

U.S. Department of Justice
Office of Justice Programs
Office of Juvenile Justice and Delinquency Prevention
State Relations and Assistance Division



Challenge Activities Program Areas

OJJDP

Challenge to the States

The 1992 reauthorization of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974 added Part E, State Challenge Activities, to the programs funded by OJJDP. The purpose of Part E is to provide initiatives for States participating in the Formula Grants Program to develop, adopt, and improve policies and programs in 1 or more of 10 specified Challenge areas.

Challenge Activity G

Developing and adopting policies and programs designed to remove, where appropriate, status offenders from the jurisdiction of the juvenile court to prevent the placement in secure detention facilities or secure correctional facilities of juveniles who are nonoffenders or who are charged with or who have committed offenses that would not be criminal if committed by an adult.

Perhaps the major area of reform with which the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, is identified concerns the relationship of status offenders and nonoffenders to the juvenile justice system. The Act requires States that voluntarily participate in the Act's programs to refrain from:

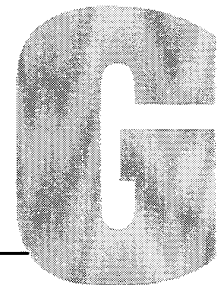
- Placing status offenders or nonoffenders in secure juvenile detention or correctional facilities.
- Allowing status offenders, nonoffenders, or delinquents in secure custody to have contact with adult criminal offenders.
- Placing status offenders, nonoffenders, or delinquents in adult jails and lockups (since 1980).

While Congress has paid much attention in the Act to the deinstitutionalization of status offenders and nonoffenders (that is, their removal from secure detention and correctional facilities), it did not address the issue of removing them from juve-

nile court jurisdiction until it passed the State Challenge Program in the 1992 amendments to the JJDP Act.

One of the grant areas of greatest interest concerns the issue of "appropriate removal of status offenders from juvenile court jurisdiction."¹ This challenge harkens back to recommendations made by a number of independent standard-setting and advisory groups before the JJDP Act's passage in 1974. These groups included the Institute for Judicial Administration (Joint Commission on Juvenile Justice Standards), the American Bar Association (Standards Relating to Noncriminal Misbehavior), the National Council on Crime and Delinquency, the President's Commission on Law Enforcement and the Administration of Justice, and the National Advisory Commission on Criminal Justice Standards and Goals. Each of these groups focused at least one recommendation on the reduction or elimination of juvenile court status offense jurisdiction and argued for increased reliance on voluntary community-based services.

In 1980, after the JJDP Act's passage in 1974 and its reauthorization by Congress in 1977, the National Advisory Committee for Juvenile Justice and Delinquency Prevention addressed this issue in its *Standards for the Administration of Juvenile Justice*, as required by the Act. The committee stopped short of suggesting the total removal of court jurisdiction for status offenders by recommending some retention of a "highly circumscribed version of family court jurisdiction over children who display noncriminal



misbehavior.”² But through its standards, the committee joined previous advisory commissions in also seeking:

To limit referrals to the intake unit to instances in which all available and appropriate noncourt alternatives to assist the juvenile and the juvenile’s family have been exhausted, and to encourage communities to meet obligations to juveniles and families by developing a range of voluntary services.³

The National Advisory Committee specifically urged “that a juvenile alleged to have engaged in noncriminal behavior should only be taken into custody when no less restrictive alternative will protect him/her from imminent bodily harm, or when there is no person willing to provide supervision and care for the child, and the child is unable to care for him/herself.”⁴ When children were taken into custody for noncriminal misbehavior, the standards provided that they should only be placed in the least restrictive shelter facility, and “never in a secure detention facility.”⁵

The reasons for the advisory groups’ recommendations varied, as do the reasons for reconsidering the removal-of-jurisdiction issue today:

- To improve the character and treatment of young people who are neither criminal nor severely disturbed by making existing ways of handling those youth more humane as well as more responsive to their needs.
- To decrease the probability that status offenders will eventually become delinquent offenders by separating them from youth who commit serious offenses.
- To focus more of the juvenile court’s time and resources on the problems of juveniles who commit criminal acts.
- To promote recognition of the need for greater procedural and substantive regularity in State intervention in the lives of status offenders.
- To encourage true diversion of status offenders and nonoffenders from the juvenile justice system and to avoid labeling noncriminal youth as criminal.
- To promote the growth and development of community-based services for noncriminal offenders.
- To reduce the costs of care incurred by incarcerating non-criminal youth in secure, institutional settings.

As Julie Zatz in *Neither Angels Nor Thieves* points out:

Nonjudicial handling holds out the promise of placing the status offender issue in a more proper context: youth who have done little or nothing to warrant the coercive intervention of the State will in turn receive less stringent attention. This permits a more flexible response to juvenile misbehavior, minimizing the likelihood that what starts out to be a relatively trivial matter will end up being

magnified in ways designed to accommodate the needs of the system rather than the needs of the child. The voluntary character of nonjudicial alternatives may serve to channel available services to those who are both most in need and most prepared to accept them, while reducing the tendencies toward overreach and overkill in a system in which services are both narrowly defined and forcibly imposed.⁶

Definitions

While legal definitions vary among the States, the term *status offender* generally refers to juveniles who are charged with or who have committed offenses that would not be criminal if committed by adults. Differentiated from nonoffenders, status offenders are not usually considered passive victims of circumstance (although this may be debated in individual instances where a runaway is fleeing abuse), but rather are seen as having engaged in some action that may be subject to some type of official response. Truancy, incorrigibility, alcohol possession and use, curfew violations, running away, being beyond control, and variations on the phrase “in need of supervision” are labels associated with status offenses. These are behaviors that have no victim and for which only juveniles can be arrested. In other words, an otherwise legal act is considered to be illegal because of the person’s age or juvenile status. Some status offenses, such as alcohol possession or use and restrictions on possession of firearms, may be illegal acts for a narrow class of young adults, e.g., 18- to 21-year-olds. This does not change their character as status offenses. However, the 1992 Amendments exclude handgun possession violations from the statutory restriction on detention of status offender juveniles.

Nonoffenders, on the other hand, are most often youngsters who are dependent and neglected. They come to the attention of the juvenile court because of inadequate care on the part of their parents or guardians. The problem may be lack of support resulting from death, absence, physical or mental incapacity, or desertion (throwaways); abuse or cruel treatment; or improper or inadequate conditions in the home. These youngsters have committed no offense themselves and may truly be seen as victims.

Current Status of Status Offenders and Nonoffenders

Though much progress has been made since passage of the JJDP Act in the deinstitutionalization of status offenders, their removal from secure settings is far from complete. In 1974, about 40 percent of youth placed in long-term, secure State juvenile correctional facilities were reported to be status offenders or nonoffenders.⁷ Today, nearly 5 percent of juvenile admissions to State correctional facilities are for juveniles whose most serious offense is a status offense or “another nondelinquency offense or unknown.”⁸ Nearly 20 years after the Federal Government began encouraging States to remove

status offenders from secure settings, about 27 percent of status offenders are still held in secure detention or correctional facilities.⁹

According to the FBI's latest *Uniform Crime Report*, in 1993 there were about 237,000 arrests of persons under the age of 18 for curfew offenses and running away.¹⁰ Running away accounted for 152,000 of the 237,000 arrests; the balance were for curfew and loitering violations. Due to the way in which the data are reported, it is not possible to differentiate status offenses, such as curfew violations, from loitering, which may be a misdemeanor offense. Arrests for runaways were up by nearly 30 percent since 1984, and arrests for curfew and loitering violations were up 18 percent. But variation among the States is considerable. For example, Texas reported arrests of about 40,000 status offenders in 1993 (nearly 20 percent of the Nation's total), while New York reported only 5,500. Florida reported none. Wisconsin reported nearly 20,000 arrests, while Maryland, with nearly the same population, reported only 2,300. Obviously the way a State chooses to handle status offenders has a huge bearing on the way they are treated. Evidently some States have worked out legislative or de facto agreements granting police the authority to divert status offenders and nonoffenders to other community agencies as an alternative to arrest.

According to a report prepared by the National Center for Juvenile Justice, juvenile courts petitioned and formally handled about 90,100 status offense cases in 1991—a 3.2-percent increase since 1987. Of status offenses referred to the court, 33 percent were for underage liquor violations, 28 percent were for truancy, 14 percent were for running away, 12 percent were for being ungovernable, and 10 percent were for other offenses. About 1 of 10 status offenders processed were held in detention at some point between referral to court and disposition.¹¹ Young women were twice as likely to be detained as young men.¹²

Sixty percent of status offender cases were referred to court by sources other than law enforcement, emphasizing the complexities of the juvenile court's mandate.¹³ Fully 6 of 10 status offenders appearing before the court have not been arrested at all but have been referred by parents, schools, or other community agencies. The court is then expected to solve the problems of community institutions that might better look within themselves for solutions. Those who advocate diversion of status offenders (and some nonoffenders) from formal court jurisdiction seek to make the juvenile court the court of last, rather than first, resort for families and schools. Is the court's coercive authority really needed to meet the needs of runaway, homeless, truant, ungovernable, and dependent youngsters? The JJDP Act's 1992 challenge activity is intended to further develop answers to this question.

According to *Juveniles Taken Into Custody: Fiscal Year 1991 Report*, more than 11,000 facilities across the Nation hold juveniles in custody. These include secure juvenile detention and

correctional facilities, State prisons, adult jails and lockups, and other public and private juvenile custody facilities.¹⁴ Together they process an estimated 800,000 juvenile admissions annually, with public facilities, almost all secure and used to detain or correct more serious offenders,¹⁵ accounting for more than 600,000 admissions.¹⁶ One percent, or about 6,000, of the admissions to secure public facilities were nonoffenders. Four percent, or about 24,000, of the admissions were status offenders.¹⁷ Female status offenders were more likely to be held in public facilities than males. Only 2 percent of males in public facilities were held for status offenses, compared with 17 percent of females.¹⁸ Nearly half of youth held in private facilities, mostly nonsecure, were nonoffenders, held for reason of dependency, neglect, abuse, emotional disturbance, or related reasons.¹⁹

Past Experience in Diverting Status Offenders

When used in the context of status offenders, *diversion* aims to reduce status offender and nonoffender contact with formal juvenile court system processing. Zatz, in *Neither Angels Nor Thieves*, identifies two variations of status offender diversion from court systems that might be helpful to States initiating challenge grant activity in this area:

- Divestment.
- Referral to community-based alternatives.

Divestment involves removing jurisdiction of status offender cases from the court. According to Zatz: "In this view, the most important element of reform is the removal of status offenders from any contact whatsoever with the juvenile justice system; and if alternative services are to be forthcoming, they must not be initiated or controlled by constituent parts of the juvenile justice system."²⁰ Alaska, Maine, Utah, and Washington have, at earlier times, elected to revise statutes to bring about either partial or total divestment over status offenders. Others practice in a de facto sense. When some services are not available, some offenders are simply ignored by various components of the system, which is not at odds with some noninterventionists who view the most minimal system penetration appropriate for the youngsters involved.

Utah's experience provides some sense of how a diversion strategy might be operated. In 1971, State law removed runaways and truants from juvenile court jurisdiction, but did not fix responsibility elsewhere. This would be pure divestment. In 1973 and 1974, the Utah Department of Social Services initiated a Youth Services System. This system required the active participation of mental health agencies, law enforcement departments, schools, social services organizations, juvenile courts, local detention offices, and interest groups. Juvenile courts were key. They wanted to focus more of their scarce court time on serious delinquents, and they believed in a family-centered approach to status offenders. Continued success of the Youth Services Sys-

tem with runaways and ungovernables served to broaden the base of support for deinstitutionalization. The expanding coalition was aided by the overcrowding of juvenile facilities, the belief that court contact had negative implications for status offenders, and the view that a family-centered approach would be more productive. In 1977, Utah passed a law that moved jurisdiction for runaway youth and youth beyond control of parents and schools to the Department of Family Services. These categories of status offenders could be referred to juvenile court only if counseling efforts failed or if probation was violated.

The experience of Pennsylvania also serves as an example. In 1977, all status offenders were placed in the dependent category; nondelinquents were referred to the Department of Public Welfare. Some variations in practice were reported. Police used some private providers of service, but welfare department approval of all referrals was required. In Arizona, a State statute allowed the police to divert status offenders to nonsecure placements without referring them first to the court. In Illinois, the State created a category of status offenders called Minors Requiring Authoritative Intervention. These juveniles are subject to a 21-day family reconciliation period, with crisis intervention and emergency placement services provided by the Department of Children and Family Services through community service providers. Only after these services have failed can these narrowly defined classes of status offenders be referred to court.

Referral to Community-Based Alternatives

Referral to community-based alternatives suggests not only removing status offenders, and possibly some nonoffenders, from the jurisdiction of the court but also requiring their referral to some other source of service. This option excludes nonservice as an option. Rather than providing services directly, justice system officials would refer youth to other community agencies for needed services.

In *Neither Angels Nor Thieves*, Joel Handler cites Charlottesville, Virginia, for a program that used this variation, referred to as "court brokering."²¹ The Charlottesville juvenile court decided to handle only delinquent cases, removing status offenders from its docket but continuing to broker services with other community agencies to children in need of supervision. It was the court's view that youth were almost always better off in the home. The court itself became active in cases only when service was denied by a community agency, intervening to chastise the uncooperative agency when necessary.

Conclusion

Research documenting the success or failure of these approaches across an entire jurisdiction is lacking. Evaluations have been done on diversion in general, but researchers have not specifically addressed the diversion of status offenders

from the courts, nor have they looked at outcomes confirming whether those diverted would be more or less likely to be involved subsequently in the juvenile or criminal justice system. State involvement in this challenge activity area, coupled with careful evaluation of innovative approaches, could provide a remedy.

Resources

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Endnotes

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³ Ibid., p. 186.

⁴ Ibid., p. 194.

⁵ Ibid.

⁶ Handler, Joel F., and Julie Katz. 1982. *Neither Angels Nor Thieves: Studies in Deinstitutionalization of Status Offenders*. Washington, D.C.: National Academy Press, p. 60.

⁷ Hruska, Hon. Roman. 1974. *Congressional Record* (S23937).

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⁹ Krisberg, Barry, and Robert DeComo. 1993. *Juveniles Taken Into Custody: Fiscal Year 1991 Report*. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, p. 4.

¹⁰ Federal Bureau of Investigation. 1994. *Uniform Crime Report: 1993*. Washington, D.C.: U.S. Department of Justice, Federal Bureau of Investigation, p. 227.

¹¹ National Center for Juvenile Justice. 1993 (November). *Juvenile Court Statistics: 1990*. Washington, D.C.: U.S. Department of Justice, p. 31.

¹² Ibid., p. 39.

¹³ Ibid.

¹⁴ Krisberg, Barry, and Robert DeComo. 1993. *Juveniles Taken Into Custody: Fiscal Year 1991 Report*. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, p. 2.

¹⁵ Ibid., p. 14.

¹⁶ Ibid., p. 13.

¹⁷ Ibid., p. 14.

¹⁸ Ibid., p. 21.

¹⁹ Ibid., p. 14.

²⁰ *Neither Angels Nor Thieves*, p. 50.

²¹ Ibid., p. 123.

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