

MODEL POLICY GUIDE

STATUS OFFENSE LAWS

A growing number of states and communities are revisiting their laws related to status offenses. These laws address behaviors that are illegal only because the person who committed them has not yet reached the age of legal majority.

The Coalition for Juvenile Justice (CJJ) published the *National Standards for the Care of Youth Charged with Status Offenses* as part of its Safety, Opportunity and Success (SOS): Standards of Care for Non-Delinquent Youth project, in part to serve as a model for states that are considering revisions to their status offense laws. This guide is based on the *National Standards*, and outlines some of the key issues states should take into consideration when trying to improve their laws to better serve young people who are charged with a status offense.

DEFINING THE ISSUE

One of the first and most important questions that states face when crafting legislation on this issue is, “How do we define status offenses?” This question is multi-faceted and should include consideration of the age at which the law no longer applies, as well as a list of specific behaviors that constitute status offenses, and a clear definition of what each behavior entails.

CATEGORIZING BEHAVIORS

States should clearly indicate what behaviors constitute a status offense. The *National Standards* define status offenses as behaviors that fall into one of the following five categories: (1) running away; (2) failing to attend school (truancy); (3) alcohol or tobacco possession; (4) curfew violations; and (5) circumstances where youth are found to be beyond the control of their parent/guardian(s), which some jurisdictions call “ungovernability” or “incorrigibility.”¹ States vary on which of these offenses they include in their own definitions. According to the Office of Juvenile Justice and Delinquency Prevention, as of

States should avoid considering any of the five types of behaviors listed in the *National Standards* as delinquent, as none of these behaviors violate the law when committed by an adult.

¹ The *National Standards for the Care of Youth Charged with Status Offenses*. p. 10. Available at: http://www.juvjustice.org/sites/default/files/resource-1/files/National%20Standards%20for%20the%20Care%20of%20Youth%20Charged%20with%20Status%20Offenses%20FINAL_0.pdf. Last accessed April 18, 2014.

2012 most states continued to handle possession of alcohol by a minor as a non-status offense.²

SETTING THE AGE

Policymakers should expressly indicate the age at which the law no longer applies. Most states have opted to make status offense laws applicable only to people under the age of 18.³ Other states, meanwhile, have set the age lower and in some cases have chosen to include both a minimum and a maximum age for the applicability of status offense laws. In North Carolina, for example, it is a status offense for anyone between the ages of 6 and 16 to not attend school on a regular basis.⁴

FOCUSING ON THE DETAILS

States should use detail and specificity to explain what categories of status offense behaviors are included. They should clearly define each of the categories of behaviors that they have deemed a status offense. If a state, for example, makes it a status offense to skip school, the applicable statute should clearly indicate how many days of school a student must miss, whether these absences must all be unexcused, and within what period of time the absences must accrue in order for the law to apply. States should also indicate what interventions schools must offer to a student before a truancy petition is filed.

Similarly, states that include “incurability” as a status offense should clearly indicate whether the law applies when a young person disregards directives from parents only, or if it also applies to directives issued by teachers and other adults. The statute should indicate whether the young person’s behavior must meet a specific threshold to trigger the law (e.g. is it sufficient to be merely disobedient or disruptive, or must the young person’s noncompliant behavior rise to the level of being dangerous). These statutes should also state how many times a child must be disobedient in order for the law to apply, and any applicable time frame within which this number must be met.

In jurisdictions where running away is considered a status offense, language should clearly indicate the length of time a child must remain away from their residence before the law becomes applicable. The statute should also indicate whether the child must have left home previously in order to trigger the statute, and whether an exception exists if the child is married, or left home for “good cause” such as physical or sexual abuse.

² Office of Juvenile Justice and Delinquency Prevention. Statistical Briefing Book. Available at: http://www.ojjdp.gov/ojstatbb/structure_process/qa04121.asp?qaDate=2012. Last accessed April 18, 2014. (In some states this is instead considered a delinquent offense.)

³ See Ala. Code § 12-15-101 et. seq.; Alaska Stat. § 47-10-011, et. seq.

⁴ N.C. Gen. Stat. § 7B-1501(27).

DIVERSION OPTIONS

As part of their discussions, states should also consider how and when children can be diverted from the court system to other community-based programs. Policymakers should consider whether this will occur before any papers are filed in the case, following a disposition in the matter, or at some other point along the way. Diversion should occur before court involvement when possible so court resources can be reserved for the most serious and complex cases. In Rhode Island, for example, no petition can be filed in a status offense case until a needs assessment has been conducted and the resulting treatment plan has failed.⁵

States should also consider whether diversion programs will be mandatory or voluntary. For example, in Arkansas, diversion is optional.⁶ Before diversion can be entered into in the state, both the child and his or her parent or guardian must be informed that diversion is not mandatory. The child and his or her parent or guardian must then consent to participation in a diversion program if this option is chosen. In Arkansas, the family also has a right to counsel when making this decision.

States should also consider whether there will be a penalty for failure to comply with diversion requirements and whether fees are associated with participation in a diversion program. States should avoid implementing fines and/or fees for diversion programs as these are not appropriate responses to status offense behaviors. States should attempt to divert status offenders from the judicial system whenever possible, as early in the process as possible, and as often as possible. States should have policies and procedures in place to ensure that a youth's rights are not violated in the event that

⁵ R.I. Gen Laws § 14-1-11(f).

⁶ Ark. Code § 9-27-301, *et. seq.*

SOS Project Products

In addition to the *National Standards for the Care of Youth Charged with Status Offenses*, the Coalition for Juvenile Justice has released several publications related to status offenses. These SOS Project products include:

Disproportionate Minority Contact and Status Offenses

Available at: http://www.juvjustice.org/sites/default/files/resource-files/DMC%20Emerging%20Issues%20Policy%20Brief%20Final_0.pdf

Girls, Status Offenses and the Need for a Less Punitive and More Empowering Approach

Available at: http://www.juvjustice.org/sites/default/files/resource-files/SOS%20Project%20-%20Girls%2C%20Status%20Offenses%20and%20the%20Need%20for%20a%20Less%20Punitive%20and%20More%20Empowering%20Approach_0.pdf

Ungovernability and Runaway Youth

Available at: <http://www.juvjustice.org/sites/default/files/resource-files/Ungovernable%20and%20Runaway%20Youth%20Guidance.pdf>

LGBTQ Youth and Status Offenses

Available at: <http://www.juvjustice.org/sites/default/files/resource-files/LGBTQ%20Youth%20Guidance%20FINAL.pdf>

Use of the Valid Court Order

Available at: <http://juvjustice.org/sites/default/files/resource-files/State%20VCO%20usage.pdf>

Truancy and Other Status Offenses

Available at: <http://juvjustice.org/sites/default/files/resource-files/Guidance%20For%20Education%20Professionals%20and%20Systems.pdf>

diversion fails. For example, statements of culpability that are required for entry into a diversion program should not be available for use against the young person if they later end up in court for the behavior.

SERVICES

Status offense behaviors such as skipping school and running away from home are often among the first indications that something is amiss in a child's life, and that either they and/or their family are in need of services such as a drug treatment programs, therapy and other interventions. Policymakers should give thought to services and how they will be offered to young people charged with status offenses.

Discussions should focus on the types of services made available to youth and whether these services will be mandatory or voluntary. It is also important to determine whether services will be for children only, or if they will extend to families, as well as what party (e.g. social services, intake officer, etc.) will offer services to the family.

RIGHT TO COUNSEL

Statutes should provide children with the right to counsel in status offense cases. States should make counsel available even if diversion is being considered in lieu of court proceedings. This helps ensure that the child's rights are not violated and that they receive the best possible outcome in their case. The *National Standards* urge states to ensure that the right to counsel in status offense cases cannot be waived. If waiver of counsel is permitted, it should only be granted in limited circumstances where (1) the waiver is made on the record, (2) following a thorough examination by the judge about the child's understanding and capacity, and (3) is made in the presence of and consultation with an attorney.

DETENTION AND CONFINEMENT

Under the Juvenile Justice and Delinquency Prevention Act (JJDP), youth who commit status offenses cannot be incarcerated. An exception, however, permits young people who have disregarded a valid court order to be placed in secure detention for their behavior. This practice, known as the Valid Court Order (VCO) Exception, continues to be used in 27 states and territories to incarcerate youth who, for example, did not comply with a judge's directive to attend school or stay in their home. Many other states have chosen instead to statutorily prohibit secure detention of youth charged with status offenses.

It is important for policymakers to clearly define what constitutes secure detention in their communities. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) defines secure detention as the

Young people often engage in conduct that constitutes a status offense because of underlying problems; the *National Standards* discourage incarcerating children and teenagers for status offenses under any circumstances.

holding of a youth in a secure facility following his or her arrest to ensure they appear for court dates, and/or do not harm the community. Secure confinement on the other hand, comes after disposition and requires the youth to remain in a correctional facility for several months, or in some cases several years.⁷ Communities should refrain from placing youth in secure detention facilities at any point in the process. They should also clearly, and accurately define what a secure detention facility is. Consideration should be given to the restrictions placed on the young person's liberty to leave the facility either temporarily or permanently. Common examples of secure facilities include juvenile detention halls, although they can also include other settings in which the young person is not free to leave. Non-secure placements, meanwhile, include training centers where youth are able to live on-site and learn new job and life skills. They also frequently include treatment centers and group homes where youth live with other children and/or a family who teaches them how to modify their behaviors. Non-secure placements are outside the young person's family home, but are different from secure confinement in that the young person is able, if they chose, to leave.

POST-DISPOSITIONAL OPTIONS

A range of post-dispositional options are used by states after a young person has been adjudicated in a status offense case. In Nevada a young person can have his or her drivers' license suspended, be required to pay restitution or perform community service, or be placed on electronic monitoring.⁸ Arizona, meanwhile, permits youth to be placed on probation, to pay restitution, to remain at home, be placed with a relative, or be placed in an out-of-home placement.

Because of the many negative effects of secure confinement and out-of-home placements, the Standards suggest that reasonable efforts be made to avoid out-of-home placements. Secure detention, meanwhile, should always be avoided in status offense cases.



This *Model Policy Guide* was written by Naomi Smoot, Senior Policy Associate at the Coalition for Juvenile Justice. To learn more about the Coalition for Juvenile Justice Safety, Opportunity & Success: Standards of Care for Non-Delinquent Youth Project:

Contact: Lisa Pilnik, CJJ Deputy Executive Director, 202-467-0864, Pilnik@juvjustice.org
Visit: <http://www.juvjustice.org/sos>
Facebook: www.facebook.com/juvjustice
Twitter: www.twitter.com/4juvjustice
YouTube: www.youtube.com/user/JusticeCJJ

Want to become a CJJ individual or organizational member?

Visit: www.juvjustice.org/about-us/members

⁷ OJJDP. Juvenile Justice Bulletin. Sept. 2005. Available at: <https://www.ncjrs.gov/pdffiles1/ojjdp/208804.pdf>. Last accessed April 18, 2014.

⁸ Nev. Rev. Stat. Ann. § 62A.040 et. seq.