CREATING AN ADOLESCENT CRIMINAL CLASS: JUVENILE COURT JURISDICTION OVER STATUS OFFENDERS

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INTRODUCTION

Status offenders are often the disregarded middle children of the juvenile court system. Neither perpetrators of criminal offenses nor merely victims of abuse or neglect, status offenders represent some of the most complex participants in the American court system. As juveniles, they are often unable to speak for themselves or even to comprehend the nature of their offenses, but as defendants in the juvenile criminal court system they are not always afforded the protections of children in the dependency courts (those who have been neglected or abused). Most significantly, though status offenders are tagged in most states as criminal defendants and are detained, adjudicated, and punished in the same manner as juvenile delinquents, the offenses they commit are merely those of status; essentially, these children are penalized on account of their age alone.

Status offenses are a class of transgressions that are not considered crimes for adults, such as truancy, running away, and unruly behavior. Though more often in need of discipline or social services than strict criminal punishment, status offenders, in most states, are put through the paces of the juvenile justice system. One critical consequence of this practice is that they are generally incarcerated in the same facilities as juvenile delinquents, a situation that actually tends to promote criminal behavior rather than mitigate it. In other words, even though status offenders are not delinquents when they enter the court system, they often are when they leave it.


1 See Lee Teitelbaum, Status Offenses and Status Offenders, in A CENTURY OF JUVENILE JUSTICE 158, 161-64 (Margaret K. Rosenheim et al. eds., 2002) (discussing status offenders in the court system).

2 See Kathleen M. Heide, Foreword to KENNETH WOODEN, WEEPING IN THE PLAYTIME OF OTHERS IX (2nd ed., Ohio State Univ. Press 2000) (1976) (further noting that juvenile institutions can cause violence, mental illness, and suicide).
This Article will argue that status offenders should be regarded as a distinct class within the juvenile and family courts, and, as such, they should be adjudicated, punished, and detained differently than juvenile delinquents. The Article will begin by providing a background on status offenders and the nature of status offenses in order to establish the differences between status offenders and juvenile delinquents. Additionally, because an up-to-date review of status offenses is lacking in the literature, this Article will serve that purpose. Though many articles chronicle the history of the juvenile justice system on a national scale and the place of status offenders within it, there is no practical treatment that: reconciles the differences in terminology between states; confirms the offenses included in this category; outlines the demographics of the offenders; and discusses factors contributing to commission of status offenses. The second section of this Article will examine the courts, briefly discussing the historical position of status offenders in the system, including the deinstitutionalization of status offenders (DSO) movement in the early 1980s, before considering the actual experience of status offenders at different stages in the juvenile justice process. Finally, the Article will propose several solutions to the problem of criminalizing status offenses, including not only jurisdictional changes, but also initiatives for increasing social services for this group. Implementing these solutions is a step toward reducing the rate of juvenile crime as well as helping these children gain opportunities and preparing them for adult responsibilities.

I. STATUS OFFENSES: A PRIMER

A. Terminology

One of the reasons status offense jurisprudence is difficult to chronicle is the multitude of different terms used to refer to status offenders. Because status offenses are a matter of state law, great variability exists in the ways they are handled. The difficulty of doing surveys of the law surrounding this issue in all fifty states is intensified by the many terms employed by the states; sometimes even multiple jurisdictions within a state may use different terms to refer to the same offenses or classes of offenders. The most common terms across states are “person in need of supervision” (“PINS”) and “child in need of supervision”
(often seen in the literature as "CHINS"). In this Article, the term "status offender" will be used to cover any child who commits one of the offenses discussed below or any related offense, regardless of individual state terminology.

B. Behaviors Comprised by Status Offenses

As with the terminology, many states classify status offense behavior in different ways. Depending on the state, the offenses themselves may be included, for example, in a state's family law code or child welfare law. The commission of one of these offenses labels a child as a status offender, and therefore "in need of services," rather than as a juvenile delinquent, but the offenses themselves do not always have a separate classification in the juvenile code. In other words, most court systems find only a functional, rather than a theoretical, difference between status offense behavior and criminal behavior. While this may not seem an important distinction, the inclusion of status offense behavior in the criminal code can color the behavior in the eyes of a judge.

There are five main types of offenses that will generally lead a court to classify a child as a status offender. Not all states consider all of the following behaviors to be status offenses. Additionally, there is great variation in the extent and scope of each state's status offender classification scheme. However, in the majority of states, the following would be considered offenses of status: ungovernability, runaways and throwaways, truancy, and curfew violation.

1. Ungovernability

Often called incorrigibility, unruliness, or misbehavior, this type of unmanageable behavior allows a parent or guardian to put her child under court supervision. Used by courts to describe a multitude of

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3 Southern Juvenile Defender Center, *The Statutory Definition of Status Offenders Across the 50 States*, Mar. 2003 (on file with author). A browse through state codes shows that some of the other terms used to describe a status offender in various states are: child in need of protection, child in need of services, family in need of services, family with service needs, unruly child, incorrigible child, ungovernable child, minor requiring authoritative intervention, child in need of aid, child in need of care, child beyond the control of parents, youth in need of intervention, wayward child, undisciplined juvenile, dependent child, at-risk youth, and "juvenile-family crisis."


behaviors, ungovernability is unique in the juvenile justice system due to its lack of defined elements; in other words, there are no specific criteria that determine whether a child is to be classified as ungovernable.\textsuperscript{6} Depending on the community, ungovernability might cover habitual disobedience of family rules about anything from staying out late to engaging in sexual relations.\textsuperscript{7} Females have an inordinate tendency to be referred to the court system for ungovernability due to sexual behavior that is perceived as promiscuous or due to differing norms for gender-appropriate behavior.\textsuperscript{8} Because of the differing nature of this classification between and within states, it is difficult to obtain an accurate incidence rate of ungovernability.

2. Runaways and Thrownaways

Unlike ungovernability, which is ill-defined, runaway behavior is easily recognizable as such by the general public. The National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children (commonly abbreviated as “NISMART”) cites the official criteria of a runaway episode as any one of the following:

- A child leaves home without permission and stays away overnight;
- A child 14 years old or younger (or older and mentally incompetent) who is away from home chooses not to come home when expected to and stays away overnight;
- A child 15 years old or older who is away from home chooses not to come home and stays away two nights.\textsuperscript{9}

NISMART's last major study, in 1999, counted the number of runaways in the United States as over one and a half million.\textsuperscript{10} Running away has a significant impact on teenage homelessness and can often lead to more serious and sometimes criminal activity such as drug use

\textsuperscript{6} Id. at 997 n.5.
\textsuperscript{7} Id. at 997.
\textsuperscript{10} Id.
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and prostitution. Many runaways end up in foster homes or at the homes of relatives.

Additionally, many teenagers who are thrown out of their homes are left with options similar to those of runaways (such as homelessness), and have, in the past, been considered runaways due to their demographic similarity. However, social scientists increasingly (and controversially) distinguish between runaways and "thrownaways." NISMART defines a thrownaway episode as one that meets either of the following criteria:

- A child is asked or told to leave home by a parent or other household adult, no adequate alternative care is arranged for the child by a household adult, and the child is out of the household overnight;
- A child who is away from home is prevented from returning home by a parent or other household adult, no adequate alternative care is arranged for the child by a household adult, and the child is out of the household overnight.

Most runaway and thrownaway episodes have an actual duration of less than a week. It is important to realize that despite the difference between a child running away and being "thrownaway," most state laws still do not make a distinction between the two. On the other hand, many episodes of this nature have elements of both running away and being thrown away, and have many similar consequences and causes.

3. Truancy

States are divided on the issue of whether school truancy should be considered a delinquent act or a status offense. On the one hand, missing school is clearly an offense of status, as only those under a certain age are required to attend school. On the other hand, truants often miss

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11 See id. at 1.
12 Id.
14 See id. at 1720.
15 See id.
16 Hammer, Finkelhor & Sedlak, supra note 9, at 2.
17 Id. at 4.
19 Hammer, Finkelhor & Sedlak, supra note 9, at 2.
school to perpetrate some form of criminal behavior, such as drug use.\textsuperscript{20} Additionally, truancy is often seen as a “gateway” that opens the door to further criminal behavior.\textsuperscript{21} Truancy is also a relatively accurate indicator of whether a student is going to drop out of school, which generally results in decreased economic opportunity and therefore may result in welfare dependency.\textsuperscript{22} In some cities, thousands of students skip school each day.\textsuperscript{23} Because truancy is widespread and tends to lead to poverty, intervention to prevent truancy focuses on public policy more than does intervention in other types of status offenses.\textsuperscript{24} This policy often seeks education reform rather than juvenile court jurisdiction or social services.\textsuperscript{25}

4. Curfew violation

Curfew laws, ordinances that dictate hours after which juveniles may not loiter on the streets, have been a hotly debated constitutional issue.\textsuperscript{26} Though curfew has historically been viewed as a decision of an individual family unit, many large cities began enacting curfew laws in the 1990s as a way to curb juvenile crime.\textsuperscript{27} Though previous curfew laws had been ruled constitutional,\textsuperscript{28} curfews in the 1990s were highly controversial in terms of their possible infringement on minors' First and Fourteenth Amendment rights.\textsuperscript{29} Though the controversy remains

\begin{itemize}
\item \textsuperscript{22} Spaethe, \textit{supra} note 20, at 690.
\item \textsuperscript{23} U.S. Dep't of Education, \textit{supra} note 21.
\item \textsuperscript{24} See Spaethe, \textit{supra} note 20, at 690.
\item \textsuperscript{25} See id.
\item \textsuperscript{29} LeBoeuf, \textit{supra} note 27, at 1-2.
\end{itemize}
active, enforcement of curfew laws has been correlated to lower rates of juvenile (especially gang-related) crime and curfew laws have been affirmed by most courts to be constitutional.30

5. Other behaviors

Though the above four classifications generally span the scope of most status offender statutes, some states include additional offenses. For instance, while in some states underage alcohol or nicotine consumption would be grouped under ungovernability, other states have a separate classification for these status crimes.31 Additionally, some jurisdictions have passed so-called “baggy pants” statutes, which create a mandatory dress code for minors that prohibits certain items of clothing that are often perceived as gang paraphernalia, such as baggy pants.32

“Baggy pants” statutes are telling in understanding the legislative motive for criminalization of status offenses; the law is certainly being used to guide moral behavior.33 This is not news; the historic function of the juvenile justice system was indisputably to inculcate behavioral norms into “idle” youth.34 However, advancements in social science data collection methods make it imperative that we temper this moral function with a critical look at the needs of the at-risk child population. Rehabilitative strategies should be tailored toward resolution of the factors underlying commission of status offenses rather than relying solely on the traditional adversarial process of the court. With that in mind, this Article will survey the available data regarding status offender backgrounds before moving on to discuss the appropriate solutions for preventing this non-criminal behavior and subsequent delinquency.

30 Id. at 9. But see Coalition for Juvenile Justice, A Celebration or a Wake?: The Juvenile Court After 100 Years, 1998 Annual Report 41 (1998) (noting that most curfew laws restrict minors’ movement at night, even though most juvenile crime happens in the late afternoon).
31 Southern Juvenile Defender Center, supra note 3.
32 Matthews, supra note 28, at 209.
33 Id.
34 Teitelbaum, supra note 1, at 161-62.
C. Who Are Status Offenders?

1. Demographic Information

i. Age

In most states, the cut-off age for commission of status offenses is coextensive with the age of majority (eighteen), though in some it is set younger, at fifteen, sixteen, or seventeen. In 1997—the last year major status offender data was published—the majority of status offenses were committed by juveniles under the age of fifteen, though underage drinking offenses were more common in sixteen- and seventeen-year-olds. Very little data is available on the age range of status offenders—that is, the average age or the youngest age at which status offenses are committed. However, the 1999 NISMART reported that 68% of all runaways and thrownaways were between fifteen and seventeen, 28% were between twelve and fourteen, and only 4% were under twelve.

ii. Race

Though data is available to describe the racial makeup of juvenile offenders in general, very little data exists specifically on status offenders. There is evidence that enforcement of curfew laws is disproportionately focused on ethnic and racial minorities. Conversely, the 1999 NISMART notes that over half of all runaways and thrownaways are white, non-hispanic children. While this percentage reflects only runaways, who may have different motivating factors for their behavior than other status offenders, this number is widely out of proportion to

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35 Due to the difficulty of finding up-to-date statistical data that focuses solely on status offenders, I make the assumption that the demographics of the status offender population have stayed relatively constant in the past ten years. Alternatively, since most data collection encompasses the broader context of all juvenile delinquency and status offenses cases, at times I also make the assumption that status offender demographics resemble demographics for all juveniles in court. However, it is also important to note that the incidence rate of all status offenses increased from 1988 through 1997. See Melissa Sickmund, Offenders in Juvenile Court, 1997, JUVENILE JUSTICE BULLETIN (Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice), Oct. 2000, at 14 [hereinafter Sickmund, Offenders], available at http://ncjrs.gov/App/Publications/abstract.aspx?ID=181204 (click hyperlink to PDF).
36 Southern Juvenile Defender Center, supra note 3.
37 Sickmund, Offenders, supra note 35, at 14.
38 Hammer, Finkelhor & Sedlak, supra note 9, at 4.
39 COALITION FOR JUVENILE JUSTICE, supra note 30, at 41.
40 Id.
the racial breakdown of juvenile offenders in general, where minorities—in particular, black youth—are disproportionately represented.\textsuperscript{41} However, this number may reflect the fact that minority youth are more likely to be charged with delinquent or criminal behavior rather than given services or treatment as status offenders.\textsuperscript{42} In fact, black youth in the juvenile justice system are much more likely to be put in detention than are whites.\textsuperscript{43} One source cites the number of minority youth in detention and custody as nearly two-thirds of the total number of children in public facilities.\textsuperscript{44} Other factors possibly contributing to this disparity are the race of families that have a tendency to report missing children and the likelihood that law enforcement officials pick up and take to shelters a disproportionate number of runaways or homeless children of certain races. For instance, since NISMART relies on parental reports, thrownaways are less likely to be reported;\textsuperscript{45} it is possible that minority children are more likely to have been abused and abandoned, and thus remain unreported.

This disproportionality likely means that some form of discrimination is involved at various points in the process.\textsuperscript{46} The elusiveness of this explanation makes it clear that more data is needed on the racial breakdown of status offenders in order to assess clearly and ensure the likelihood of fair treatment in the system.

iii. Class

As with race, very little data is available on the intersection of class and status offenders. NISMART has found that household income does not have a large impact on the rate of runaways or thrownaways in an age group, except that low-income households are more likely than others to have abandoned a child to the foster care system.\textsuperscript{47} However, we can assume that the availability of private resources to higher-income

\begin{itemize}
\item \textsuperscript{41} Sickmund, Offenders, supra note 35, at 5.
\item \textsuperscript{42} BARRY C. FELD, RACE AND THE TRANSFORMATION OF THE JUVENILE COURT 180 (1999).
\item \textsuperscript{43} Sickmund, Offenders, supra note 35, at 7.
\item \textsuperscript{45} Loken, supra note 13, at 1723.
\item \textsuperscript{46} See Sickmund, Juveniles, supra note 44, at 12.
\item \textsuperscript{47} Loken, supra note 13, at 1721.
\end{itemize}
households would make them less likely to turn to state intervention in order to deal with a child’s transgressions.\textsuperscript{48} Traditionally, status offenses were a way for lower income parents to receive support from the state.\textsuperscript{49} For instance, children from lower-class families will therefore be more likely to receive a label of PINS from the state than will middle- or upper-class children.

iv. Gender

Gender-based differences in the treatment of status offenders, at many points in the juvenile justice process, are well documented.\textsuperscript{50} As discussed above, courts have traditionally taken a “protective stance” toward teenage females and declared them ungovernable for sexual activity.\textsuperscript{51} Male judges especially have perpetuated traditional gender norms, sometimes punishing females for behavior—sexual behavior in particular—that would not be considered extreme or deviant in males.\textsuperscript{52} Additionally, female status offenders tend to receive harsher dispositions than male offenders.\textsuperscript{53}

Once in the system, females are also more likely to receive decreased access to, and lesser quality, social services than males.\textsuperscript{54} This may be due in part to the fact that juvenile offenders as a whole are more likely to be male, while over half of all status offenders are female.\textsuperscript{55} Because the system does not make many distinctions between status offenders and delinquents, it is generally more equipped to handle working with males.\textsuperscript{56} Not only does this mean that there are fewer services available for females, it also means that the services are not always equipped to handle female-specific issues such as birth control and pregnancy.\textsuperscript{57} This disparate treatment of female status offenders is one
of the most controversial issues facing the juvenile justice system; judicial discrimination, in particular, is difficult to address with unilateral solutions such as deinstitutionalization. On the other hand, gender inequality is one of the major indicators that the juvenile justice system is not always an appropriate venue for status offenders.

2. Related Transgressions, Conditions, and Behaviors

Though status offenses themselves are not criminal, status offenses are considered a gateway to delinquent behavior. In addition, they often occur simultaneously with criminal behavior, mental illness, prostitution, drug use, homelessness, and increased health risks such as contracting AIDS, particularly in the case of runaways and throwaways. Runaway girls, in particular, are at high risk not just for pregnancy but also for pregnancy-related health complications. This is exacerbated by the health risks posed by prostitution; because prostitution is one of the only viable means of earning money on the street, about half of all homeless children turn to prostitution. Street youth are also at risk for mental illness and suicide; almost half of all homeless youth have attempted suicide.

These public policy issues must be taken into account when addressing status offender issues. For instance, children in dependency courts can be placed in foster care under a “best interests of the child” standard, but the same consideration is not given to status offenders. In fact, because status offenders are the least dangerous of the children who go through the delinquency courts, many of them may be returned to their homes—regardless of family environment—which may also lead to increased runaway episodes or continued unruly behavior.

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59 Loken, supra note 13, at 1732-33.
60 Id.
61 Id. at 1732 n.88 (citing DONNA D. SCHRAM, EVALUATION: COLLABORATIVE SERVICES FOR SEATTLE’S STREET YOUTH 15 (1987)).
62 Id. at 1732-33.
63 See id.
65 See Eggers, supra note 50, at 245.
D. What Factors Contribute to Status Offenses?

Overwhelmingly, abuse, particularly sexual abuse, is a factor in status offense-related behavior. One study has posited that at least half of all runaways and thrownaways have been physically abused, some so badly that they needed hospitalization. Status offenses, especially running away, can act as coping mechanisms for dealing with and attempting to end abuse. Thrownaway episodes are often prompted by a (possibly violent) argument in the household. Even when abuse is not physical, emotional and psychological abuse are often contributing factors. Many status offenders come from troubled homes with parents or siblings who abuse alcohol or other drugs.

Especially in the case of truancy, unfulfilled educational needs may be a major contributor to the commission of a status offense. Many truants believe that dropping out of school is the only option for dealing with failing grades. At-risk children often have lower self-esteem and fewer social skills than their peers, which can contribute to a negative academic self-image. A related possible cause of truancy may be academic anxiety—for instance, a student may stay home from school in order to avoid stressful situations like oral presentations or because they have an undiagnosed learning disability that causes underperformance in the classroom. Certainly, one of the major causes of truancy is academic climate. Problematic relationships with peers and teachers are a strong indicator for truancy. Another anxiety- and stress-related cause of tru-
ancy is avoidance of bullying. Additionally, students whose families are not supportive of academic endeavors are more likely to be truant. Finally, though statistics and documentation for such instances are scarce, it could be the case that some students stay home from school because they believe their presence in the home will stop physical or sexual abuse of siblings or parents.

Another individual factor that has been thought to contribute to non-criminal, but troubling, behavior is mental illness. Mental illness, learning disabilities, and other psychological issues such as ADD/ADHD and depression may remain undiagnosed, especially in low-income families. On a larger scale, then, other contributing factors may be poverty, racial discrimination, and alternative social and behavioral norms. For instance, though physical and sexual maturity may come early for some girls, this biological development may be out of step with the lengthy educational requirements in the United States. In other words, in some cultures these girls may be ready for marriage, while in the United States they are considered ungovernable. In some situations, parents may find a child ungovernable even though a family from another culture would not. The concept of adolescence and its development through history differs globally, even though the U.S. juvenile justice system is not equipped to handle these differing perspectives. Nor is the system well-equipped to handle differing rates of social, psychological, emotional, and physical development of children.

Despite the traditional function of the juvenile justice system as rehabilitative rather than punitive, its practical function often runs counter to its roots. The complexity of status offenders' backgrounds and the individual differences between them make the juvenile justice system ill-equipped to handle their needs. The next section will explore the jurisdiction of the juvenile delinquency courts over status offenders and explore alternatives to this system.

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78 Id. at 691.
79 Id.
80 FELD, supra note 42, at 180.
81 Kandel & Griffiths, supra note 5, at 1032.
82 See id. at 1033.
83 See id.
84 Id. at 1033-34.
85 See Teitelbaum, supra note 1, at 162.
II. STATUS OFFENDERS IN THE COURTS

A. History of Status Offenses in the Juvenile Justice System

Many sources chronicle the path of the juvenile justice system in the United States, so there is no need to restate that history. However, a few important historical details are particularly relevant to status offenses and, more specifically, to changing the jurisdictional structure of status offenses in the juvenile courts.

The separation of status offenses from more serious juvenile criminal behavior began in the post-WWII era. New York State was the first jurisdiction to create the designation of “PINS” and officially categorize status offenders as non-delinquents. In 1974, the enactment of the Juvenile Justice and Delinquency Prevention Act (“JJDPA”) by Congress federally mandated deinstitutionalization of status offenders (“DSO”), or removal of status offenders from juvenile correctional facilities. Many legal organizations at that time, including the American Bar Association, advocated a complete removal of status offenders from the jurisdiction of the courts in favor of entirely service-based programs. However, the 1974 law still allowed courts to place status offenders in group homes and even medium security detention facilities. Later studies of deinstitutionalization found that “the DSO experiments” had been largely ineffective in helping at-risk youth obtain needed services. The same studies note, though, that this was largely due to a lack of clarity in the JJDPA, leading to differing interpretations and inadequate implementation; it was not because the rationale behind the JJDPA was mistaken.

Ironically enough, the codification of status offenses as separate transgressions actually eliminated judicial emphasis on individual cases

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86 See, e.g., Feld, supra note 42; Teitelbaum, supra note 1; Barnickol, supra note 8; Eggers, supra note 10; Humphrey, supra note 50.
87 COALITION FOR JUVENILE JUSTICE, supra note 30, at 21.
88 Id.
89 Id. at 21-22.
90 Feld, supra note 42, at 168.
91 Id. at 176.
93 See NEITHER ANGELS NOR THIEVES, supra note 92, at 200-29; Kobrin & Klein, supra note 92, at 294-322.
and dispositions; as a by-product, it also funneled services toward juveniles who committed more serious offenses and were therefore thought to need more help.\(^\text{94}\) Although incidence of status offenses has been lower since the passage of the act, it is probable that this means that many of them are never served by the courts at all (rather than that there are actually fewer status offenders).\(^\text{95}\) It could also mean that behavior that would have been a status offense before deinstitutionalization was now being charged by prosecutors as criminal, rather than allowing it to be placed in a non-criminal status offense category.\(^\text{96}\) Additionally, as is discussed further below, many children who would previously have been categorized as status offenders are being “boot-strapped” into delinquency offenses.\(^\text{97}\)

**B. Introduction of Status Offenders to the Court System and State Supervision**

How are status offenders brought into the court system and what happens to them after they are “picked up?” Referral to the juvenile justice system happens in several ways, depending on the offense. As might be expected, truancy cases are referred by schools as violations of state compulsory attendance statutes.\(^\text{98}\) In the case of a runaway reported by her parents, a warrant is issued for her return and police will search for the child.\(^\text{99}\) Thrownaways may enter the court system through an emancipation proceeding, a referral by a runaway or homeless shelter, or a police pick-up from the streets.\(^\text{100}\) Curfew violators are usually arrested by law enforcement officers.\(^\text{101}\) Finally, in the case of ungovernability, most parents refer their own children to the system be-

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\(^{94}\) Teitelbaum, *supra* note 1, at 166.

\(^{95}\) See *id.* at 166-69.

\(^{96}\) *Feld, supra* note 42, at 178.


\(^{98}\) Spaethe, *supra* note 20, at 692.


\(^{100}\) See Loken, *supra* note 13.

\(^{101}\) See Leboeuf, *supra* note 27.
cause they feel they are unable to deal effectively with the child's behavior.\textsuperscript{102}

Once a status offender is referred to the system, several things may happen. In a few cases, the offender may be referred directly to some type of social service.\textsuperscript{103} Some children may be placed in temporary shelters, group homes, or foster homes.\textsuperscript{104} Some children—particularly truants—remain in the home or are returned to it.\textsuperscript{105} In many situations, this may be problematic because the status offense behavior is related to a negative home environment. Some children receive a combination of these behavior modification strategies, and some children are briefly detained in institutions.

Some states have a slightly more stringent process for referral of certain status offenders—usually runaways. In 1993, a high profile case in Washington State initiated a move away from the deinstitutionalization of the 1970s and 1980s. Rebecca Hedman, a thirteen-year-old runaway scraping a life on the streets through prostitution, was murdered by a man in his mid-thirties right after he had sex with her.\textsuperscript{106} Legislators latched on to the fact that Rebecca's parents had previously tried to bring her home on several occasions, only to have her run away again.\textsuperscript{107} They passed the "Becca Bill," which allowed for police control over runaways to either return them home or securely detain them.\textsuperscript{108} At this point, before runaways have been brought to court, they may be detained for up to five days.\textsuperscript{109} Other states have since passed similar laws.\textsuperscript{110}

C. \textit{Adjudication of Status Offenders}

Though status offender statutes in every state are different, most states have several things in common. One is that across the board, legal standards for status offense behavior are vague and unclear.\textsuperscript{111} This

\textsuperscript{102} Feld, \textit{supra} note 42, at 170-71.
\textsuperscript{103} See Kandel & Griffiths, \textit{supra} note 5, at 1005.
\textsuperscript{104} See id.
\textsuperscript{106} Eggers, \textit{supra} note 50, at 219 (describing the Hedman case in detail).
\textsuperscript{107} Id.
\textsuperscript{108} Tracy, \textit{supra} note 105, at 1401.
\textsuperscript{109} Id. at 1407.
\textsuperscript{110} Juliano, \textit{supra} note 97, at 101.
\textsuperscript{111} Feld, \textit{supra} note 42, at 172.
leaves much discretion—too much, some would say—to individual judges. This discretion has many implications; for instance, it allows the possibility of discrimination against minorities and females. Also, there is considerable room for the judge and prosecutor to adjust charges; that is, many courts categorize children as status offenders because status offenses are easier to prove than either neglect or a criminal offense. Status offenders, however, despite the possibility of being placed in secure detention, are usually not afforded the same due process rights as those facing delinquency charges. The procedures for status offenders are less formal and the offenders often do not have access to counsel.

One particularly troubling practice is “bootstrapping”: many states allow judges to hold repeat status offenders in contempt of court, which is a criminal charge. Runaways in particular bear the brunt of this law, because the contempt charge is offered when status offenders leave non-secure detention facilities. This means, for instance, that a status offender who has been placed in foster care who runs away due to, for example, sexual abuse by a caretaker, is subject to delinquency charges.

In order to assess fully the impact of adjudication in the juvenile justice system on status offenders, more research needs to be done on family, domestic, and juvenile court structures in different states. Many states, for instance, have instituted “one family, one judge” rules that create unified family courts with jurisdiction over any offenses committed by anyone in one family, in order to allow the judge to fully understand the background of the parties to each proceeding. While this practice can provide more unity among judicial decisions regarding children within individual families, it also may create inconsistency in status offense adjudication in general. More information is also needed on the average level of separation between branches of a domestic court. In smaller jurisdictions, it seems more likely that dependency and delinquency cases are heard in the same court, while larger, more urban juris-

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112 Id.
113 Id.
114 See id.
115 Tracy, supra note 105; Matthews, supra note 24, at 204.
116 Feld, supra note 42, at 177. Additionally, in some states, status offenders may not have the same access to a guardian ad litem that a child might in a dependency proceeding.
117 See id. at 176.
118 Juliano, supra note 97, at 99.
119 Coalition for Juvenile Justice, supra note 30, at 29.
dictions are more able to split cases by topic and have judges who specialize in that area. These jurisdictions have already taken a step in the right direction.

D. Status Offender Dispositions

One of the most common commitments for status offenders, especially runaways and ungovernable children, is placement in a group home, shelter, foster home, or another non-secure facility. On rare occasions, this may be accompanied by neglect and removal or emancipation proceedings. However, even when placed in such facilities, these children, especially females, are often still victims of abuse, which perpetuates the runaway cycle by giving them a reason to leave their new environments. Similar results may occur when status offenders are returned to their families, as is common when services are proscribed and in states where parents have pushed for tougher legislation. Most other status offenders are detained or incarcerated in a secure facility, often with juvenile delinquents and on occasion with adult offenders.

Very few status offenders get effective and comprehensive social services in response to their needs. Traditional social and psychological services can have as many pitfalls as broad delinquency court jurisdiction—treatment programs, for instance, may be overly rigid or even abusive. Social services and programs are often under-funded, making already struggling vehicles for behavioral change even more likely to fail. On occasion, however, some creative solutions to the jurisdictional issues have succeeded. Though not widespread, and often in experimental form, some programs exist that divert status offenders from the

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120 Loken, supra note 13, at 1751.
121 Id. at 1752.
122 Humphrey, supra note 50, at 178.
125 See Feld, supra note 42, at 174 (describing the reasons past attempts at extrajudicial services have gone awry, including inconsistent implementation, insufficient program development, and inappropriate tailoring of programs to the needs of their population).
126 Id. at 184.
courts to service-based programs before they are brought before a judge. These will be discussed in more detail in a subsequent section.

E. Summary of the System’s Critiques

Most status offenders do not receive an appropriate disposition from the courts—we do not want these children incarcerated, nor do we want them returned to families that are not equipped to act in their best interest. Status offense jurisdiction “fails to meet the needs of either adolescents and teens or their parents, and the basis for state intervention in the context of conflict between parent and state needs to be reformulated.”

Though it may be possible that in some states status offenders are adjudicated in the juvenile justice system because there is a possibility they will get more services there, this Article has indicated that most states reserve their services for more troubled offenders and attempt to help status offenders with less expensive and extensive programs. The delinquency courts are ill-equipped to handle the psychological and social needs of status offenders, let alone with some degree of individuation. Additionally, the current court system operates discriminatorily, disadvantaging minorities and women both before they enter the system (by unequally singling them out) and after (with a lack of targeted services).

Some authorities believe that this type of broad control over dispositions constitutes too much power over the proceedings. Even those who would not necessarily remove status offenses from the jurisdiction of the delinquency courts concede that the courts should provide services to these offenders rather than incarceration, in recognition of the connection between status offenses and later criminal behavior. The failings inherent in the current system’s propensity to incarcerate at-risk youth are myriad and have many implications. Though solutions to this problem vary, almost all relevant sources are clear in their belief that status offenders should not be placed in the same institutions as delinquents. Not only will status offenders not receive necessary services, but they are more likely to learn criminal behavior: according to one study, recidivism rates for equal or greater crimes are at least thirty-five percent.

127 Kandel & Griffiths, supra note 5, at 1063-64.
128 Coalition for Juvenile Justice, supra note 30, at 48.
129 Id. at 60-61.
130 Wooden, supra note 124, at 38 (citing California study).
Many other factors are at play here as well. For instance, no study has shown that status offenders are better off because of court supervision. It is possible that the “gateway” to harder crime predicated by the commitment of status offenses may be caused by court intervention rather than prevented by it.\(^{131}\) This system may also not be equipped to deal with non-criminal (and therefore non-adversarial) proceedings\(^{132}\)—especially while still ensuring due process. This can cause the state to waste court resources on a population that does not need the same level of judicial oversight as the delinquent population.\(^{133}\) Finally, it can be argued that detaining status offenders for non-criminal behavior is simply unfair. Though putting children in jail for skipping school or running away from an abusive home probably does not rise to the level of Eighth Amendment cruel and unusual punishment, it would be an undesirable approach, especially considering the poor condition of many juvenile detention centers.

III. SOLUTIONS

A. Diversion from Delinquency Courts

Programming (both preventative and rehabilitative) that is designed specifically to meet the psychological, emotional, and educational needs of status offenders is a key strategy for reducing the need for court intervention. More support—monetary and otherwise—for the creation of these types of extrajudicial programs and more creative solutions is needed.\(^{134}\) Nevertheless, a number of alternative, community-based services that focus on practical skills and communication-based resolution have been documented. These programs can serve as models for jurisdictions attempting to divert status offenders from the courts.

1. Family Group Conferencing (FGC)

FGC shifts the focus from individual rehabilitation to the restoration of stability to the family and community. FGC involves mediation...
and negotiation. This mediation is not only between children and parents, but also includes any victims, law enforcement officials, and youth advocates, and is led by a “Youth Justice Coordinator.” Only after the conference are the results brought to the juvenile court, which generally accepts the decisions of the group.\textsuperscript{135}

2. Mediation

There are special advantages of mediation in the case of status offenders, for whom the adversarial nature of the traditional legal process may only serve to deepen the issues in the parent-child relationship and increase the stigma attached to status offenses. In addition, mediation is less costly and less time-consuming, therefore reserving more juvenile court resources for delinquency issues. This model uses a neutral third party as mediator and is intended to be more therapeutic than legally-based.\textsuperscript{136}

3. Independent Living

Though independent living is not a new concept, one documented program focused solely on helping females gain life skills in a safe, protected environment away from abuse. In the first phase of this graduated program, girls live together in a dormitory with their needs taken care of while they attend therapy and job skill development programs. Halfway through the program, they move to their own apartments, yet they have access to 24-hour crisis counseling and are allowed to return to the dorm if necessary. Additionally, after the program is complete, each girl is matched with a female mentor for the next year.\textsuperscript{137}

4. Academic Mentoring

This truancy prevention program matches truant students with college student volunteer mentors who monitor attendance and meet with the status offenders weekly to help them learn social and academic skills such as conflict resolution and learning to ask for help.\textsuperscript{138}


\textsuperscript{136} See generally Varin, Clark, & Shull, supra note 58.

\textsuperscript{137} Eggers, supra note 50, at 256-57.

\textsuperscript{138} Spaethe, supra note 20, at 700-01.
5. Intra-community Truancy Intervention

In these programs, truant students are referred to an in-school group called the School Attendance Review Team, which consists of a social worker or counselor, the assistant county attorney, parents, and the student, who all work together to create an attendance contract. In addition to a promise to attend school, the contract may also contain pledges to attend counseling or other social service programs. Other similar programs include variations on the contract (oral, rather than written, for example) and school-based hearings rather than court-based processes.\footnote{Mogulescu & Segal, supra note 134, at 7-10.}

6. Respite Care

Though respite care, or temporary relief for caretakers, is most often seen when working with the elderly, the basic principle of temporary separation—a “cooling off period”—is appropriate for status offenders and their families as well. Not only is respite care cheaper than foster care and detention, it also maintains the parent-child relationship and reduces the stigma of status offenses. There are a number of different models for respite care, including differing intake methods, durations, services offered, and post-respite follow-up methods. Because the focus of respite care is generally family reunification, most respite care centers offer family-based rather than solely youth-based services.\footnote{Fiza Quraishi, Heidi J. Segal & Jennifer Trone, Vera Institute of Justice, \textit{Respite Care: A Promising Response to Status Offenders at Risk of Court-Ordered Placements}, Issues in Brief (Youth Justice Program, New York, N.Y.), Dec. 2002, available at http://www.vera.org/publication_pdf/188_356.pdf.}

7. Flexible Counseling Options

New York State’s intake reforms work on an immediate crisis response model in which families receive an out-of-court situational assessment within forty-eight hours. If necessary, a family conferencing process is used to determine what type of services and counseling are needed. The crisis counselor generally stays involved in the issue for a few weeks so that the plan is actually followed. Additionally, in order to reduce the social and financial cost of placing status offenders in detention facilities and foster care, one county in New York has implemented an alternative program in which, under certain circumstances, status offenders are released to the care of their parent or guardian under super-
vision of a specialized probation officer, who maintains daily contact face-to-face or via phone.  

B. Revised Jurisdictional Scheme

Though these programs can provide options and flexibility to at-risk youth, should status offenses be absolutely removed from the domain of the courts? The court system has benefits, such as the ability to work easily with law enforcement officials. Additionally, the current and increasing popularity of waiving older juvenile criminals into adult court, along with complete removal of delinquency court jurisdiction over status offenders, could effectively be the end of the juvenile justice system, leaving only the dependency courts to deal with child-related legal issues. While this may fulfill the historic rehabilitative function of the juvenile justice system, it also seems unwise to remove support, financial or otherwise, from children’s courts.

If status offenders remain the purview of the courts, then, ideally, juvenile courts that are already split into two branches (delinquency and dependency) would create a third branch for status offenses. Because status offenders are neither criminals nor helpless victims of abuse, neither branch of the current court system is completely equipped to handle them. Not only would this allow more specialization, it would likely provide more flexibility to create status offender-specific social services and programs like the ones above. The rearrangement of the docket this way might also allow for more status offender referrals, possibly providing children with services that would prevent future crime, and thus lighten the load of the delinquency courts, and, by extension, the juvenile detention centers. This arrangement would also allow for the development of due process rights specific to status offenders: this system could protect children’s rights without requiring the more extensive due process rights afforded to some juvenile criminals.

Alternatively, since the creation of an entirely new branch of the domestic court scheme may be a farfetched goal, at the very least some status offense cases should be adjudicated in the dependency courts so judges may better understand the context and background of the children they see; in particular, the dependency courts may provide better

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services to those offenders who have been abused. Another imperative, if secure detention is really necessary, is absolute separation of detention facilities for status offenders and delinquents, to help stem the likelihood of a status offender committing a crime in the future.

**Conclusion**

One judge has noted that whatever the final decision of society is regarding deinstitutionalization of status offenders, the transition to a new system needs to be gradual; delinquency court jurisdiction over status offenders should not be eliminated until new services are firmly in place.\(^\text{142}\) The same judge also suggested that the court system remain a “backstop” option for status offenders who simply do not respond to the services they are given.\(^\text{143}\) As the title of one book suggests, status offenders are neither angels nor thieves.\(^\text{144}\) Complete deinstitutionalization poses as many issues as complete court jurisdiction. However, that movement toward changing the nature of status offense dispositions and dealing with underlying factors, however gradual, has the potential to keep at-risk youth from being both victims and criminals.

\[^\text{142}\] Wooden, supra note 124, at 38.
\[^\text{143}\] Id.
\[^\text{144}\] Neither Angels Nor Thieves, supra note 92.