmet and unaddressed needs. While certain factors reverberate through all categories of status offenses, others are particular to a certain offense. In addition, issues that underlie status-offending behavior are especially acute for adolescent girls.<sup>v</sup> Research reveals gender disparities in petitioned status offense cases, with girls being disproportionately detained; a recent study shows 61% of all petitioned runaway cases are girls.<sup>vi</sup> Further, girls serve twice the length of detention time for status offenses as compared to boys.<sup>vii</sup>

For these reasons, an individualized approach, premised on preventing

institutionalization, is necessary when addressing the needs of youth charged with status offenses. Thus, it is the position of the Coalition for Juvenile Justice (CJJ) and many other professional organizations in the fields of juvenile justice, child welfare and delinquency prevention that the juvenile justice system's response to status offenses should differ from responses to delinquent and criminal offenses, and in all cases be keyed to the developmental differences of children, teens and adults.

### **What are the Most Commonly Charged Status Offenses?**

The most common status offenses include missing school, running away from home, foster care or other placements, and parents relinquishing youth to the courts because they are not sure how to manage their children's behaviors.

#### Chronic Absenteeism/Truancy:

Chronic absenteeism/truancy is broadly defined as youth who habitually miss school. While the number of days a youth must miss before being considered truant varies by jurisdiction, researchers have noted common circumstances such as homelessness and transitory lifestyles, poverty, and neglect and abuse may lead a child to become truant.<sup>viii</sup> School and interpersonal factors may also play a part, including poor relationships with teachers and peers, fearfulness of attending school, inappropriate academic placement or support, and low self-esteem.<sup>ix</sup>

#### Running Away:

A runaway is defined as any youth who, without permission, leaves home and stays away overnight, or, if away from home,

chooses not to come home when expected.<sup>x</sup> Youth who run away often suffer from turmoil at home that may include physical abuse, sexual abuse, and/or neglect.<sup>xi</sup> Poverty and troubled family dynamics are typically associated with their backgrounds.<sup>xii</sup>

#### Ungovernable/Incorrigible Youth:

Best described as youth who have defiant relationships with their parents and family members, youth considered to be "ungovernable" often struggle with emotional, social and interpersonal issues that may be compounded when a parent does not possess the ability to deal with the misbehavior in a healthy fashion.<sup>xiii</sup> Their behavioral problems may stem from disorders such as Attention Deficit Hyperactivity Disorder (ADHD) or Oppositional Defiant Disorder (ODD).<sup>xiv</sup>

Additionally, there are state statutes and local ordinances that lead children and youth to be charged with other types of status offenses, including curfew and loitering violations and prohibitions against possession of firearms, tobacco and/or alcohol by youth under the legal age as defined by the jurisdiction.

### **Harm of Institutionalization**

While locked confinement may be a valid response to delinquent behavior in *very limited* circumstances, incarcerating youth charged with status offenses in secure/locked facilities is both dangerous and ineffective.

Prior to the 1970s, conventional wisdom advocated for the institutionalization of status offenders as a means to keep them

safe and reinforce “good” behavior. In the 1970s, with the passage of the federal Juvenile Justice and Delinquency Prevention Act, state and local jurisdictions began to deinstitutionalize status offenses, with youth being referred to a variety of community services.

By the mid-1980s, critics began to argue that deinstitutionalization was ineffective, citing the need for tough responses to all forms of youthful misbehavior, and asserting that runaway and truant youths needed to be more tightly controlled.<sup>xv</sup> Thus, the policy again shifted toward institutionalization, undoubtedly leading to the previously-cited sharp increase in court-petitioned status offense cases between 1995 and 2007.

Research, however, reveals that locked confinement is not an evidence-supported best practice for court-involved youth, especially status offenders. Institutionalization’s many harms begin with removing youth from their families and communities, which prohibits youth from developing the strong social network and support system necessary to transition successfully from adolescence to adulthood.<sup>xvi</sup> Further, for youth who have committed status offenses, detention is ill-equipped to address the underlying causes of the initial status offense, and fails to act as a deterrent to subsequent status-offending behavior.

In addition, placing youth who commit status offenses in locked detention facilities jeopardizes their safety and well-being, and may actually increase their likelihood of committing unlawful acts. Often, detained youth are held in overcrowded,

understaffed facilities—environments that can breed violence and exacerbate unmet needs.<sup>xvii</sup> In addition, nearly 20% of detained status offenders, as well as youth who have been charged with technical violations of probation and non-offending children who are detained in “protective custody” as victims of child abuse and neglect, are placed in living units with youth who have killed someone.<sup>xviii</sup>

### **Protecting Status Offenders: The Juvenile Justice and Delinquency Prevention Act (JJDP)**

In 1974, Congress passed the Juvenile Justice and Delinquency Prevention Act (JJDP) to provide a set of uniform standards of care and custody for court-involved youth across the U.S. states, territories, and the District of Columbia (“the states”).

The JJDP sets forth four core requirements, or protections, with which states must comply in order to be eligible for federal juvenile justice funding under the statute. States who voluntarily choose to comply with the JJDP also receive training and technical assistance from the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP). In addition, OJJDP is charged with monitoring state compliance with the JJDP and providing guidance to the states on how best to prevent delinquency and improve their juvenile justice systems.

The Deinstitutionalization of Status Offenders (DSO) core requirement of the JJDP provides that youth charged with status offenses, and abused and neglected youth involved with the dependency courts,

may not be placed in secure detention or locked confinement. This provision seeks to ensure that youth who have not committed a delinquent or criminal offense are not held with those who have and instead, receive the family- and community-based services needed to address and ameliorate the root causes of their behavior.

When states are found out of compliance with any of the four core requirements, OJJDP may reduce a state's funding by 20% for each requirement. Once found out of compliance, a state must use 50% of their remaining funding to regain full compliance with the JJDPA.

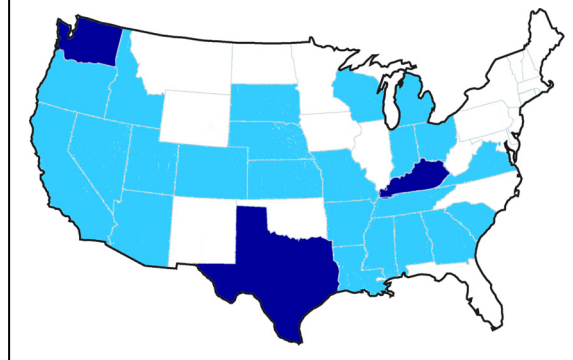
### Valid Court Order Exception

The valid court order (VCO) exception to the DSO core requirement was amended into the JJDPA in 1980. While the DSO protection remained intact, judges and others were given the option of placing adjudicated status offenders in locked detention if they violated a VCO, or a direct order from the court, such as "stop running away from home" or "attend school regularly." While intended to be an exception to the rule, the VCO exception has amounted to "bootstrapping," as it takes a status offense, protected from secure/locked detention under the JJDPA, and converts it into a delinquent act that is not entitled to the same protection.

Almost half of the U.S. states who voluntarily participate with the JJDPA prohibit use of the VCO exception in state statute or do not actively utilize the exception. In the thirty states where the exception is used, it is typically used by a single court or a small number of judges. A

few states, however, frequently use the VCO exception to lock up youth charged with status offenses. According to 2007 compliance data compiled by OJJDP, Kentucky, Texas and Washington accounted for 60% of the VCO exceptions invoked that year.<sup>xix</sup>

*States highlighted in light blue allow for and use the VCO exception according to 2007 data provided by OJJDP. States highlighted in dark blue reported the highest number of VCO uses for that year.*



*Note: Wyoming does not fully participate in the JJDPA, so data on Wyoming's use of the VCO are not available.*

Allowing youth who have committed status offenses to be placed in a locked facility violates the letter and the spirit of the JJDPA. Paul Lawrence, Presiding Justice of the Goffstown (NH) District Court, testified before Congress in 2009 stating that to ensure that youth are protected as intended by the JJDPA, congressional and state lawmakers "have to take [the VCO] option off the table."<sup>xx</sup> In line with Judge Lawrence's declaration, a 2008 survey of JJDPA participating states found that 44% of JJDPA compliance staff cited the DSO core

protection as being the most difficult of the core requirements with which to comply, with many respondents listing the VCO exception as the main barrier to JJDP compliance.<sup>xxi</sup>

### **What policy efforts are underway to effectively address the needs of this youth population without locked detention?**

States are increasingly amending their laws and policies to divert youth charged with status offenses from detention and formal adjudication within the juvenile court.

#### Connecticut

In 2005, Connecticut revised its state code to strictly prohibit the locked detention of youth charged with status offenses, also known as Families with Service Needs (FWSN). Connecticut postponed the effective date of the prohibition for two years to give stakeholders adequate time to design and implement an alternative intervention. Then, in 2007 and based on guidance from the FWSN Advisory Board, Connecticut revised its state code again to mandate juvenile court diversion for youth charged with status offenses. Instead, these youth are referred to Family Support Centers (FSC) where they have access to immediate family- and community-based services, including non-secure respite care for youth. Only if a family experiences repeated crises after FSC intervention can a formal petition be filed with the courts. During the first six months, the number of status offense court referrals fell by 41%, and more than one year later no youth charged with a status offense had been securely detained.<sup>xxii</sup>

#### New York

In 2005, New York adopted legislation to enhance diversion requirements for status offenders, discourage status offender petition filings, and narrow the circumstances under which PINS (Persons in Need of Services) youth may lawfully be detained. By 2006 - just one year later - court petitions for status offenses decreased by almost 41 percent, admissions of status offenders to non-secure detention facilities fell by 39 percent, and out-of-home placements decreased by 28 percent.<sup>xxiii</sup>

These and other state-level policy reforms are supportive of changes at the federal level as well. In both the 110<sup>th</sup> and 111<sup>th</sup> sessions of Congress, the U.S. Senate Judiciary Committee approved, with bipartisan support, JJDP reauthorization bills that called for the phasing out of the VCO exception over a three-year period. This amendment mirrors a recommendation adopted in 2008 by the CJJ Council of State Advisory Groups, comprised of Chairs/Chair-designees of State Advisory Groups (SAGs) chartered under the JJDP. The U.S. Department of Justice, where OJJDP sits, has also issued a letter in support of a JJDP reauthorization bill that would phase out use of the VCO exception.

### **What changes in state, local and judicial practice are underway to effectively address the needs of youth who commit status offenses?**

Ahead of large-scale policy changes in their respective states, several local jurisdictions are implementing changes in system practices that better utilize existing connections and resources to

deinstitutionalize youth charged with status offenses.

Clark County, Washington:

Despite being located in a state that allows use of the VCO, Clark County successfully implements a truancy protocol that diverts chronically absent youth away from the court system. Youth identified by schools as having excessive absences are brought before a Community Truancy Board and placed on a truancy plan, which often includes wraparound services.

Jefferson County, Kentucky:

In Jefferson County, juvenile judges act as conveners for local agencies, such as child protection services, mental health services, and schools, to address the needs of youth who struggle with truancy. Once identified by schools for having low attendance, youth come before an informal truancy “court” and are placed in a 10-12 week truancy program that includes appropriate social services.

Jefferson County, Alabama:

In Birmingham, judicial leaders have implemented a protocol for ungovernable/incorrigible youth that mandates before a parent file a petition, the parent must participate in at least five counseling sessions with his/her child. Counseling is offered by local providers at little or no costs. If the child refuses to comply, then the parent must develop a treatment plan with a counselor. This protocol has cut the number of ungovernable/incorrigible cases filed annually in Jefferson County by an estimated 40%.<sup>xxiv</sup>

**Resources of note:**

Coalition for Juvenile Justice (CJJ) has launched a Deinstitutionalization of Status Offenders and Other Non-Delinquent Youth Project (“DSO Project”) to help states and local jurisdictions identify, develop and adopt effective strategies for meeting the needs and behaviors of status offenders without detention and formal juvenile court adjudication. For more information visit the DSO Project Web page:  
[http://www.juvjustice.org/initiative\\_dso.html](http://www.juvjustice.org/initiative_dso.html).

National Council on Family and Juvenile Court Judges is undertaking efforts to educate and equip judges to eliminate use of the VCO and instead rely on evidence-informed strategies that do not result in locked detention. For more information visit:  
<http://www.ncjfcj.org/content/view/1318/347/>.

Vera Institute for Justice Center on Youth Justice works with the John D. and Catherine T. MacArthur Foundation’s Models for Change initiative to create successful and replicable models of status offender system reform in key states. For more information visit:  
<http://www.vera.org/centers/center-youth-justice> and  
<http://www.modelsforchange.net/index.html>.

American Bar Association Center for Children and the Law’s Juvenile Status Offense Project is designed to provide practical guidance to attorneys representing status offenders in and out of court. For more information visit:

[http://www.americanbar.org/groups/child\\_law/projects\\_initiatives/juvenile\\_status\\_offense\\_projects.html](http://www.americanbar.org/groups/child_law/projects_initiatives/juvenile_status_offense_projects.html).

Office of Juvenile Justice and Delinquency Prevention (OJJDP) has a DSO Best Practices Database which offers a searchable database containing profiles of promising programs and strategies in each of the five major status offense categories. For more information visit:  
<http://www2.dsgonline.com/dso2/>.

Georgetown University's Center for Juvenile Justice Reform is implementing a Crossover

Youth Practice Model to address the unique issues presented by children and youth who are known to both the child welfare and juvenile justice systems. For more information visit:  
<http://cjjr.georgetown.edu/pm/practicemo del.html>.

Administration for Children and Families at the U.S. Department of Health and Human Services provides a directory of providers serving runaway and homeless youth across the nation. For more information visit:  
<http://www2.ncfy.com/locate/index/htm>.

### About the Coalition for Juvenile Justice (CJJ):

CJJ is a true coalition. We are concerned individuals, practitioners, advocates, and youth, who voluntarily serve at the state and national levels to prevent children and youth from becoming involved in the courts and to uphold the highest standards of care when youth are charged with wrongdoing and enter the justice system. For more than 25 years, CJJ has supported this broad and active coalition of more than 1,800 members across all 56 U.S. states, territories and the District of Columbia, as the national nonprofit association of Governor-appointed state juvenile justice advisory groups, as well as allied individual and organizational members.

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<sup>i</sup> National Center for Juvenile Justice and Office of Juvenile Justice and Delinquency Prevention. 2010. *Juvenile Court Statistics 2006-2007*. Pittsburgh, PA: Charles Puzzanhera, et al.

<sup>ii</sup> *Id.*

<sup>iii</sup> Office of Juvenile Justice and Delinquency Prevention. 2006. *Census of Juveniles in Residential Placement Databook, Detailed Offense Profile for United States*. Retrieved from [http://www.ojjdp.gov/ojstatbb/cjrp/asp/State\\_Offense.asp](http://www.ojjdp.gov/ojstatbb/cjrp/asp/State_Offense.asp).

<sup>iv</sup> *Id.*

<sup>v</sup> Patricia J. Arthur and Regina Waugh. 2009. "Status Offenses and the Juvenile Justice and Delinquency Prevention Act: The Exception Swallowed the Rule." *Seattle Journal for Social Justice: Homeless Youth and the Law*. Vol. 7, Issue 2.

<sup>vi</sup> *Id.*

<sup>vii</sup> *Id.*

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- <sup>viii</sup> National Center for School Engagement. 2007. *Pieces of the Truancy Jigsaw: A Literature Review*. Denver, CO: Joanna Zorn Heilbrunn.
- <sup>ix</sup> *Id.*
- <sup>x</sup> Alma C. Molino. 2007. Characteristics of Help-Seeking Street Youth and Non-Street Youth. Retrieved from: <http://aspe.hhs.gov/hsp/homelessness/symposium07/molino/>.
- <sup>xi</sup> National Runaway Switchboard. 2010. *Why They Run: An in-depth look at America's Runaway Youth*. Chicago, IL.
- <sup>xii</sup> Molino, supra note vii.
- <sup>xiii</sup> Developmental Services Group. 2009. *Ungovernable/Incorrigible Youth Literature Review*. Bethesda, MD.
- <sup>xiv</sup> *Id.*
- <sup>xv</sup> David J. Steinhart. 1996. "Status Offenses—The Future of Children." *The Juvenile Court*, 6, 86-99.
- <sup>xvi</sup> D. Nelson. 2008. A Road Map for Juvenile Justice Reform. *2008 National KIDS COUNT Data Book*. Baltimore, MD.
- <sup>xvii</sup> Justice Policy Institute. 2006. *The Dangers of Detention*. Washington, DC: Barry Holman and Jason Ziedenberg.
- <sup>xviii</sup> Nancy Gannon Hornberger. 2010. "Improving Outcomes for Status Offenders in the JJDP A Reauthorization." *Juvenile and Family Justice Today*.
- <sup>xix</sup> Unpublished data provided to CJJ in an email. Cited here: Nancy Gannon Hornberger. 2010. "Improving Outcomes for Status Offenders in the JJDP A Reauthorization," *Juvenile and Family Justice Today*.
- <sup>xx</sup> Gannon Hornberger, supra note xviii.
- <sup>xxi</sup> Coalition for Juvenile Justice. 2009. *A Pivotal Moment: Sustaining the Success and Enhancing the Future of the Juvenile Justice and Delinquency Prevention Act*. Washington, DC: T. Andrews, et al.
- <sup>xxii</sup> Sarah Mogulescu and Gaspar Caro. 2008. *Making Court the Last Resort: A New Focus for Supporting Families in Crisis*. New York, NY: Vera Institute for Justice.
- <sup>xxiii</sup> *Id.*
- <sup>xxiv</sup> Data provided by the Jefferson County Family Court, Birmingham, AL.