THE JUVENILE STATUS OFFENDER

AND

THE LAW

PENNSYLVANIA JOINT COUNCIL ON THE CRIMINAL JUSTICE SYSTEM

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PENNSYLVANIA JOINT COUNCIL ON THE CRIMINAL JUSTICE SYSTEM

PRESIDENT
Judge Richard P. Conaboy

EXECUTIVE DIRECTOR
Richard V. Snyder

PREFACE

This report is a result of the Joint Council's continuing effort to gather and analyze information on critical issues confronting Pennsylvania's criminal justice system and to make this information readily available to all interested parties.

It is recognized that a work of this scope cannot be completed without the able assistance and cooperation of many people within and without the State. Their help in identifying resources and supplying information was essential during the compilation process and invaluable in the preparation of the many drafts. In particular I extend the appreciation of the Council to its juvenile justice staff, Christine Klejbuk and Beth Rosenberg, for their diligence and competence in writing this report, and to Deborah L. Libby, the Council's administrative assistant for her never-ending patience and excellence in editing and typing the final document.

In addition, the Joint Council expresses its gratitude to Kenneth Adami, Research Analyst for the Pennsylvania House Judiciary Committee; The Honorable Fred P. Anthony, President of the Pennsylvania Juvenile Court Judges' Commission; Thomas J. Brennan, Executive Director of the Governor's Justice Commission; Gerald M. Croan, Chief of the Juvenile Justice and Delinquency Prevention Office of the Governor's Justice Commission; Charlotte S. Ginsburg, Chairperson for the Juvenile Justice and Delinquency Prevention Advisory Committee; The Honorable John A. MacPhail, Chairperson of the Section of Juvenile Court Judges of the Pennsylvania Conference of State Trial Judges; Gerald Radke, Deputy Secretary for Social Services of the Pennsylvania Department of Public Welfare; Robert H. Sobolevitch, Director of the Bureau of Youth Services in the Department of Public Welfare. Their ongoing commitment and participation in this project is deeply appreciated by the Council and noteworthy to the citizens of this State.

The Joint Council trusts that this report will be received with open-mindedness and interest and hopes that it will contribute to the quality of juvenile justice.

Richard P. Conaboy

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INTRODUCTION

In Pennsylvania there are divergent views and a lack of consensus on exactly how the state's Juvenile Act should be amended to coincide with changing social scien[illegible] theory about the care and treatment of juveniles who come in contact with the juvenile court and to help move Pennsylvania towards compliance with the Federal Juvenile Justice and Delinquency Prevention Act of 1974. This difficulty stems partly from the fact that:

a. There is insufficient information available on which to make informed decisions regarding changes in current Pennsylvania juvenile legislation;

b. There is a lack of agreement regarding the objectives to be included in legislative changes; and,

c. There is a lack of consensus about how to implement the various objectives.

The general goal of this report is to gather and provide information about status offenders and detained juveniles. Status offenders are children who have committed acts which; although indicative of their age group such as truancy, ungovernability, running away, disobeying the reasonable demands of their parents, or deporting themselves in a manner as to endanger their morals; may bring a child before the juvenile courts of this country. Similar acts, if committed by an adult, would never demand similar consequences. These acts are referred to as "status offenses" because it is the status of a child, his or her age, which allows such intervention by the court.

Detained juveniles are those youths who are held by authorities before an adjudicatory hearing charging them with criminal-type or status offenses.

It is believed that the material set forth in this document will provide an informational basis whereby judges, legislators, systems administrators and interested juvenile justice groups may come together to discuss and seek resolution of the legislative problem in this area of juvenile justice.

METHODOLOGY

It is the approach of this report to present to the reader an understanding of what the laws are in the various states on the issues of (1) court jurisdiction regarding the status offender, (2) post-adjudicatory dispositions for status offenders, and (3) permissibility

of incarceration of adults with juveniles. Furthermore, the report is to provide information on what the actual practice is on the above issues in a selected number of states.

The following states have been selected as illustrative of the various approaches and postures that states are taking towards the status offender and detained juvenile:

Alabama	Michigan
Florida	New Mexico
Iowa	New York
Maine	Oregon
Maryland	Vermont
	Washington

This report will also include a discussion on constitutional issues that are currently being debated regarding the state's jurisdiction over juveniles who commit status offenses, and the positions that national criminal justice groups are taking regarding the restricting of courts' involvement with this population.

The information was collected for this report by: (1) review of states' juvenile statutes; (2) written inquiries to states' legislative reference bureaus; (3) telephone interviews and correspondence with state planning agencies, juvenile justice program staff, legislators, and judges; (4) attendance at the National Conference on Juvenile Court Law Reform: Legislative Advocacy, St. Louis, Missouri, December 8-10, 1976, sponsored by the National Juvenile Law Center; (5) review of states' 1977 LEAA Action Grants; and (6) a comprehensive search of available literature.

HISTORICAL OVERVIEW

The establishment of the juvenile court at the turn of the century was widely applauded around the nation. Primarily, it was a movement to separate youthful offenders from adults in jails and institutions, and, secondly, it sought to establish a different type of legal structure for youths. This was the first time that a child who broke the law was to be treated as a child needing care, education and protection rather than punishment. The Illinois Act of 1899 was the first comprehensive juvenile legislation to be passed. In comparison to what we are used to today, it was quite simplistic. This Act in its original form covered neglected, dependent and delinquent children. Delinquents, however, were defined only as those children who had violated state criminal statutes or municipal ordinances.

By 1905, this Act was amended to include those children who now are referred to as status offenders, that is, those children who commit an act which if committed by an adult would not be considered criminal, and therefore such an act would never permit court intervention. The following section is taken from the 1905 amended Illinois Act and illustrates a sense of the concerns of this period of reform:

> The court will have jurisdiction over that child who is incorrigible; or who knowingly associates with thieves, vicious or immoral persons; or who, without cause and without consent of its parents or custodian, absents itself from its home or place of abode, or who is growing up in idleness or crime; or who knowingly frequents any policy shop or place where any gaming device is operated; or who frequents any saloon or dram shop where intoxicating liquors are sold; or who patronizes or visits any public pool room or bucket shop; or who wanders about the streets in the night time without being on any lawful business or occupation; or who habitually wanders about any railroad yards or tracks or jumps or attempts to jump onto any moving train; or who enters any car or engine without lawful authority; or who is guilty of immoral conduct in any public place or about any school house.[1]

Within six years the Illinois juvenile court had extended its jurisdiction to include practically any child. The government had been persuaded to intervene in this diverse group of youthful activities that had previously been ignored or handled informally.

The form of legislative activity witnessed during the turn of the century was much different from what we are accustomed to today. Presently, it takes approximately two to five years to pass legislation, and our legislators appear much more informed and concerned. In 1905 a phone call could "do it." Mrs. Joseph Bowen, who was prominent in promoting and working for the passage of the Illinois Act, describes the passage of the 1905 Illinois amendment as follows:

> I well remember how that law was passed, because it gave me a feeling of great uneasiness, that it was so easy to accomplish. I happened to know at that time a noted Illinois politician. I asked him to my house and told him that I wanted to get this law passed at once. The legislature was in session; he went to the telephone in my library, called upon one of the bosses in the Senate and one in the House and said to each one: "There's a bill, number so and so, which I want passed, see that it is done at once." One of the men whom he called evidently said, "What is there in it?" and the reply was "There is nothing in it, but a woman I know wants it passed"--and it was passed. I thought with horror at the time, supposing that

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[1]Laws of Illinois, 1899, Sec. 1. According to the act of 1905 quoted in Margaret Keeney Rosenheim, Justice for the Child (New York: Free Press, 1962), p. 19.

> it had been a bad bill, it would have passed in exactly the same way.[2]

Since 1962, with the revision in New York's Juvenile Code to remove status offenders from the delinquent category, there has been widespread controversy and debate as to how to best handle the youth who commits no crimes, but appears as a menace to society's values and morals as dictated by law. The juvenile court movement was first initiated to separate youths from adults and to remove the stigma of the "criminal" label from a child. Similarly, the PINS (person in need of supervision) movement was initiated to remove the status offender from the "delinquent" label category and to begin to remove status offenders from traditional correctional institutions with delinquents.

Statistics have begun to demonstrate the nature of the court process towards juveniles:

1. On the average, four out of every one hundred youth are likely to be referred to juvenile court;

2. Law enforcement agencies and parents are the major sources of referrals to the court, resulting in the coexistence of radically different input mechanisms to which the court must adjust;

3. Status offenders comprise nearly 40 percent of the referrals to juvenile court;

4. On the average only 7 percent of cases referred to juvenile court result in commitment to correctional facilities;[3]

5. More juveniles adjudicated as status offenders are sent to juvenile institutions than youths convicted of other offenses: 25 percent are incarcerated for status offenses, 18 percent for minor offenses, and 23 percent for serious crime;

6. Once incarcerated, status offenders tend to spend more time in institutions than their juvenile counterparts who have been institutionalized for other offenses.[4]

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[2]Mrs. Joseph Bowen, "The Early Days of the Juvenile Court," in Jane Addams et. al., The Child, the Clinic and the Courts quoted in Margaret Keeney Rosenheim, Justice for the Child (New York: Free Press, 1962), pp. 19-20.

[3]Rosemary Sarri and Yeheskel Hasenfeld, eds., Brought to Justice? Juveniles, the Courts and the Law (Michigan: National Assessment of Juvenile Corrections, August 1976), p. 7.

[4]United States Senate Subcommittee to Investigate Juvenile Delinquency, Committee Information Release: The Juvenile Justice and Delinquency Prevention Act of 1974, (Mimeographed, Washington, D.C., August 1974), p. 4.

Cognizant of the trends shown by the above statistics the United States Congress passed in 1974 the Juvenile Justice and Delinquency Prevention Act under the chief sponsorship of Senator Birch Bayh. This was a product of a "three-year bipartisan effort to improve the quality of juvenile justice in the United States and to overhaul the federal approach to the problems of juvenile delinquency and children in trouble."[5] The Act seeks to coordinate a federal juvenile justice effort which will enable individual states, through the disbursement of federal monies, to achieve the mandates of the Act. The individual state criminal justice planning agencies presently are delegated by the federal Law Enforcement Assistance Administration to receive the federal allotments and disburse the monies in such a manner as to achieve two clear mandates of the Federal Act:

> § 223 (a)(12) provide within two years after submission of the plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult, shall not be placed in juvenile detention or correctional facilities, but must be placed in shelter facilities; (and)
>
> § 223 (a)(13) provide that juveniles alleged to be or found to be delinquent shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges.

It is important to note that states may voluntarily agree or refuse to commit their state-operated juvenile justice and child welfare systems to meeting the mandates of the Federal Act. If a state decides to accept the money, that state must meet the above mandates or be liable to lose continued federal funding for alternative programs for status offenders and detained juveniles.

A LOOK AT PENNSYLVANIA

The Pennsylvania Joint Council on the Criminal Justice System was instrumental in the coordination of an effort that led to the passage of Pennsylvania standards for the criminal justice system. The standards were the culmination of a more than two years process, during which time the input and assistance of thousands of citizens and criminal justice practitioners throughout the state were sought. In December of 1975, 250 delegates invited by the Governor convened to consider and ratify a set of criminal justice standards for Pennsylvania. Three of these standards which address the juvenile justice goals for the state also reflect Pennsylvania's commitment to similar action within the juvenile justice system as addressed in the Federal Juvenile Justice and Delinquency Prevention Act of 1974. The Pennsylvania criminal justice standards that deal with the issues of the Federal Act are:

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[5]Ibid., p. 1.

Standard 2.1, Court Jurisdiction Over Juveniles, which provides: "The family court should be authorized to order the placement of a juvenile in an institution only upon a determination of delinquency and a finding that no alternative disposition would accomplish the desired result. A determination of delinquency should require a finding that the state has proven that the juvenile has committed an act that, if committed by an adult, would constitute a criminal offense. No deprived child should be placed in an institution unless there is a finding that no alternative disposition would accomplish the desired result. The state shall create the resources to provide for the deprived child."[6]

Standard 3.1, Detention of Juveniles, which provides: "Pennsylvania should enact legislation immediately which should include... a prohibition against detention of juveniles in jails, lockups, or other facilities used for housing adults accused or convicted of crimes, and a requirement that county or regional juvenile detention services (both secure and non-secure) be provided."

Standard 4.2, Modification of Existing Institutions, which provides: "The use of any state correctional facility as a combined adult and juvenile facility should be prohibited."[7]

In 1975 the state criminal justice planning agency, the Governor's Justice Commission, was awarded funding from the federal government to meet the mandates of the Federal Juvenile Justice and Delinquency Prevention Act of 1974. The Governor's Justice Commission has recently stated the following:

> In setting standards for determining compliance (with the Federal Act), the Law Enforcement Assistance Administration has ruled that a statistically documented reduction of 75% in the number of institutionalized status offenders by August, 1977 would constitute "substantial compliance" with the Act. With respect to the requirement for separation of juveniles and adults, the Law Enforcement Assistance Administration has ruled that the states must set a firm deadline for accomplishing this objective as quickly as possible.

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[6]In Pennsylvania, the state does not provide the services and resources to deprived children; it is the individual county government that is responsible for caring for this population. Contrary to this, the state is responsible for providing services to some sections of the delinquent population, i.e., those children who are institutionalized at the state's youth development centers and youth forestry camps.

[7]Pennsylvania Joint Council on the Criminal Justice System, Pennsylvania Standards for the Criminal Justice System, (Harrisburg, March 1976), pp. 89-93.

> ...Juvenile Court statistics (for Pennsylvania) indicate that in 1975, a total of 2,499 status offenders were detained with delinquents prior to disposition, and 494 youth were adjudicated delinquent for status offenses and committed to public or private delinquency institutions. In addition, adult county jails reported detaining 2,943 juveniles.
>
> ...We anticipate that the 1976 statistics may show a slight decrease in these figures. ...It is extremely unlikely that Pennsylvania will be able to document statistically the 75% reductions in status offender populations required by August 31, 1977.
>
> ...The only practical hope which Pennsylvania has for achieving compliance with the deadline in the Juvenile Justice and Delinquency Prevention Act is the passage of State legislation which mandates the appropriate changes in the handling of status offenders and detained juveniles.[8]

Because of the various reporting systems that track juvenile offenders in the state, there is disagreement on the numbers of status offenders detained in secure facilities prior to adjudication and on the numbers of status offenders placed in secure correctional institutions for post-adjudicatory commitment.[9] There is little argument, however, that Pennsylvania will not be able to meet the mandates of the Federal Act, as previously suggested by the Governor's Justice Commission, unless the state moves to comply statutorily. In order to accomplish this, changes are needed in the Pennsylvania Juvenile Act of 1972, Act No. 333.

In Pennsylvania there is no statutory definition of a status offender. Pennsylvania does not single out this group of adolescents, either definitionally nor dispositionally, from other types of behavior. A working definition of what constitutes a status offender, however, has been set forth by The Council of State Governments as "the child who comes under the jurisdiction of the juvenile court for offenses that would not be crimes if committed by adults."[10] Activity such as ungovernability, truancy, running away from home, and violating curfew, are examples of what are considered juvenile status offenses. In Pennsylvania

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[8]Thomas Brennan, Executive Director, Governor's Justice Commission, testimony given before the House Sub-Committee on Crime and Corrections, Harrisburg, Pennsylvania, March 10, 1977.

[9]As an example of the state's statistical discrepancies, for 1975 the Office of Criminal Justice Statistics reported a total of 10,588 detentions for the state; the Department of Public Welfare reported for the year a total of 17,718 detentions.

[10]The Council of State Governments, Status Offenders: A Working Definition, (Lexington, Kentucky: The Council of State Governments, September 1975), p. 1.

only children who are "ungovernable" or "truant" are specifically mentioned in the juvenile law. Under the current Pennsylvania Act, a child who is charged with an act of ungovernability, a status offense by definition, may be adjudicated as a delinquent child (along with other children who commit criminal-type offenses);[11] a child charged with an act of truancy, similarly a status offense, is defined and adjudicated as a deprived child (along with children who are considered dependent, neglected, or abused).[12]

Additionally, Pennsylvania law states that:

> Under no circumstances shall a child be detained, placed, or committed in any facility with adults, ... unless there is no appropriate facility available, in which case the child shall be kept separate and apart from such adults at all times and shall be detained, placed, or committed under such circumstances for not more than five days.[13]

Throughout Pennsylvania, particularly in the state's rural regions, there are few juvenile detention facilities available to the court when it thinks a youth should be in secure pre-adjudicatory placement. The court then has no alternative, other than to use the local county jail. Again, the Pennsylvania Act states that this is acceptable only under two conditions: 1) if juveniles are kept separate and apart from adults; and 2) if juveniles are not held for more than five days. The Pennsylvania Act, in and of itself, would comply with the mandates of the Federal Juvenile Justice and Delinquency Prevention Act. But, it is recognized by the welfare and justice departments, the judicial authorities, the legislature and other juvenile justice authorities that these mandates of the Pennsylvania law are violated throughout the state. Aware of this fact, the state legislature is presently seeking ways to amend the Pennsylvania Act that would provide for regional secure detention facilities to accommodate the youths who must be placed in security prior to an adjudicatory hearing and, therefore, to also comply with the mandates of the Federal Act.

Pennsylvania law also allows for a delinquent child to be committed to a "special facility for children operated by the Department of Justice."[14]

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[11] Juvenile Court Act of 1972 Sec. 2(2), Pennsylvania Statutes Annotated title 11, Sec. 50-102(2) (Supp. 1975-76).

[12] Ibid., Sec. 2(3), Pennsylvania Statutes Annotated title 11, Sec. 50-102(3) (Supp. 1975-76).

[13] Ibid., Sec. 14(4), Pennsylvania Statutes Annotated title 11, Sec. 50-311 (Supp. 1975-76).

[14] Ibid., Sec. 25(4), Pennsylvania Statutes Annotated title 11, Sec. 50-322(4) (Supp. 1975-76).

The Attorney General in a letter dated April 14, 1975 determined that there was no facility operated by the Department of Justice that met the mandate of the Pennsylvania Juvenile Act that juveniles and adults be kept separate and apart, and at that time he asked that alternative placements be found for the juveniles committed to the State Correctional Institution at Camp Hill which was operated by the Department of Justice.[15]

Considering what has and is happening in Pennsylvania today, this report will present some of the issues and responses experienced in other states, on Constitutional issues and in national groups' policies to provide to those Pennsylvanians interested and involved in juvenile justice with some approaches and alternatives regarding status offenders and detained juveniles.

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[15] Robert P. Kane, Attorney General, letter to Ernest S. Patton, Superintendent of the State Correctional Institution at Camp Hill (Mimeographed, April 14, 1975).

CLASSIFICATION DESCRIPTION

(Chart I)

The following chart represents the manner in which each state classifies by state statute its children under the jurisdiction of the court. The chart is divided into four basic categories:

1. DELINQUENT CHILD CATEGORY
2. STATUS OFFENSE CHILD CATEGORY
3. DEPENDENT CHILD CATEGORY
4. NO LABELS

DELINQUENT CHILD CATEGORY

In every state that labels children, a delinquent child includes one who commits an act that would be an offense if committed by an adult. Several states, however, include other acts or requirements that allow a child to be adjudicated delinquent, i.e., needs care or rehabilitation. In some states, a child who commits a "child only status offense" is placed in this delinquent child category. Occasionally, this provision is maintained to allow for the court's discretion, i.e., Arkansas, to treat a status offender as a delinquent or as a CHINS. A number of states specifically note that within their statute a violation of a court order will be considered a delinquent act.[16]

STATUS OFFENSE CHILD CATEGORY

The majority of states have delineated a separate labeling category for status offenders, i.e., Children in Need of Supervision (CHINS), Persons in Need of Supervision (PINS), Minors in Need of Supervision (MINS), Juveniles in Need of Supervision (JINS), Unruly Children, Ungovernable Children, Wayward, etc.

"Ungovernability" refers to those provisions in a state's statute that provide court jurisdiction for a child who "disobeys the reasonable and lawful orders of his parents or guardian and is beyond their control," "who is incorrigible," "who is ungovernable," "who is habitually disobedient."

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[16] See Appendix A. Memorandum from the Office of General Counsel, Law Enforcement Assistance Administration, Department of Justice states that a status offender who violates a court order is still a status offender.

"Endangers self" refers to the terminology most frequently expressed as "who is endangered of leading a lewd, lascivious and immoral life," or "who habitually so deports himself/herself as to injure or endanger the life, physical or mental well-being of himself/herself or others."

"Miscellaneous status offenses" refers to the less noteworthy acts of a youth, i.e., curfew, or the all-encompassing provision which permits the court's intervention upon any act of a child.

The "delinquent act provision" indicates that the court is able, by statute, to label and treat a child who has been charged with a criminal-type offense as a status offender.

DEPENDENT CHILD CATEGORY

Under this section are included the many provisions that provide for the court's intervention in the case of deprivation, neglect, abuse and dependency. It should be noted that several states have more than one labeling category for a dependent-type child. Because of the focus of this study, however, it did not appear necessary to delineate such categorical differences.

Within this section, three states label status offenders within a dependent category. Several other states, although maintaning delinquent and/or status offense category provisions, mandate that certain types of status offenders be labeled as dependent-type children.

NO LABELS

In this section are placed the states that are jurisdictional and provide no statutory labels for the children coming under the court's jurisdiction. The statutes provide for the court's intervention for certain defined types of activity committed by or to a child.

CHART I

CLASSIFICATION CHART

	ALA	ALAS	ARIZ	ARK	CAL	COLO	CONN	DELA	D.C.	FLA	GEO	HAW	IDAHO	ILL	IND	IOWA	KAN	KEN	LOU	MAINE	MARY	MASS	MICH	MINN	MISS	MO	MONT	NEB	NEV	N.H.	N.J.	N.M.	N.Y.	N.C.	N.D.	OHIO	OKLA	ORE	PA	R.I.	S.C.	S.D.	TENN	TEXAS	UTAH	VER	VIR	WASH	W.VIR	WISC	WYO
A. DELINQUENT CHILD CATEGORY	X	X	X	X	X	X	X	X	X	X	X			X	X	X	X		X		X	X						X		X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X
1. Adult Type Criminal Offense	o	o	o	o	o	o	o	o	o	o	o			o	o	o	o		o		o	o						o		o	o	o	o	o	o	o	o	o		o	o	o	o	o	o	o	o	o	o	o
2. Child Only Status Offense			o	o																																														
a. Truancy								o	o																																									
b. Ungovernability, etc.									o	o																																							
c. Runaway								o																																									
d. Endangers Self																																																	
e. Multiple Status Off. Adjudication																																																
3. Violation of Court Order					o	o	o			o																																							
4. And Needs Care or Rehabilitation	o								o																																								
B. STATUS OFFENSE CHILD CATEGORY	X	X	X	X	X	X	X		X		X				X		X																															
1. Truancy	o	o	o	o	o	o			o		o				o																																	
2. Ungovernability, etc.	o	o	o	o	o	o			o						o																																	
3. Runaway			o	o		o					o																																					
4. Endangers Self		o	o		o	o																																										
5. Miscellaneous Status Offense	o								o		o																																					
6. Violation of Court Order																																																
7. Delinquent Act Provision																																																
8. And Needs Care or Rehabilitation	o								o		o																																					
C. DEPENDENT CHILD CATEGORY	X	X	X	X	X	X	X	X	X	X	X			X	X	X	X																															
1. Deprivation; Neglect	o	o	o	o	o	o	o	o	o	o	o			o	o	o	o																															
2. Status Offense																																																
a. Truancy	o																																															
b. Ungovernability, etc.																	o																															
c. Runaway																																																
d. Endangers Self	o	o																																														
3. Violation of Court Order																																																
4. And Needs Care or Rehabilitation	o																																															
D. NO LABELS																																																
1. Adult Type Criminal Offense																																																
2. Truancy																																																
3. Ungovernability, etc.																																																
4. Runaway																																																
5. Endangers Self																																																
6. Miscellaneous Status Offense																																																
7. Violation of Court Order																																																
8. Traffic Offense																																																
9. Deprivation; Neglect																																																
10. And Needs Care or Rehabilitation																																																

STATUS OFFENDER JURISDICTIONAL PLACEMENT

Today, all fifty states have provisions for court intervention into a "status offender's" life.

Twenty-eight states plus the District of Columbia have a separate definitional status offender category:

Alabama	Kansas	North Carolina
Alaska	Louisiana	North Dakota
Arizona	Maryland	Ohio
Arkansas	Massachusetts	Oklahoma
California	Montana	Rhode Island
Colorado	Nevada	South Dakota
District of Columbia	New Hampshire	Tennessee
Georgia	New Jersey	Texas
Illinois	New Mexico	Wisconsin
	New York	Wyoming

Eight states primarily classify status offenders as delinquent children:

Connecticut
Delaware
Indiana (runaways are dependent children)
Minnesota
Mississippi
Pennsylvania (truants are deprived children)
South Carolina
West Virginia

Three states classify status offenders within the same category as they do dependent children: Iowa, Vermont, and Washington.

Florida's statute provides for the truant and runaway to always be defined and treated as a dependent child. The first time a child is adjudicated as ungovernable, he/she may be defined and treated as a dependent child; for the second and subsequent adjudications for ungovernability, the child may be defined and treated as a delinquent child .

Ten states have "jurisdiction" over defined activities of children and do not specifically place the child in labeled categories:

Hawaii	Oregon
Idaho	Utah (defines dependent and neglected child; mandates jurisdiction for these and others as indicated)
Kentucky	
Maine	
Michigan	Virginia
Missouri	
Nebraska	

Kansas has a status offender category, but may place repeat status offenders within the delinquent category. This state distinguishes between wayward child; a miscreant child which is a three-time adjudicated wayward; and a delinquent which includes a three-time adjudicated miscreant child.

Five states specifically denote that a "violation of a court order" by a status offender (defined within a separate category) may be deemed a delinquent offense: Montana, Nevada, North Carolina, Ohio and Texas.

At least three other states denote that a violation of a court order by a status offender must continue to be treated as a status offense case: Colorado, Georgia and Idaho.

PRE-ADJUDICATORY DETENTION

(Chart II)

Section 223(a)(13) of the Federal Juvenile Justice and Delinquency Prevention Act of 1974 provides that delinquents and/or alleged delinquents shall not be incarcerated in the same facility with adults who have been convicted of a crime or are awaiting trial. Unlike the prior provision relating to status offenders in delinquent institutions, the provision regarding the commingling of delinquents and adults does not have a fixed date for compliance; however, a systematic program to accomplish this provision must be outlined and documented in the state criminal justice planning agency's juvenile justice plan.

The impact of this section has mainly been directed at the removal or total separation of juveniles in local jails or lockups. Chart II is a summary of state legislation on this issue.

Four states prohibit the detention of juveniles in adult facilities: Arizona, Connecticut, Ohio and Rhode Island.

All other states and the District of Columbia allow for the placement of juveniles in adult jails. These remaining states specify that juveniles must remain "separate and apart" from the adults.

Several states have also attached further requirements. Fourteen states permit juvenile detention in adult facilities only when there is no juvenile facility available:

Alabama	Nevada
California	New Mexico
Colorado	North Dakota
Georgia	Oregon
Maryland	Pennsylvania
Minnesota	Tennessee
Montana	Wyoming

Two states require that the juvenile be an alleged felon, if placed in an adult detention facility: Florida and Vermont.

Seven states have a minimum age limit before he/she can be placed in an adult facility:[17]

Over 14	Over 15	Over 16	Over 17
Colorado	Louisiana	Illinois	Maryland
Minnesota	Michigan	Utah	

[17] In Pennsylvania, the Bureau of Correction's Minimum Standards for County Jails (Pennsylvania Code, Title 37, Section 95.227) states that no child under the age of 16 shall be detained in a county jail.

STATUTORY AUTHORIZATION OF DETAINING JUVENILES WITH ADULTS

	ALA.	ALAS.	ARIZ.	ARK.	CAL.	COLO.	CONN.	DELA.	D.C.	FLA.	GEO.	HAW.	IDAHO	ILL.	IND.	IOWA	KAN.	KEN.	LOU.	MAINE	MARY.	MASS.	MICH.	MINN.	MISS.	MO.
PROHIBITED			X				X																			
PERMITTED																										
ONLY IF:																										
1. Child shall have no contact with adults																										
2. Child shall not be in same cell with adult																										
3. No juvenile facilities are available																										
4. By court order																										
5. Child is menace to community																										
6. Child is awaiting transportation																										
7. Child is over 14																										
8. Child is over 15																										
9. Child is over 16																										
10. Child is over 17																										

	MONT.	NEB.	NEV.	N.H.	N.J.	N.M.	N.Y.	N.C.	N.D.	OHIO	OKLA.	ORE.	PA.	R.I.	S.C.	S.D.	TENN.	TEXAS	UTAH	VER.	VIR.	WASH.	W. VIR.	WISC.	WYO.
PROHIBITED														X											
PERMITTED			X	X																					
ONLY IF:																									
1. Child shall have no contact with adults																									
2. Child shall not be in same cell with adult																									
3. No juvenile facilities available																									
4. By court order																									
5. Child is menace to community																									
6. Child is awaiting transportation																									
7. Child is over 14																									
8. Child is over 15																									
9. Child is over 16																									
10. Child is over 17																									

CHART II

POST-ADJUDICATORY DISPOSITIONS

What is important to recognize is that, althought twenty-eight states and the District of Columbia have a status offender category, this is basically a labeling feature which does not necessarily distinguish permitted dispositional alternatives.

PROTECTIVE SUPERVISION AND PROBATION

Some states are beginning to make the dispositional distinction between probation and protective supervision. In many states, the court is able to order either protective supervision or probation for both delinquents and status offenders. Other states, i.e., Hawaii, indicate that only protective supervision is available to the court for status offenders; whereas, probation is permitted as a dispositional alternative for delinquents. There is a fine line between these dispositional services. Protective supervision is usually administered by a child welfare agency, by order, and at times, with assistance of court personnel. It is intended as an aid to the child and the family in lieu of removing a child from the home. If protective supervision does not benefit the child or his/her family, the court commonly has the ability to make an alternate dispositional choice as a consequence of the original adjudication. Although a violation of protective supervision may occur by the child, that, in and of itself, usually may not permit the adjudication of that child for a separate delinquent offense.

Probation, on the other hand, is administered directly by court personnel who tend to have greater access to the court. Probation developed as an alternative method of treatment in lieu of placement. A child on probation normally is placed on restrictions by the court or the court's officer. Probation may be revoked whereby a child may be placed in a facility allowed under the original adjudication or, in some states, may be charged anew with a "violation of a court order," which may be considered a delinquent offense. The revocation of probation may lead to a child's placement in a secure facility in contrast to a protective supervision order review, which may not result in secure placement.

The following states do not allow a status offender to be placed on probation, but allow for protective supervision:

Florida	Iowa
Hawaii	Maryland
Illinois	Vermont

SECURE INCARCERATION

The states listed below are the only ones with a third category system that specifically prohibit by law the institutionalization of status offenders with delinquent children:

Maryland	New Mexico
Massachusetts	New York
Montana	South Dakota
New Jersey	

Hawaii is the only jurisdictional state that prohibits the incarceration of delinquents and status offenders within the same correctional institution.

Because many states allow their departments of public welfare or a similar agency to regulate placement of children once adjudicated by the courts, it is difficult to determine exactly how many states allow the incarceration status offenders within delinquent institutions, because this is sometimes determined by state social welfare regulation and not dependent on the state statute.

For example, Michigan by law is a jurisdictional state and does not differentiate nor label any of its children. In this same manner, it does not distinguish in its law the types of dispositional alternatives available to any child within its jurisdiction. By statute, there is no restriction to placing a deprived child in a correctional institution for delinquent children. There is also no restriction to placing a status offender in the same type of institution. But, by order of the Department of Social Services in 1975, which subsequently went into permanent effect on July 1, 1976: No status offender is permitted to be placed in a correctional institution for delinquents, subsequently there are no status offenders held within these institutions.

States that specifically permit the incarceration of status offenders in correctional institutions are, of course, those states that label some status offenders as delinquents:

Connecticut	Mississippi
Delaware	Pennsylvania
Indiana	South Carolina
Minnesota	West Virginia

Third category states that allow status offenders to be incarcerated in correctional institutions are:

California	Oklahoma
Connecticut	Tennessee
Georgia	Texas
North Carolina	Wyoming

Several states allow commingling usually when a status offender is "unamenable" to other types of treatment:

Alabama	North Dakota
Colorado	Ohio
Florida	Tennessee
Kansas	Washington
Minnesota	

Therefore, there are thirty-four states, including nine jurisdictional states, that by law allow status offenders to be treated in the same institutions as delinquent children.

POST-ADJUDICATORY DISPOSITIONAL CHARTS
(Charts III, IV, and V)

Charts III, IV, and V describe the statutory disposition alternatives available to the court. The first column under each state is to indicate if the disposition is permitted for status offenders; if it is, it will be indicated by a "O". The second column under each state is to indicate if the disposition is permitted for delinquents; if it is, it will be indicated by "⊕". If the disposition is permitted for either status offenders or delinquents only under certain conditions, it will be indicated in the appropriate column by a "Ø". A "P" in the appropriate column will indicate that the disposition is prohibited by statute.

Although in most states the court has the discretionary authority to dismiss a case or to allow the placement of a child in a foster home, such dispositions have only been indicated if specified in the state statute.

Additionally, it was very difficult to ascertain from state statutes what exact jurisdictional rights and responsibilities were delegated to the state or local welfare or justice departments and which were retained by the court regarding the placement authority and continued decision-making policy over a case. In those states that indicate that a department or agency has legal custody, usually the decision-making authority has also been transferred to them. These dispositions reflect the laws of the state and do not indicate administrative restrictions or alternatives available.

CHART III

POST-ADJUDICATORY DISPOSITIONAL CHART

	ALABAMA	ALASKA	ARIZONA	ARKANSAS	CALIF.	COLORADO	CONN.	DELAWARE	D.C.	FLORIDA	GEORGIA	HAWAII	IDAHO	ILLINOIS	INDIANA	IOWA	KANSAS
DISMISS THE CASE																	
REMAIN AT HOME	O ⊕		O ⊕	O ⊕													
PROTECTIVE SUPERVISION	O																
PROBATION	O ⊕	O ⊕	O ⊕	O ⊕													
EXCUSE FROM SCHOOL	O ⊕																
FINE, RESTITUTION	O ⊕			O ⊕						⊕							
SUPERVISED WORK PROGRAM																	
PLACEMENT WITH:																	
FRIEND, RELATIVE	O	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕
FOSTER HOME					O ⊕		O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕
INSTITUTION FOR DEPENDENT CHILDREN	Ø ⊕	P P			O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕
INSTITUTION FOR DELINQUENT CHILDREN	P P		P P		O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕
INSTITUTION FOR ADULT OFFENDERS	O ⊕		O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕
PRIVATE AGENCY																	
TRANSFER LEGAL CUSTODY TO:																	
FRIEND, RELATIVE	O ⊕																
PRIVATE AGENCY	O ⊕																
PUBLIC AGENCY OR INSTITUTION	O ⊕																
PROBATION DEPARTMENT																	
COUNTY DEPARTMENT OF WELFARE																	
STATE DEPT. OF WELFARE--YOUTH SERVICES	O	O ⊕															
STATE DEPT. OF JUSTICE--CORRECTIONS	O ⊕		O ⊕	Ø													

	KENTUCKY	LOUISIANA	MAINE	MARYLAND	MASS.	MICHIGAN	MINN.	MISS.	MISSOURI	MONTANA	NEBRASKA	NEVADA	N.H.	N.J.	N.M.	N.Y.	N.C.
DISMISS THE CASE		O ⊕	O ⊕			O ⊕		O ⊕									
REMAIN AT HOME			O ⊕		O		O ⊕	O ⊕	O ⊕		O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕
PROTECTIVE SUPERVISION	O ⊕	O ⊕		O		O ⊕		O ⊕							O ⊕		
PROBATION	O ⊕	O ⊕	O ⊕		⊕	O ⊕	O ⊕		O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕
EXCUSE FROM SCHOOL																	O ⊕
FINE, RESTITUTION	⊕		O ⊕					O ⊕			O ⊕					⊕	
SUPERVISED WORK PROGRAM	⊕						O ⊕					O ⊕					
PLACEMENT WITH:																	
FRIEND, RELATIVE		O ⊕			O				O ⊕	O ⊕		O ⊕				O ⊕	
FOSTER HOME								O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O				
INSTITUTION FOR DEPENDENT CHILDREN						O ⊕			O ⊕		O ⊕		O				
INSTITUTION FOR DELINQUENT CHILDREN			O ⊕	P ⊕	P P	O ⊕	Ø ⊕	O ⊕	O ⊕	P ⊕	O ⊕		P⊕	P ⊕	P ⊕	P ⊕	O ⊕
INSTITUTION FOR ADULT OFFENDERS			O ⊕	P P	P P					P P			⊕				
PRIVATE AGENCY					O	O ⊕				O ⊕		O ⊕					
TRANSFER LEGAL CUSTODY TO:																	
FRIEND, RELATIVE							O ⊕	O ⊕						O ⊕	O ⊕		
PRIVATE AGENCY	O ⊕	O ⊕					O ⊕	O ⊕	O ⊕			O ⊕			O ⊕		
PUBLIC AGENCY OR INSTITUTION												O ⊕					
PROBATION DEPARTMENT																	
COUNTY DEPARTMENT OF WELFARE							O ⊕										O ⊕
STATE DEPT. OF WELFARE--YOUTH SERVICES	O ⊕		O ⊕		O ⊕		O ⊕			O ⊕				O ⊕	O ⊕	O	
STATE DEPT. OF JUSTICE--CORRECTIONS		⊕			⊕		Ø ⊕				O ⊕				⊕	⊕	O ⊕

	N.D.	OHIO	OKLA.	OREGON	PENNA.	R.I.	S.C.	S.D.	TENN.	TEXAS	UTAH	VERMONT	VIR.	WASH.	WEST VII	WISC.	WYO.
DISMISS THE CASE							O ⊕										
REMAIN AT HOME		O ⊕	O ⊕		O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O	O ⊕	O ⊕		O ⊕	O ⊕
PROTECTIVE SUPERVISION		O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕			O ⊕			O ⊕	O ⊕	
PROBATION	O ⊕	O ⊕	O ⊕	O ⊕	Ø ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	⊕	O ⊕	O ⊕			O ⊕
EXCUSE FROM SCHOOL																	
FINE, RESTITUTION		⊕		O ⊕		O ⊕		⊕	O ⊕		O ⊕		O ⊕			⊕	
SUPERVISED WORK PROGRAM								O ⊕			O ⊕						
PLACEMENT WITH:																	
FRIEND, RELATIVE				O ⊕		O ⊕	O ⊕	O ⊕		O ⊕		⊕	O ⊕	O ⊕	O ⊕		
FOSTER HOME			O ⊕	O ⊕			O ⊕	O ⊕		O ⊕			O ⊕	O ⊕		O ⊕	
INSTITUTION FOR DEPENDENT CHILDREN		O ⊕	O ⊕									O ⊕					
INSTITUTION FOR DELINQUENT CHILDREN	Ø ⊕	Ø ⊕	O ⊕		Ø ⊕			P ⊕	O ⊕	O ⊕	O ⊕	O ⊕	O ⊕	Ø ⊕	O ⊕		O ⊕
INSTITUTION FOR ADULT OFFENDERS				P P	Ø		O ⊕										O ⊕
PRIVATE AGENCY	O ⊕	O ⊕	O ⊕										O ⊕	O ⊕	O ⊕		
TRANSFER LEGAL CUSTODY TO:																	
FRIEND, RELATIVE		O ⊕			O ⊕						O ⊕	O	O ⊕			O ⊕	O ⊕
PRIVATE AGENCY			O ⊕		O ⊕	O ⊕	O ⊕	O ⊕	O ⊕		O ⊕	O	O ⊕			O ⊕	O ⊕
PUBLIC AGENCY OR INSTITUTION			O ⊕		O ⊕	O ⊕	O ⊕	O ⊕	O ⊕		O ⊕	O					O ⊕
PROBATION DEPARTMENT		O ⊕						O ⊕	O ⊕					O ⊕			
COUNTY DEPARTMENT OF WELFARE		O ⊕	O ⊕		O								O ⊕			O ⊕	O ⊕
STATE DEPT. OF WELFARE--YOUTH SERVICES	O ⊕	O ⊕	O ⊕	O ⊕	Ø ⊕	O ⊕	O ⊕	O ⊕	O ⊕		O ⊕	O		⊕		⊕	O ⊕
STATE DEPT. OF JUSTICE--CORRECTIONS					Ø ⊕				Ø ⊕	⊕		⊕	O ⊕				

CHART V

NOTES CONCERNING "Ø"

WITHIN POST-ADJUDICATORY DISPOSITIONAL CHART

ALABAMA: A CHINS shall not be committed to a delinquent institution unless the court finds the child is not amenable to treatment under any prior disposition or such child is alleged again to be a CHINS and the court so finds.

CALIFORNIA: A status offender who violates a court order may be adjudicated a delinquent; hence, a status offender could be committed to the youth authority.

COLORADO: A violation of the terms and conditions of probation by a child in need of supervision is not a violation of a "lawful order of court" made under the delinquent child provisions of the children's code.

By statute, CHINS may not be placed initially in institutions for juvenile delinquents, but they may be transferred by the director of institutions to such institutions with prior approval of the court.

The precedent setting case of People in Interest of D. R., 487 P. 2d 824 (1971) establishes, contrary to written statute, that a CHINS may not, under any circumstances, be transferred nor placed in an institution for delinquent children.

Colorado does maintain, however, intake diagnostic and receiving centers for the initial placement of both CHINS and delinquent children.

FLORIDA: Second time around ungovernables may be adjudged delinquent, and, therefore, there is the possibility of probation, commitment to the Division of Youth Services or institutionalization.

GEORGIA: For an unruly child to be committed to the Division of Children and Youth, the court shall first find that the child is not amenable to treatment or rehabilitation by delinquent dispositions that do not require such treatment.

KANSAS: A ninth-time status offender can be adjudicated a delinquent and hence be institutionalized.

MINNESOTA: Truants and ungovernables cannot be committed to the Commissioner of Corrections or to a county institution for delinquents, unless the child is a repeat offender.

NORTH DAKOTA: An unruly child can only be committed to a state industrial school upon failure of the original disposition order to provide treatment and rehabilitation.

OHIO: If an unruly child is unamenable to treatment within stated dispositions, the court may then use dispositions available for delinquents.

PENNSYLVANIA: Ungovernables can have the same dispositions as delinquent children. By statute, a delinquent child may be detained, committed or placed in an adult facility when a juvenile facility is not available.

SOUTH DAKOTA: Statute states that CHINS shall not be placed in institutions for delinquents; however, an opinion from their attorney general states that CHINS can be placed in delinquent institutions if other provisions have failed.

TENNESSEE: Statute prohibits commitment of an unruly child to the Department of Corrections unless he/she is not amenable to prior treatment.

WASHINGTON: A status offender should not be placed in an institution for delinquents unless previous treatment has failed, at which time he/she may be committed to such an institution but must be separated from adults. Any status offender, however, may be placed up to 45 days in a delinquent institution for diagnostic evaluation.

DESCRIPTIVE STATE STUDIES

With the passage of the Federal Juvenile Justice and Delinquency Prevention Act of 1974, the states that wish to receive federal money and comply with the federal guidelines must be working towards the elimination of status offenders from delinquent correctional institutions and the separation of juveniles and adults in detention and correctional facilities. Many of the laws and regulations that now exist are rapidly changing to meet compliance standards. The following pages will contain a detailed presentation regarding how selected states are addressing the issue of status offenders and detained juveniles.

ALABAMA

Alabama's legislature, with strong support and direction from their judiciary, created the Alabama Constitutional Commission in 1969. This commission was responsible for the task of reforming Alabama's judicial system.[18] In 1973 the Alabama legislature through the Constitutional Commission, formed the Juvenile Court Analysis Project to study the problems of the juvenile court and to make recommendations to the legislature for revisions in Alabama's juvenile code. The juvenile court in Alabama did not stand alone in its need for reform; the entire judicial system was in the midst of change, and the status offender issue in itself was only one small entity in a large cauldron.

Since the inception of its juvenile court in 1907, Alabama has always treated the status offender as a delinquent child. Practically any child could have been brought into court. The court had jurisdiction over one who was:

> ...incorrigible; or who knowingly associated with thieves, gamblers, whores, vicious or immoral persons; or who is growing up in idleness or crime; or who knowingly enters a house of ill fame; or who knowingly visits or patronizes any policy shop, bucket shop, pool room, billiard room, bar room, or club room where liquors are sold; or where any gaming table, or device for gambling is operated, or who loiters about such places; or who habitually smokes cigarettes; or who wanders about any railroad yard or tracks; or jumps or hooks on to any moving engine or car; or unlawfully enters any engine or care; or habitually uses vile, obscene, profane or indecent language; or is found in possession of any indecent or lascivious book, picture, card or paper; or in possession of any pistol, dirk, bowie knife or knife of like kind, or of brass knuckles; or is guilty of immoral conduct in any public place, or in or about any school house;...[19]

Several later amendments in 1915, 1923 and 1931 deleted portions of the above statute and revised the status offender section of a delinquent

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[18]Legis 50, The Center for Legislative Improvement, Legislative Policymaking in Juvenile Justice: Four Case Studies, (Englewood, Colorado: Legis 50, June 1976), Synopsis.

[19]Sec. 1, Act No. 340, Acts of Alabama 1907, p. 442 quoted in Alabama Department of Court Management, Alabama Juvenile Court Analysis Project, project director Annette Clark Dodd, (Cumberland School of Law, Samford University, August 1974), p. 1.

child to finally include under the court's jurisdiction one "who is incorrigible or who is guilty of immoral conduct; or who is leading an idle, dissolute, lewd, or immoral life; or who is engaged in any calling, occupation or exhibition punishable by law."[20]

The status offender was, prior to the 1974 court revision, subject to the same treatment and dispositions as a child who committed a misdemeanor or felony. There were no prohibitions on placing status offerders in facilities with those children who committed criminal offenses, nor were there any restrictions on the use of secure detention facilities.[21]

The major concern of the Juvenile Court Analysis Project was to be the reorganization of the juvenile court's structure and procedures; however, the project did devote some attention to the status offender issue. The project's final study report recognized that some groups, including the National Council on Crime and Delinquency and the Institute of Judicial Administration--American Bar Association Standards Project, recommended the elimination of the court's jurisdiction over juveniles who commit status offenses. The project members, however, did not think that Alabama was ready for such a move. After a serious study of the constitutional dilemma regarding the vagueness of their statute, their final recommendation was that delinquency be restricted to acts which would be crimes if committed by an adult, and that a separate CHINS category be developed to handle the status offender.

By 1975, a new Judicial Article and a Judicial Article Implementation Act had been passed by the state legislature. Much of what the Juvenile Analysis Project had recommended was included in the Judicial Implementation Act. Because the two judicial reforms covered such a broad-based and all-encompassing reform direction for Alabama's statutes, the question of status offenders elicited little interest beyond the few groups in the state who advocated the CHINS category.[22]

The new Juvenile Code went into effect in January 1977.

Alabama revised the juvenile status offense portion of the statute to include only children needing care and rehabilitation who are truants, ungovernables or commit an offense applicable only to children. These changes reflect the position of the project which advised that the category be redefined to meet the constitutional specificity guidelines as tested in other states' courts.[23] Because Alabama was not participating in the Federal Juvenile Justice and Delinquency Prevention Act of 1974 at the time

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[20]Sec. 1, Act No. 315, Acts of Alabama 1931, p. 353 quoted in Alabama Department of Court Management, Alabama Juvenile Court Analysis Project, project director Annette Clark Dodd, (Cumberland School of Law, Samford University, August 1974), p. 11.

[21]Legis 50, Alabama, p. 4.

[22]Ibid., Synopsis.

[23]Ibid., p. 3.

of the passage of Alabama's Implementation Act, there seemed to be little concerted thought about compliance with the Federal Act and guidelines. Alabama's reform did provide for the CHINS category and also effected the dispositional alternatives for status offenders. Juveniles cannot be sent to state training schools during their first adjudication on a status offense. On the second offense, however, if the court finds that the child could not benefit from a non-secure and/or dependent facility, then that child may be placed in a secure facility with delinquent children. The chairperson of the project stated that the dispositional alternative of placing status offenders in delinquent institutions was included in the Implementation Act because the judges wanted some authority over these juveniles. The Advisory Committee of the Juvenile Court Analysis Project expects to be in constant review of the new juvenile justice provisions and expects to ask for repeal of this latter dispositional section of the Act, if it is overused.[24] It is not expected to be used frequently; there was only one status offender in a delinquent institution in November 1976 before the Act went into effect. An earlier Law Enforcement Planning Agency report indicated that 60 percent of 89 girls in the Alabama Training School were institutionalized in 1973 for status offenses.[24] Apparently, in 1976 Alabama was administratively more in line with the goals and intent of the Juvenile Justice and Delinquency Prevention Act than they may be with their new juvenile code, which allows for the institutionalization of status offenders.

As of June 1976 the legislature had not mandated any appropriations to meet the statutory dictates. Therefore, it is questionable whether the legislators are committed to such reform and whether the professionals involved in the juvenile justice system will be able or will want to uphold the new statute provisions.

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[24]Telephone interview with Annette Clark Dodd, Juvenile Court Analysis Project director on November 11, 1976.

[25]Ibid., p. 37.

FLORIDA

From 1967 to 1975 Florida had been labeling their status offenders--runaways, truants, and ungovernable children--as Children in Need of Supervision. The state had followed the theorists in the labeling school that the "delinquent" label ruined a child's self-image and subsequently changed their law in order to label children who came within the court's jurisdiction for non-criminal offenses as CHINS. During this period, however, Florida did not concurrently change their policy towards the treatment of status offenders (CHINS), and, therefore, their dispositional alternatives and treatment remained the same as for delinquent children.

Because of the high number of runaway children that seem to migrate to Florida, prior to 1975, 50 to 60 percent of the children that were placed in secure detention facilities were status offenders. This substantial percentage did not confine itself to the pre-adjudicatory stage, as 10 percent of the boys and 40 percent of the girls committed to training schools for delinquent children were status offenders. Moreover, youths who were adjudicated as CHINS on a second offense and subsequently committed to a training school were being held within these facilities longer than children placed for criminal acts.[26]

In Florida, the expense of placing status offenders in secure facilities was up to $30.00 per day. In addition, there developed a tremendous concern that the youths who had not committed any criminal offense were being treated unjustly.[27] As legislation was being proposed and debated, the Division of Youth Services, the state agency at that time responsible for CHINS, took assertive steps to begin to eliminate the placement of status offenders in secure detention and delinquent institutions. The state has responsibility for detention, but realized that money was a problem and that new high-cost programs could not readily be developed. The Division of Youth Services decided as an alternative to detention to expand an idea that began in Tampa, Florida--volunteer homes for status offenders. The division set out to establish 900 volunteer beds for emergency short-term placement of youths who were then being placed in secure detention because other residential facilities were non-existent. The department set April 1975 as its start-up date.

Concurrently, legislative movement was strong towards an entire revamping of Florida's social service system. A major bill that would centralize intake and service under the newly organized Department of Health and Rehabilitative Services was being studied and debated in

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[26]Ibid., Florida, pp. 9-10.

[27]Jane C. Latina and Jeffrey L. Schembera, "Volunteer Homes for Status Offenders: An Alternative to Detention," Federal Probation, December 1976, p. 45.

Florida's Assembly. Also included in this enormous bill was a small section devoted to the reclassification of the CHINS category. The reorganization for a Department of Health and Rehabilitative Services was a very popularly supported issue within the state and the advocates of reclassifying status offenders were, for the most part, content to r e the waves of the large bill.[28] Whether the reclassification movement could have survived on its own is questionable. But as it were, the bill was not passed as all would have favored.

Essentially, the bill eliminated the CHINS category and defined and treated status offenders as dependent children. However, a child who has been adjudicated ungovernable on a second offense may be defined and treated as a delinquent child.

There was some resistance to the second offense ungovernable statute, but this opposition was not overwhelming enough to overcome this latter provision. Today in Florida, status offenders may be adjudicated and treated as either delinquent or deprived. Complete deinstitutionalization of status offenders has not taken place in Florida, because of the availability to the court of ordering institutionalization for a second-time status offender who may be adjudged delinquent; however, deinstitutionalization is closer than it has ever been.

With the combination of the administrative action taken initially by the Division of Youth Services and the legislative change, different methods of treating status offenders have been developed and have proven effective. Volunteer homes have eliminated the secure setting traditional in detention facilities. Less children run away from the open volunteer home than they had from the secure detention facilities.[29]

During the first three months of 1975, before the administrative directive was enacted, approximately 27 percent of status offenders were being held in secure detention; after the act and the directive were in effect, only 9 percent of status offenders referred to the partment were detained.[30]

The following table indicates that the trend continued, even as the number of cases referred remained stable:

COURT JURISDICTION OF STATUS OFFENDERS

	July-September 1974		July-September 1975	
	Ungovernables	Truants	Ungovernables	Truants
Referred to HRS	1,608	310	1,232	310
% of Referrals Handled Judicially	19	66	8	19
% of Referrals Detained	1.	12	4.5	3

[28]Legis, p. 49. [29]Latina, p. 48. [30]Legis, p. 42.

> Additionally, data from October-December 1975 indicates that the post-legislation trend regarding ungovernables and truants is continuing. During that period, only 2.9 percent of those referred for ungovernability were detained, and only 2.6 percent of all such referrals were handled judicially. Similarly, 1.2 percent of juveniles referred for truancy were detained, and just 2.5 percent of all referrals for truancy were dealt with judicially.[31]

It must be pointed out, however, that there were some placements of second offender ungovernables in delinquent institutions as their present law allows. Approximately 260 ungovernable youths were handled as delinquents in 1975-76.[32] This does not mean that all these children were institutionalized; however, exact statistics are not available at this time.[33] Action towards further legislative reform is in motion, for both philosophical reasons and to meet the mandates of the Federal Juvenile Justice and Delinquency Prevention Act. According to the Federal Guidelines for the Act the provision within Florida's law that allows for a second offense ungovernable child to be treated as a delinquent would be unacceptable for compliance. Ungovernability, no matter how many times a youth has been before the court, should still be considered a status offense. The provision within Florida's Act that permits the child to be handled as a delinquent would not change the fact that he/she is still a status offender.

[31]Legis, pp. 43-50.

[32]Jeffrey L. Schembera, telephone interview on October 22, 1976.

[33]Because of the transition period precipitated by the change in the legal status of status offenders and the centralization of intake under the newly structured Department of Health and Rehabilitative Services, statistics given in this section are considered accurate for the time frame given. It must be noted, however, that a complete statistical and evaluative review is now underway to analyze what has happened to the status offender in Florida's system to understand if and how these youths are benefiting from the change in the law.

IOWA

Iowa's legislative body has taken and continues to take an active role towards changing their juvenile justice system by revisions in the state's juvenile code. In 1975 Iowa passed legislation that placed the status offender, who had been previously considered a delinquent child, in the same jurisdictional category as their dependent and neglected child. This combined category is labeled "Child in Need of Assistance" (CINA).[34] This label should not be confused with similarly named categories in other states, such as "Children in Need of Supervision" (CHINS), that have traditionally been reserved for status offenders only. The Iowa Act provides the following types of status offenders to be included within their CINA category: A child who is "uncontrolled by his parents, guardian or legal custodian by reason of being wayward or habitually disobedient" or "who habitually so deports himself in a manner that is injurious to himself or others." In addition to these provisions that are basically limited for the parent or custodian to bring action against a child, the Iowa Code provides the opportunity for a child to petition the court for assistance when for "good cause (the child) desires to have his parents relieved of his care and custody," thus allowing the child a similar privilege that in most states is reserved only for the parent.[35]

The 1975 revision of the Iowa Code mandates that status offenders be treated within the same dispositional alternatives available for the dependent and neglected child and prohibits their placement in either detention facilities or correctional institutions for delinquent children.[36] Presently, there are no status offenders within correctional institutions for delinquent children.[37]

The state planning agency has determined that the majority of detention in Iowa, however, is still in local county jails. There is no available data to determine exactly how many status offenders are being held in these local facilities. The state planning agency notes a particular problem with the lack of appropriate shelter care facilities for the runaway child.[38] There is a provision in the code that states that the court may use jails for protective custody for a period not to

[34] Iowa Code Annotated Sec. 232.2(13) (Supp. 1975).

[35] Ibid.

[36] Ibid., Sec. 232.33 (1976).

[37] Dave White, program specialist, Iowa Crime Commission, telephone interview, February 15, 1977.

[38] Dave White, correspondence, March 30, 1977.

exceed 12 hours;[39] judicial authorities do acknowledge the use of jails for status offenders in this latter instance, but believe that judges are not using jails for runaways or other status offenders unless there is some type of criminal conduct also charged.[40]

Because of the previous lack of alternative detention and counseling services for runaways, specialized programs operated by private social service agencies have developed since the enactment of this legislation. In areas where services for runaways do not exist, plans are forthcoming to accommodate these children.[41]

Overall, the judges were in favor of the two category system as were the legislative and welfare sectors. Some people questioned whether the switching of the type of facilities available for the placement of status offenders would create chaos in the child welfare system because there would be no bedspace available in the dependent-neglected residential facilities. Iowa has not yet experienced this problem. Considering that group homes have been primarily developed within the last decade due to changing theories regarding treatment modalities, the state now benefits from 60 to 70 such facilities where the welfare department finds that status offenders fit in with other dependent and neglected children. As with most other states, Iowa has a greater problem in finding suitable foster homes for those children who might benefit from closer familial type settings. Overall, however, the basic categorical change within the juvenile code did not create a problem with shortage of beds nor did it create jurisdictional disputes between the courts and the Department of Social Services.

There is one indication that some courts have not completely withdrawn from their interest and concern in status offender cases. Administrative handling of juvenile cases may be yielded by the court to the Department of Social Services. The court in the past has tended to yield all jurisdictional powers to this welfare department in cases involving dependency or neglect. In delinquent-type cases, however, judges have tended to retain jurisdictional privileges; thus, the Department will make the placement decision, but the judge decides when a child should be removed from state jurisdiction and recommends under what conditions treatment-rehabilitation-punishment should be meted out. Since the enactment of the 1975 legislation, some judges have preferred to retain jurisdiction over status offense cases instead of yielding this authority to the Department of Social Services as they normally do for other CINA cases. According to the county-state welfare reimbursement schedule, if a judge makes the decision to retain this jurisdictional power for status offenders, then there is a higher probability that the county will pay for a greater percentage of the costs of care than when the supervision is yielded to the Department. The welfare department

[39] Iowa Code Annotated Sec. 232.29 (Supp. 1975).

[40] Forrest Eastman, chairperson of the Juvenile Law Committee of the Iowa Judges' Association, telephone interview, April 4, 1977.

[41] Dave White, telephone interview, February 15, 1977.

will reimburse more of the costs when a child is completely within their jurisdiction.[42]

The annual state welfare report has not been completed as of this writing, therefore, statistics are not readily available to compare pre- and post-legislative enactment, but Iowa does not seem to be in any state of disarray due to this change towards the treatment and labeling of status offenders.

Simultaneously, with the enactment of this most recent change in the juvenile code, the Iowa Legislature appointed in 1975 a Joint Juvenile Justice Study Committee with membership from both the state's House and Senate. Their assigned task was a complete consideration of the juvenile court structure, of juvenile court procedures, and of services to children by the state and local communities. Their final report includes a proposed bill to revise and restructure Iowa's juvenile code. This bill was introduced in the latter part of the 1976 legislative session and then again in the 1977 session. The committee's proposed bill seeks to accomplish three goals: 1) reorganize the present code provisions in a more coherent and understandable format; 2) clearly define and codify procedures which are only mentioned or implied in the present code and provide safeguards for the use of these procedures; and 3) make some policy changes in ways cases are handled in the juvenile courts.[43]

The bill which is now to be seriously considered by the General Assembly is an embodiment of many concepts being advocated across the United States. The proposed legislation deletes from the juvenile code completely the two status offender sections which are presently incorporated within the CINA category. The child would retain the ability to petition the court to have his/her parents relieved of his/her care and custody when there is good cause and reason. It would, therefore, still allow some status offenders, such as runaways, the opportunity to petition the court in order to be removed from an intolerable home situation. Additionally, the bill creates a category entitled "Family in Need of Assistance." This type of petition may be filed by either the parents, guardian, or the child who believe they have been unsuccessful in reconciling the family's problems through community-based agencies. The petition shall allege a "breakdown in the familial relationship." Providing due process procedures as other categories, this category allows for the following dispositions:

> 1. If the court makes such a finding, the court may order the parties to accept counseling or other services designed to maintain and improve the familial relationship. Such an order shall remain in force for a period not to exceed one year unless the court otherwise specifies or sooner terminates the order.

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[42] Ibid.

[43] Juvenile Justice Study Committee, 1976 Report: Juvenile Justice Study Committee, (Mimeographed, Des Moines), p. 4.

> 2. The court may not order the child placed on probation, in a foster home or in a nonsecure facility unless the child requests and agrees to such supervision or placement. In no event shall the court order the child placed in the Iowa training school for boys or the Iowa training school for girls or other secure facility.[44]

This section was included in the bill to allow a family to come into court as a last resort, proposedly when one of the parties needs an authoritarian push to seek counseling. The bill, however, does not provide for any type of court sanction to the child nor to his/her parents if they do not continue with the counseling program. It is also important to emphasize that a child from a "Family in Need of Assistance" may not be placed in any type of residential care or under probation unless he/she voluntarily agrees to do so.

Although the court was in favor of the transfer of status offenses from the delinquent category to the CINA category, they are not entirely in favor of eliminating the status offender from the CINA category to such a provision as presently delineated in the "Family in Need of Assistance" proposal. The major objection seems to surround the voluntary nature of counseling assistance and that the court is left no avenue to treat the problem brought in by either the child or his/her parents, if one or the others parties do not fulfill the court order. The judges think that such a measure is a big mistake and will not resolve the families' problems.[45]

There are active and involved members on the legislative committee, and it is, therefore, not to be predicted as to what outcome might be derived from such debate. But, it should be noted that this legislative proposal really embodies the elimination of the status offender from court sanction or any type of service, unless such action is voluntary.

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[44] S.F. 1344 Division V, Sec. 76 (5) and (6), (1976).

[45] Forrest Eastman.

MAINE

Maine is one of ten states that does not provide by statute any labels for youth adjudicated in the juvenile court, but provides only for the type of activity that comes within the jurisdiction of the court.

As a point of reference it should be noted that in Maine, during fiscal year 1974-1975, there were 11,000 police contacts; 61.7 percent of these contacts were handled at the police level. Subsequently, 3,572 cases were referred to juvenile court, an increase of 1,369 from fiscal year 1971.[46]

The juvenile courts in Maine have exclusive, original jurisdiction over juveniles who commit the following conduct: Any criminal offense; habitual truancy; behaving in an incorrigible or indecent and lascivious manner; knowingly and wilfully associating with vicious, criminal or grossly immoral people; repeatedly deserting one's home without just cause; or living in circumstances of manifest danger of falling into habits of vice or immorality.[47] An adjudication of a commission of a juvenile offense is possible if the appropriate juvenile court finds that a juvenile has committed any of the above offenses or specific acts.

When the juvenile court has adjudged that a juvenile has committed a juvenile offense, the court has the option of several dispositions:

1. Commit to the Maine Youth Center. A juvenile cannot be committed to the Youth Center, if the offense by the juvenile would not be an offense under the criminal statutes of this state;

2. Commit to the custody of the Department of Health and Public Welfare;

3. Commit to the custody of a family subject to supervision by the State Probation and Parole Board;

4. Dismiss the case;

5. Order payment of fine.

Under no circumstances shall the juvenile court have power to sentence any juvenile to jail or prison.[48]

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[46]Maine Law Enforcement Planning and Assistance Agency, 1977 Action Plan, (Augusta, 1976).

[47]Maine Revised Statutes Annotated Ch. 15 Sec. 2552 (Cum. Supp. 1976).

[48]Ibid., Sec. 2611.

Under present Maine law, a juvenile may be detained in a jail, only if the juvenile is able to be segregated from criminal offenders.[49]

On July 1, 1975, the Commission to Revise Statutes Relating to Juveniles was established by an Act of the Maine Legislature. It was charged with inquiry into four subject areas: Prevention, non-criminal behavior, criminal behavior and juvenile court.[50] The Commission issued a preliminary report on October 1976 that proposed many revisions to the Maine Juvenile Act.

The Commission made several recommendations regarding the scope of the juvenile court jurisdiction.

1. THE COMMISSION RECOMMENDS THE ELIMINATION OF JUDICIAL INTERVENTION IN TRUANCY SITUATIONS

Maine statutorily forbids the incarceration or detention of children for truancy alone. A further refinement of this philosophy appears in the report wherein truancy matters are recommended to be totally removed from the judicial process. The basis of this recommendation is that "(1) there is no evidence that judicial intervention, however benign, prevents truancy; (2) there is some evidence that judicial intervention, rather than working as intended, sometimes harms both parents and children."[51]

The Commission was very cognizant of the fact that this recommendation would shift responsibilities from the court to educators and parents. Recognizing, in turn, that a common rebuttal against the recommendation would be that "there is no money." A sagacious response to this argument was presented by the Commission.

> A change in attitudes may be the most crucial factor to the many children who are pushed out because of school hostility, condescension, and indifference. It does not cost much money to design and implement fair discipline procedures and policies, to establish periodic teacher-parent-child conferences or to inform parents of social education placement procedures.
>
> Many changes that are required are a matter of data collection. Knowing the extent of the problem will help officials design good outreach programs. That is the first step. Others mean enforcement of existing policies, taking the time to ask the right questions, to insist that reporting requirements be met, to relate what is reported to policy

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[49]Ibid., Sec. 2608.

[50]Maine Commission to Revise Statutes Relating to Juveniles, Summary of Preliminary Report of Recommendations and Analysis, (Augusta, Oct. 1976), p. 2.

[51]Ibid., p. 13.

implementation. These steps would go a long way to identify some of the problems that cause children to be excluded from school.[52]

In this era of lower compulsory school age, the Commission recommends that Maine's compulsory school age remain unchanged from 5 to 17. Aware that setting an age limit is arbitrary, Maine "should err on the side of more public education rather than less."[53]

2. THE COMMISSION RECOMMENDS THAT THE SERVICES DESIGNED FOR THE NEEDS OF THE INCORRIGIBLE CHILD AND HIS/HER FAMILY SHOULD BE VOLUNTARY AND COMPLETELY REMOVED FROM JUDICIAL INTERVENTION

The reasons the Commission advances for removing the incorrigible child from the jurisdiction of the court are the following:

1. There is no evidence to support the effectiveness of the court in rehabilitating the incorrigible child;

2. Re-routing the incorrigible child out of the court system would free up resources and personnel to attend to cases involving a more serious threat to the community;

3. Legal compulsion cannot restore or provide parent-child understanding or tolerance;

4. Language conferring the court jurisdiction over the incorrigible child is arguably void for vagueness;

5. The availability of court jurisdiction over incorrigibles weakens the responsibilities of community agencies and families; and

6. The incorrigible jurisdiction is a convenient haven for cases which should have more properly been petitioned as neglect or delinquency matters.[54]

3. THE COMMISSION RECOMMENDS THAT RUNAWAY CHILDREN BE TREATED AS NEGLECT CASES

The Commission articulates once again the dearth of evidence to support the hypothesis that judicial intervention in the life of a runaway aids that child or diverts him/her from future criminal activity.[55]

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[52] Ibid., p. 15.

[53] Ibid., p. 16.

[54] Ibid., pp. 18-19.

[55] Ibid., p. 24.

Mindful of the fact that law enforcement agencies will need to take into temporary custody some youths who are runaways, the

Commission believes that there is a substantial difference between allowing law enforcement officers to take temporary custody of a runaway child and the present practice of institutional detention and possible court adjudication.[56]

The Commission is also recommending that there be a strict prohibition on the use of the same residential facilities for adults and juveniles.[57]

The changes recommended by the Commission will be presented to this year's session of the Maine Legislature in the form of proposed legislation. Maine is one of several states that will attempt to legislate the removal of certain status offenses from the court jurisdiction.

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[56] Ibid., p. 23.

[57] Ibid., p. 35.

MARYLAND

Of all the states, Maryland comes closest legislatively towards following the requirements of the Juvenile Justice and Delinquency Prevention Act of 1974. In its 1975 legislative session, a revised juvenile act was passed that for the most narrowly mandated that juveniles were not to be incarcerated with adults[58] nor were any children, except delinquent children, to be confined in any institution or facility designed or operated for the benefit of delinquent children.[59]

A delinquent in Maryland is defined as one who has committed an act which would be a crime if committed by an adult and who in addition needs guidance, treatment or rehabilitation. A child in need of supervision (CINS) is one who requires guidance, treatment or rehabilitation because of habitual truancy, habitual disobedience, commission of an offense applicable only to children, or action that would injure himself or others.[60]

The juvenile court in Maryland has the ability to make any disposition best suited to the physical, mental and moral welfare of the child. The limitations placed on any disposition are:

1. Only a delinquent child may be confined in an institution or facility operated for the benefit of delinquent children;

2. No CINS child may be confined in a juvenile training school;

3. No child may be committed or transferred to a facility used primarily for the execution of sentences of adults convicted of a crime;[61]

4. A delinquent child may be placed on probation, whereas a CINS child is placed on protective supervision.[62]

During fiscal [illegible], the state juvenile courts handled 19,926 delinquent cases, 1,[illegible] 1,891 dependency cases. Informally,

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[58]Annotated Code of Maryland, Sec. [illegible] (Supp. 1976).

[59]Ibid., Sec. [illegible].

[60]Ibid., Sec. [illegible].

[61]Ibid., Sec. [illegible].

[62]Ibid., Sec. [illegible]

not requiring a court hearing, 29,872 delinquent cases were handled, 4,848 CINS cases and 160 dependency cases. A total of 4,304 juveniles were placed in community residential placement during the year. There were also 1,338 commitments to state training schools and 3,865 detentions.[63]

In light of the Federal Act, Maryland has established a rather questionable way of not placing delinquents and status offenders in the identical post-adjudicatory institution. One of the state's training schools has been designated as a dispositional facility for status offenders. In light of the similar series of events in New York (to be discussed later), it is doubtful whether this arrangement can continue if the state wishes to comply with the federal juvenile justice requirements.

The commitment of juvenile delinquents to state mental hospitals is equally of concern to many in Maryland. Legally, a child may be committed to any institution approved by the Juvenile Services Administrator of the Department of Health and Mental Hygiene; this has in practice meant that adjudicated juvenile delinquent patients are being treated in the same institutions with adult mental patients who are there after having been convicted of a crime.[64]

Since the passage of the legislation, juveniles have not been incarcerated with adults except in one rural area where "police custody" continues.[65]

The infusion of federal dollars administered by Maryland's State Planning Agency is directed towards development of community-based facilities for the status offender and alternatives to detention to implement the state's newly revised act.

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[63]John C. DuChez, Governor's Commission on Law Enforcement and Administration of Justice, Maryland, memorandum, February 22, 1977.

[64]Phillip Dantes, Esq., Maryland Juvenile Law Center, telephone interview, March 7, 1977.

[65]John C. DuChez, telephone interview, February 18, 1977.

MICHIGAN

Michigan's juvenile code was enacted in 1939, greatly revised in 1944, and has been amended every few years since that time. The present code is in need of reorganization and refinement. It permits the juvenile court to have jurisdiction over any child under 17 who has violated any law of the state or U.S.; has deserted home without sufficient cause or who is repeatedly disobedient; who repeatedly associates with immoral persons, leads an immoral life; who is truant or repeatedly violates rules or regulations; who habitually idles away his or her time; or repeatedly patronizes or frequents any tavern.[66] If the court finds that a child is within their jurisdiction, the court is free to place any child, for any reason, in any disposition from the home to a secure institution. At no point in the code is the treatment or handling of a neglected child, a status offender, or a minor accused of criminal conduct differentiated. The law provides no restrictions on the detention nor on the type of institutional placement permitted to these diverse types of children.[67]

Due to the major Supreme Court decisions in the last ten years, the poorly organized code that presently exists, the greater number of cases coming before the court, and the need to comply with federal guidelines; the Michigan legislature has been confronted with the necessity of a comprehensive revision of their juvenile code. Recently, however, there has been a history of much debate and dichotomy between legislators, juvenile justice advocate groups and the juvenile court judges. Nevertheless, all concerned with the issue of code revision comprehend that changes need to be made. The dilemma of how to handle status offenders has been a primary dispute.

Michigan, an industrial state, does have a serious problem with juvenile crime. A very high percentage of the court's caseload and of placements in secure residential facilities, however, has been attributed to status offenders, although this number has been decreasing in recent years. According to Supreme Court of Michigan statistics, 46 percent of the 20,000 delinquency petitions filed in 1973 were for status offenses. In fiscal 1974 status offense cases amounted to 37 percent of the delinquency petitions. Finally, in 1975 court data reveal that status offenses comprised 30.4 percent of the 16,179 delinquency petitions filed.[68] Whereas in 1975, status offenders only comprised 19.8 percent of the 82,324 juveniles apprehended.[69] It appears that status offenders

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[66]Compiled Laws of Michigan Sec. 27.3178 (598.2) (Cum. Supp. 1976).

[67]Ibid., Sec. 27.3178 (598.19).

[68]Legis, Michigan, p. 52.

[69]Office of Criminal Justice Programs, 1977 Action Plan, (Lansing, 1976).

have a high probability of being apprehended and then having a delinquent petition filed against them. The likelihood of status offenders going into the system, therefore, is disproportionate to the petition rate for other types of offenses.

It should also be noted that in a study which compared Supreme Court statistics with those of the county courts, the local records revealed that juvenile courts handled 30 percent more cases than were reported to the Supreme Court. Thus, the data revealed above is subject to low estimates.[70] Placement statistics reveal that status offenders comprise more than half of all children in detention. In 1975 this figure was 67 percent for pure status offenders.[71] Almost one fifth of all children committed to the state's secure or semi-secure institutions have been adjudicated solely for status violation; among institutionalized females, status offenders actually outnumber those girls who have committed a delinquent act.[72]

In addition, detention placements are quite high for these children. A 1974 study revealed that status offense and neglect cases comprised 60 percent of the population in detention. "The survey of 20 detention homes in the state determined that school and home-related problems were the reasons for court jurisdiction in about 53 percent of the detention cases."[73]

The trend created was that of charging youth committing non-aggressive status offenses at a higher rate than those committing more serious crime. The Division of Social Services concurred with this conclusion as reported in both their statistics and also in the 1976 Comprehensive Plan of their state criminal justice planning report.[74] In mid-1975 the Michigan Department of Social Services announced a policy decision not to accept any more status offenders in state training schools. On July 1, 1976, this directive was to be implemented, consequently, no status offenders are in placement within these secure facilities. The detention problem, however, still exists. Statistics on how many status offenders are being held in secure detention vary from agency to agency, from sheriff to court, and from court to social service counts. A number of attempts have been made to alleviate this problem, and continued monitoring and updating is anticipated. There is little question, however, that status offenders are still being held in secure detention facilities.

The state legislature has not agreed on a final revision of the juvenile code, although there is little doubt that a comprehensive revision will take place. All community and state agencies are therefore gearing up and beginning to initiate programs that seek to eliminate status offenders from secure detention facilities. Sheriffs, probation officers, judges, community-based agencies are all attempting to work together to accommodate these youths. The final outcome is yet to be determined.[75]

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[70]Legis, p. 52. [71]Ibid., p. 54. [72]Ibid., p. 6. [73]Ibid., p. 54.

[74]Ibid., pp. 54-55.

[75]William Lovett, juvenile justice planner, Office of Criminal Justice Programs, telephone interview, February 18, 1977.

In the 1975-1976 legislative session there were two bills introduced that would have revised the juvenile code. The first bill was the work of a legislative study group that advocated the removal of status offenders from the court's jurisdiction. This bill (House Bill 4704) would have defined two categories of juveniles; one as "juvenile offender" would have comprised the child who commits a criminal offense; whereas the "minor in need of care" would have encompassed the child whose physical or mental condition is endangered because of neglect, abandonment or abuse. The status offender, presently described by this state as the disobedient youth, the truant, the idler, the bar patronizer, the runaway, would no longer be within the court's jurisdiction. The assumption being that these children who, indeed, might need services would be able to get help in voluntary, non-coercive community-based programs. There would be no need, therefore, for the court to order or to specify treatment for the child or his/her family.

The other bill that had been introduced was commonly known as the "judge's bill" (House Bill 4392). It broke this jurisdictional state into a four-category system: "juvenile offender," "minor in need of care," "youthful offender," and "minor in need of supervision." A "juvenile offender" would have been a juvenile over 15 years of age who commits a felony and who, after hearing, the court finds cannot benefit from rehabilitative programs with the juvenile court system. He/she would have been certified to adult court. A "minor in need of care" would have been a physically injured, abandoned, neglected child who is without proper custody or is living in an unfit home. A "youthful offender" would have been a child who violates the criminal law. Lastly, the "minor in need of supervision" would have provided a truant, incorrigible or runaway child with court services and direction if the court found that voluntary community resources were not meeting or will not meet the needs of this youth or his/her family. The dispositional alternatives for a minor in need of supervision would have created an entirely different placement system for him/her. The bill provided that these status offenders be segregated from criminal-type delinquents and neglected-dependent children. It also permitted probation services to be utilized by the court and that the minor in need of supervision could eventually be placed in a secure facility, separate and apart from juvenile offenders, if upon a second dispositional hearing, the court determined that the youth's need could not be met in a nonsecure facility.

There was strong support for the individual bills, and it was common knowledge that each opposing side was adamant in its position. A compromise bill was introduced, therefore, later in the session by the House Judiciary Committee in order to alleviate some of the pressure. The compromise bill (House Bill 6354) categorized children in two areas--"juvenile offenders," those who commit criminal offenses, and "minors in need of care," those who are neglected or deprived children. Status offenses of truancy, running away and incorrigibility were not included in either one of these categories, and so this compromise bill also called for the elimination of status offenders from the court's jurisdiction. The compromise bill, however, was introduced much too late in the legislative session for serious consideration or passage. Therefore, 1977 brings another struggle with freshly introduced legislation to resolve the status offender dilemma and bring Michigan into compliance with the Juvenile Justice and Delinquency Prevention Act regulations.

So far in the 1977 legislative session the original bill that would eliminate the jurisdiction of status offenders from the juvenile court has been redrafted and has been introduced with a few revisions. The effective date for complete removal of the status offender from the court's jurisdiction has been changed to three years instead of "upon passage." One of the major concerns regarding this concept in the last session was the lack of sufficient resources in the community to handle voluntary referrals of status offenders. It is thought that within the next three years these alternative programs could be in full operation.

"The final outcome may be molded either by the ideological triumph of one point of view or by exercise of political power by one of the other opposing constituency."[76]

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[76]Legis, p. 47.

NEW MEXICO

In 1972 the New Mexico Legislature enacted a revised juvenile code. Prior to this revision, the status offender was labeled and disposed of in the same manner as the delinquent youth. The 1972 Children's Code, however, provides that the status offender is a Child in Need of Supervision (CHINS). This designation includes any child under 18 years old who: 1) is habitually truant; 2) is habitually disobedient; 3) commits an offense applicable only to children; and 4) in any of the foregoing is in need of care or rehabilitation.[77]

The code envisioned that 1) CHINS should not be detained in a jail or other facility used to detain adults or delinquents, and 2) CHINS should not be able to be committed to an institution that was designed for delinquents.[78] The original implementation date for these two prohibitions was July 1, 1976; the date, however, has been postponed until July 1, 1978, because of the non-existence of viable alternatives to these prohibitions. Prior to the 1978 extension, the provision against placement of CHINS in delinquent institutions was able to be skirted around by the use of a sixty-day diagnostic institutional commitment for status offenders. This temporary diagnostic commitment is perfectly legal under the code, and is often intended to be punitive rather than therapeutic.[79]

Part of the 1972 statute's intent was to handle CHINS in settings separate from juvenile delinquents. The actual realization of this policy has not occurred for several critical reasons:

1. No state agency has been assigned to take responsibility for the care and supervision of status offenders;

2. The provisions of the code dealing with status offenders have been, in many instances, ignored or even blatantly defied;

3. The necessary services and facilities for CHINS are not available because they have not been created. This generally is recognized as the most crucial roadblock to the implementation of the code.

Because of the lack of alternative facilities for the status offenders, the only viable disposition available to judges is placing

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[77]New Mexico Statutes Annotated Sec. 13-14-3 (Supp. 1976).

[78]Ibid., Sec. 13-14-23, Sec. 13-14-35.

[79]Legis, New Mexico, pp. 32-33.

CHINS on probation. Presently, CHINS comprise 50 percent of the total juvenile probation caseload and among female juveniles, CHINS comprise 80 percent of the probation caseload.[80]

When the 1972 code was passed, there were no appropriations included to develop the detention and dispositional alternatives for status offenders. During the 1977 session of New Mexico's General Assembly, several bills have been introduced that would channel money to juvenile programs.

--$4,000,000 as grant-in-aid to counties for pre-adjudicatory detention facilities;

--$500,000 as an appropriation for post-adjudicatory facilities.

The likelihood of passage of these bills is unclear.[81]

The lack of legislator understanding and detailed study of the juvenile justice system contributed to the 1972 code's passage, but also to its ineffectiveness. The absence of good legislative process is responsible for the fact that five years later the Children's Code has never been fully implemented nor its intent realized:[82]

1. In 1972 the juvenile code was repeatedly debated and passed without full legislator appreciation of the policy implications;

2. Few judges, police or correctional professionals offered input on the proposed code;

3. Legislators lacked information regarding the fiscal impact of the proposed legislation, a projection of the program needs for the new code and basic statistics on the number of status offenders in the state.[83]

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[80]Ibid., pp. 37-38.

[81]Anne Murray, drafting clerk, New Mexico Legislative Council, telephone interview, March 7, 1977.

[82]Legis, p. 10.

[83]Ibid., p. 50.

NEW YORK

The Person in Need of Supervision (PINS) category was created in New York in 1962. New York was one of the first states in the country to legislate that truants and unruly children be labeled and treated distinct from delinquents. The state was then hailed for its creative and humane procedures. The legislative rationale was that the new category would reduce the stigmatization of a delinquent adjudication, but still allow the court the availability of appropriate resources for the PINS.

In New York a person over seven and less than sixteen years of age who commits an act which, if done by an adult, would constitute a crime can be adjudicated a juvenile delinquent. A Person in Need of Supervision is a person less than sixteen years of age who does not attend school in accord with the provisions of the education law; or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of his parent or other lawful authority.[84]

On the issue of incarcerating juveniles with adults, no child coming under the provisions of the juvenile court's jurisdiction shall be detained in any prison, jail or lockup, or other place used for adults without the approval of the state division for youth.[85]

The experience of New York in attempting to provide different dispositions for PINS from delinquents is a commentary on what can happen if jurisdictional and dispositional changes are legislatively mandated, but appropriate resources are not made available to reflect the changes. Under the Act of April 24, 1962, only delinquents were to be placed in state training schools.

Statistics prove that this did not occur. During the calendar year 1970, 922 PINS were placed in residential settings; of those, 345 were placed in voluntary agencies and the rest in state training schools. In 1972, 589 PINS were placed, involving 374 youths with voluntary agencies and the other children going to state training schools. From July 1, 1974 to June 30, 1975, 465 PINS were placed in state training schools.[86]

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[84]New York Consolidated Laws, Family Court Act, Sec. 711 (Supp. 1976).

[85]Ibid., Sec. 720.

[86]Judicial Conference of the State of New York, Office of Children's Services, The PINS Child: A Plethora of Problems, (Mimeographed, New York, November 1973), p. 8.

Money appeared to be a major obstacle to initiating the legislature's intent.

> "The Legislature failed, however, to provide funds for the creation of appropriate facilities for PINS children. It immediately became clear that the private agencies could not provide sufficient services for the large number of PINS children requiring placement. Within four months after the effective date of the Family Court Act, the Legislature authorized the use of training schools for PINS children temporarily."[87]

The lack of alternatives for the PINS group prompted the legislature to enact a measure that "temporarily" allowed PINS to be placed in the training facilities with delinquents. Successive temporary one-year extensions were enacted until the provision was made permanent in 1968.[88] In 1973 the court of appeals prohibited the incarceration of PINS in training schools for delinquents.[89] At the time of this decision there were 128 PINS in state training schools. Subsequently, segregated PINS-only and delinquent-only training schools were established.

Several studies in New York have indicated an enormous disparity between the actual handling of the delinquent youth as contrasted with the PINS. In a study of probation officers' recommendations in the Bronx Children's Court in New York City, the data revealed that youth referred for law violations had an eight times greater chance of having the probation officer recommend discharge or probation than did children referred for being ungovernable.[90] In addition, PINS committed to training schools or detention centers spent longer periods of time there than juveniles charged with actual criminal conduct.[91]

The New York experience has not been a good model for the proponents of a third category for status offenders. The rhetoric for legislative change must go hand-in-hand with the pragmatic development of resources for the status offenders; if not, the facilities which have been geared for delinquents will begin to provide the exact services for the status offender... the name may be changed, but the treatment is likely to be the same.

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[87]Ibid.

[88]Nancy Trague, "Comment: The Juvenile Court and the Runaway: Part of the Solution or Part of the Problem," 24 Emory Law Journal 4 (Fall 1975): 1099.

[89]In Re C, 300 N.E. 2d 424, 1973.

[90]Legis, Florida, p. 10.

[91]Trague, p. 1100.

In 1976 legislation was passed which strictly prohibited the placement of PINS in any type of training school.[92] The state is now back to 1963--back to providing alternatives for the status offender separate from the traditional modality that had been used for the disposition of delinquent youth.

The infusion of federal money under the Juvenile Justice and Delinquency Prevention Act is expected to expand resource alternatives for status offenders and detained juveniles and thus ensure implementation of the 1976 legislation. Indeed, the Division of Criminal Justice Services, the state's planning agency administering the federal money in New York, has awarded numerous grants in 1976 to substantially aid in the accomplishment of the federal mandates:

1. $1.7 million to the Division for Youth to aid in the development of alternatives for adjudicated PINS;

2. $100,000 for the development of counseling and referral services for female PINS;

3. Awarded funds to undertake a quantified assessment of non-secure detention bed space needs throughout the state;

4. $500,000 for New York City to operate a 24-bed open diagnostic center; and

5. $1,010,723 to various counties for deinstitutionalization programs.[93]

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[92]New York Consolidated Laws, Family Court Act, Sec. 756(a), as amended 1976.

[93]Sheridan Faber, senior criminal research analyst, Juvenile Justice Institute, New York, telephone interview, March 11, 1977.

OREGON

Oregon's legislature took the initiative to appoint a Legislative Interim Committee on the Judiciary which studied the state's juvenile system and in November 1976 published a Proposed Revision to the Juvenile Code which was based on their comprehensive research study. This proposed code will be introduced during the 1977 legislative session.

Presently, Oregon is one of ten states in the country which do not "label" their children, but rather have a jurisdictional relationship over certain children's welfare. The act mandates that:

> The juvenile court has exclusive original jurisdiction in any case involving a person who is under 18 years of age and:
>
> (a) Who has committed an act which is a violation, or which if done by an adult would constitute a violation, of a law or ordinance of the U.S. or a state, county or city; or
>
> (b) Who is beyond the control of his parents, guardian or other person having his custody; or
>
> (c) Whose behavior, condition or circumstances are such as to endanger his own welfare or the welfare of others; or
>
> (d) Who is dependent for care and support on a public or private child-caring agency that needs the services of the court in planning for his best interests; or
>
> (e) Either his parents or any other person having his custody have abandoned him, failed to provide him with the support or education required by law, subjected him to cruelty or depravity or to unexplained physical injury or failed to provide him with the care, guidance and protection necessary for his physical, mental or emotional wellbeing; or
>
> (f) Who has run away from home.[94]

Sections (b), (c) and (f) would be considered by this study as status offenses.

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[94]Oregon Revised Statutes Sec. 419.476.(1), (1976).

Dispositionally, the law does make some distinctions as to how a child adjudicated as being under the jurisdiction of the court may be handled. The present act allows for a child to be placed in the custody of the Children's Services Division, if placement is the preferred treatment. The court does not have authority to commit a child to a specific residential facility; but to ensure effective planning for the child, the Division is restricted to placing only children who have been adjudicated under Sec. (a), which would be a criminal offense in a state training school or private secure institution. Other dispositional alternatives such as protective supervision, probation, placement in non-secure residential settings and foster homes would be allowable for all children who come within the court's jurisdiction.[95]

The Interim Committee has suggested revision of this code. The committee has taken a comprehensive look at juvenile justice models, including the rehabilitative and parens patriae concepts that were the basis of the present code. With more than one-third of all arrests being juvenile cases, with more than 50 percent of these arrests being for the seven major categories of crime, and with more than 90 percent of all referrals to juvenile departments involving some alleged wrongdoing by the child, the public is alarmed, and the committee has taken a hard look at whether the rehabilitative model or the punishment model should be applied to those juveniles who have committed criminal offenses. Furthermore, primarily due to the increase in caseload for juveniles and the mandates of the Federal Juvenile Justice and Delinquency Prevention Act of 1974, the committee has had to investigate how the state has been handling status offenders. The committee in its deliberations rejected the suggestion to remove the status offender completely from juvenile court jurisdiction. However, it recommended to the legislature that the runaway child no longer be handled in the juvenile court solely on the basis of being a runaway. Believing that social services may sometimes need to be delivered in an atmosphere of formal authority, the committee concluded that the present system of care and treatment being offered by the state and county juvenile departments and private child-caring agencies will continue to benefit other types of status offenders. Indeed, it was the committee's observation that these agencies are the only ones offering these needed services to children in most instances.[96]

The proposed code, while eliminating the runaway category, modifies some of the language now attributed to the other status offenses. The following would encompass those proposed jurisdictional sections:

> Section 5. Jurisdictional. (1) The juvenile court has exclusive original jurisdiction in any case involving an individual...
>
> (c) who is under 18 years of age and is in serious conflict with his parent, guardian or legal custodian,

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[95] Ibid., Sec. 419.50.

[96] Legislative Interim Committee on Judiciary, Proposed Revision: Oregon Juvenile Code, by Senator Elizabeth W. Browne, chairperson. (Salem, November 1976).

> and the child or the parent has requested the services of the juvenile department or of the juvenile court.
>
> (d) who is under 18 years of age and his own behavior substantially endangers his welfare or the welfare of another.[97]

Although the jurisdictional category of the runaway is removed, it should be noted that a runaway child may, nevertheless, be in the court's jurisdiction on the basis of either being in serious conflict with his/her parents or of having his/her welfare endangered by his/her own conduct.

Dispositionally, the committee recommends that the least restrictive disposition, providing for the best interest of the child and society and the preservation of family unity be decreed. The proposed law would specifically differentiate between protective supervision and probation services. Status offenders and neglected children may be placed under protective supervision, but not on probation. A new disposition subsection would also emphasize that no child who has been placed on protective supervision may be placed in secure detention.[98]

The Committee proposes to retain jurisdiction of the status offender within the juvenile court, primarily because the Committee concluded that services are available currently for the child through the courts and welfare system. Moreover, the Committee believed that the state was not ready to rely on voluntary community-based services for these adolescents. The Committee does, however, propose to prevent the status offender from being caught within the juvenile justice system by recommending the limited use of secure detention facilities and training schools and the use of protective supervision instead of probation.

For the time being, Oregon has decided to retain its jurisdictional classification of juveniles as opposed to accepting the labeling of children who come within its jurisdiction.

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[97] Ibid., p. xiv.

[98] Ibid., p. 65.

VERMONT

Vermont provides only two categories for the classification of juveniles who come under the jurisdiction of the court. In 1973 children who had formerly been defined as neglected or unmanageable were placed in one category as children in need of care or supervision. In doing so, "the General Assembly took the position that children whose outward behavior was socially unacceptable share basic problems with children who had been deprived of certain essentials of care and supervision, and that, without the implication of fault or blame, the State of Vermont was better able to carry out its commitment to assist these children in achieving their highest potential by classifying both in the one category of children in need of care or supervision."[99]

Therefore, in Vermont, a child may be adjudicated either a delinquent child or a child in need of supervision (CHINS). A delinquent child is one who is under the age of sixteen and commits a crime under the law of the state or federal law. A child in need of supervision is one who is under eighteen and who (a) has been abandoned or abused by his parent, guardian or other custodian; (b) is without proper parental care or subsistence, education, medical or other care necessary for his well-being; or (c) is without or beyond the control of his parents, guardian or other custodian.[100]

By statute, Vermont has a strict prohibition against the incarceration of juveniles in adult institutional facilities, unless the child is alleged to have committed an offense punishable by death or life imprisonment.[101]

Once adjudicated a child in need of supervision, the court may order any of the following dispositions for that juvenile:

1. Protective supervision;

2. Transfer legal custody to the Commission of Social and Rehabilitative Service; to an individual operating a foster or group home; to a child-placing agency. The Commissioner is able to place the child in any treatment, rehabilitative, or educational facility, including the Weeks School.

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[99]Amendment of purpose, 1973, No. 246 (Adj. Sess.) as quoted in Vermont Statutes Annotated ch. 12, Sec. 631 (1976).

[100]Vermont Statutes Annotated ch. 12, Sec. 632 (1976).

[101]Ibid., Sec. 642.

The Weeks School is the only state-operated juvenile institution. The facility is used for both CHINS and delinquent youths and is operated by the Commissioner of Corrections. The school provides short-term detention facilities, thirty-day diagnostic services, and long-term placement alternatives.

Prior to the transfer of a CHINS to the Weeks School, the court must be notified 1) that the needs of the child are such that he must be removed from his environment; 2) that appropriate placement alternatives are not available outside the institution; and 3) reasons are given as to why other non-residential alternatives were not appropriate.[102]

The court can order a delinquent child:

1. Placed on probation;

2. Placed on protective supervision;

3. Transfer legal custody to the Commission of Corrections who may place the child at the Weeks School upon the Commissioner's determination that it is in the best interest of the child.[103]

During the fiscal year 1976, the average population at Weeks School was 52 juveniles referred by the Commissioner of Corrections and 60 juveniles referred by the Commissioner of Social and Rehabilitative Services.

Criminal justice planners in the state feel fairly confident that the Weeks School can continue to provide residential and detention services for the delinquent child as well as the child in need of care or supervision.[104] To continue the use of the Weeks School for placement for both CHINS and delinquents, however, fails to meet the mandates of the Federal Act regarding the separation of the two populations in post-adjudicatory institutions unless the institution is non-secure and meant primarily for CHINS children.

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[102]Ibid., Sec. 656.

[103]Ibid., Sec. 657.

[104]Bruce Wescott, staff assistant, Governor's Committee on Children and Youth, Montpelier, Vermont, telephone interview, February 15, 1977.

WASHINGTON

Washington, like Vermont and Iowa, has two classifications for juveniles who come under the jurisdiction of the court: the delinquent child and the dependent child, wherein the dependent child may be an incorrigible or a truant. The dependent child also includes one who frequents the company of reputed criminals, vagrants or protstitutes; who habitually visits any saloon or place where spiritous, vinous, or malt liquors are consumed, sold, bartered or given away; or who wanders about at night without being on any lawful business or occupation. The delinquent child is one who violates any state, other state or federal law defining a crime.[105]

The delinquent child and the child adjudged dependent because of an act of incorrigibility may have the following dispositions:

1. Probation

2. Placement with reputable citizen;

3. Commitment to an appropriate private agency;

4. After July 1, 1977, commitment to the Department of Social and Health Services, provided that only a child found to be delinquent may be placed in a juvenile institution except that a dependent-incorrigible child may be committed to a diagnostic and treatment facility for not more than thirty days if the court finds that: (a) the conduct of the child evidences a substantial likelihood of degenerating into serious delinquent behavior if not corrected; and (b) other, less restrictive alternatives have failed; and (c) custodial treatment in a diagnostic and treatment facility is available and is reasonably expected to correct such degeneration PROVIDED: that such housing and treatment shall be entirely separate from that of delinquents.[106]

Based upon 1975 data, Washington State Juvenile Courts processed a total of 8,000 status offense cases; 2,300 cases were handled formally through judicial hearings and 5,700 cases were informally processed by probation staff.[107] In that year a total of 1,172 children adjudicated

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[105] Washington Revised Code Sec. 13.04.014 (1976).

[106] Ibid., Sec. 13.04.095 as amended during Extraordinary Session 1975-76.

[107] State of Washington, Department of Social and Health Services, Report: Alternatives to the Commitment of Dependent-Incorrigible Youth, (Olympia, December 1, 1976), p. 6.

for status offenses were committed to the state's juvenile institutions with a daily population of 205 status offenders.[108]

The 1975-76 legislature enacted certain changes in disposition possibilities for the delinquent and dependent-incorrigible youth moving toward deinstitutionalization. The legislative change in dispositions for dependent-incorrigibles was made simultaneously with a class-action lawsuit challenging the constitutionality of jailing and detention of status offenders.[109] To prepare for the alternatives to the commitment of dependent-incorrigibles, in accord with compliance regulations of the Federal Juvenile Justice and Delinquency Prevention Program, the Department of Social and Health Services was mandated by the legislature to present a report that would include:

1. An inventory of services available for incorrigibles;

2. The efforts of the department to augment such services;

3. A fiscal impact statement of the changes in the act.

The major change made in dispositions for dependent-incorrigible youth is that the court is restricted to committing a status offender to a diagnostic and treatment facility for not more than thirty days. Previously, the court was able to commit delinquents and dependents-incorrigibles to the same residential treatment institution for an extended period of time.

The rationale behind the limitation of institutional disposition alternatives for dependents-incorrigibles was based on at least some of the following considerations:

(a) That the deinstitutionalization of status offenders complies with the Juvenile Justice and Delinquency Prevention Act;

(b) That placing status offenders with delinquent youngsters is deleterious;

(c) That most youth return to their communities within a relatively short period;

(d) That there was a need to emphasize the proper role of the family;

(e) That institutionalization of a status offender is a severe and extreme condition, to be imposed only when less restrictive alternatives are no longer feasible.

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[108] Ibid., p. 9.

[109] Bonnie Hilliard v. Charles Morris. Filed January 22, 1976 in King County, Washington Superior Court Docket No. 807314.

The goal of the change in the law is to provide an augmented social service program which allows the dependent-incorrigible child to remain in the community and the family environment. The child is to be separated from the parental home only when necessary. After July 1, 1977, the juvenile court may commit the dependent-incorrigible child to a state diagnostic and treatment facility for not more than thirty days, but that commitment is subject to specific conditions, including separation of housing and treatment from delinquents.

The report submitted by the Department of Social and Health Services estimated that four million dollars during the next biennium would be needed to provide services for a projected dependent-incorrigible population of 18,000.[110] The money will be used to increase specialized foster family and foster group home care; crisis intervention teams; community diversion programs; and vocational-educational programs. The extent to which this money will come from state appropriations and from an infusion of federal funds is undetermined. Budget hearings are going on presently in Washington for the next fiscal year's budget.

Because the State of Washington was proposing the development of a combined shelter/detention facility, a memo from the Office of General Counsel for the Department of Justice[111] had been issued which has ramifications for any state anticipating the building or renovation of new facilities to meet the mandates of the Federal Juvenile Justice and Delinquency Prevention Act. The memo addresses the issue of whether an unlocked wing of a facility, used otherwise for juvenile secure detention, may qualify as a shelter care facility. The position of the counsel is that such a facility would be permitted under the Act only if the physically non-restrictive section was utilized only for temporary or emergency care or was able to be described as a community-based facility. Juveniles who would use the unrestricted wing could not participate in programs with the delinquents in the secure residential program if the status offender was physically restricted during the program or if the particular facility was locked during their participation. This decision places a burden upon the facility in such areas as medical rooms, dining halls, recreational facilities and classrooms.

Washington presents to those seeking a reexamination of dispositional alternatives for status offenders an example of a pre-enactment research approach to comprehensively anticipate the cost and number of programs needed to follow through with any good-intentioned legislation.

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[110] State of Washington, p. 1.

[111] See Appendix B. Memorandum from the Office of General Counsel, Law Enforcement Assistance Administration, Department of Justice, (Mimeographed, September 18, 1975).

CONSTITUTIONAL CONSIDERATIONS

OF STATUS OFFENDER LEGISLATION

Within the last several years, constitutional challenges have been raised over the power of the state to assert jurisdiction over juveniles on the basis of status offenses. Specifically, litigants have argued such constitutional issues as due process, right to treatment, equal protection and cruel and unusual punishment.

DUE PROCESS

The due process clause of the Fourteenth Amendment of the United States Constitution requires that "no state shall deprive any person of life, liberty, or property, without due process of law." One of the most notable due process challenges is to the vagueness of a written statute whereby an individual is unable to have fair warning of when he/she could be brought into court for a specific charge.

The best known formulation of the statutory vagueness test first appeared in Connally v. General Construction Co., 296 U.S. 385, (1926). In Connally, the court declared that a statute is vague and hence violative of due process requirements when "men of common intelligence must necessarily guess at its meaning and differ to its application." Throughout the years, the court has emphasized the need for specificity where substantial consequences will follow upon a violation of the statute. (Lanzetta v. New Jersey, 306 U.S. 451 (1939); United States v. L. Cohen Grocery Co., 255 U.S. 81 (1921)).

For fifty years, the vagueness challenge was confined to criminal cases; in 1966, however, in the civil case of Giacco v. Pennsylvania, 382 U.S. 399 (1966), the vagueness argument was upheld when the court declared the challenged statute unconstitutional because of the lack of uniform standards of the statute's application. The court wrote:

> ...There is no doubt that (the act) provides the State with a procedure for depriving an acquitted defendant of his liberty and his property. Both liberty and property are specifically protected by the Fourteenth amendment against any state deprivation which does not meet the standards of due process, and this protection is not to be avoided by a simple label a state chooses to fasten upon its conduct or its statute...
>
> ...It would be difficult if not impossible for a person to prepare a defense against such general abstract charges as misconduct or reprehensible conduct.

It is believed that a vagueness challenge to a civil statute could succeed, if:

1. The statute is imprecise;

2. It imposes a forfeiture or some other serious deprivation; and

3. The forfeiture or other deprivation is imposed at the request of state authorities.[112]

Whether a status offender is considered a delinquent or is categorized within a separate label as PINS, JINS, CHINS, it may be argued through a vagueness challenge that the serious consequences that may result from such an adjudication should afford juveniles with the same due process protections regarding specific statutory language as those extended to adults.

A typical section of a juvenile code granting jurisdiction to the court over status offenders is found in Arizona's statutes:

> An incorrigible child is one who refuses to obey the reasonable and proper orders or directions of his parent, guardian or custodian, and who is beyond the control of such person, or any child who is habitually truant from school, or who is a runaway from his home or parent, guardian or custodian, or habitually so deports himself as to injure or endanger the morals or health of himself or others.[113]

Some states, having a more encompassing statute, are even less specific than Arizona. South Carolina's statute includes a child within the court's jurisdiction who:

> is incorrigible, ungovernable or habitually disobedient and beyond the control of his parent, guardian, custodian or other lawful authority; is habitually truant; without just cause and without the consent of his parents, guardian or custodian deserts his home or place of abode; engaged in any occupation which is in violation of law; begs or solicits alms or money in public places; associates with immoral or vicious persons; frequents any place the maintenance of which is in violation of the law; habitually uses obscene or profane language or; so deports himself as wilfully to injure or endanger the morals or health of others.[114]

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[112]Note, "Parens Patriae and Statutory Vagueness in Juvenile Court," 82 Yale Law Review 2 (1973): 7575.

[113]Arizona Revised Statutes Annotated ch. 2, Sec. 8-201 (1974).

[114]Code of Laws of South Carolina Sec. 15-1103 (1975).

The statutory language that is currently being attacked in the courts concerns such terms as "reasonable," "beyond the control of," "habitually," "immoral," and "so deports himself as to wilfully injure or endanger." Language of this nature is very common and allows the juvenile court broad discretion in determining when a child comes within its purview.

In challenges to juvenile statutes on grounds of vagueness, however, the courts have been hesitant in declaring them invalid.

Mattiello v. Connecticut, 395 U.S. 209 (1969)

Frances Mattiello was an unmarried girl of 17 who was arrested and charged with being "in manifest danger of falling into habits of ice," a violation of the Connecticut statute. Her attorney asked that the court find that there was no cause of action in the case due to the vague and uncertain language of the state statute, and that such a statute violated the Fourteenth Amendment. The Connecticut Circuit Court overruled the claim and sentenced Frances to the state training school until she was 21. The State Appellant Division affirmed this decision, stating that the proceedings were civil in nature and that the purpose of the statute was protective rather than punitive; therefore, it reasoned, the due process clause was inapplicable. The U.S. Supreme Court, after hearing arguments in 1969, dismissed the petition because of legal technicalities and never addressed themselves to the issue of constitutional vagueness of the statute.

E. S. G. v. State of Texas, 447 S.W. 2d 225 (Tex. Civ. App. 1969)

The Texas Court declared that their state's statute that defined a delinquent child as one "who habitually so deports himself as to injure or endanger the morals or health of himself or others" was not unconstitutionally vague.

Commonwealth of Massachusetts v. Brasher, 359 Mass. 550, 270 N.E. 2d 389 (1971)

The Massachusetts Supreme Judicial Court held that the statute providing for the punishment of "stubborn children" was considered not so vague and indefinite as to violate the due process clause of the Fourteenth Amendment.

More recently, there have been several federal decisions that can give more weight to due process challenges of juvenile statutes.

Gesicki v. Oswald, 336 F. Supp. 365 (S.D.N.Y. 1971)

New York's wayward statute provided for the court's jurisdiction over a minor who was "morally depraved or in danger of becoming morally depraved." New York's law permitted these youth to be housed in an

People in Interest of D. R., 487 P. 2d 824 (1971)

This is one case that did have a valid differentiation between delinquents and status offenders. A violation of the terms and conditions of probation by a child in need of supervision adjudication is not a violation of a "lawful order of court" made under the delinquent child provisions of the children's code.

In Re J. K., Del. Fam. Ct., New Castle Cty. 9/22/76

In 1975 Delaware passed a bill that would have committed juveniles who had committed felonies to a minimum of six months in correctional institutions. The law was declared unconstitutional because they did not have the same mandatory sentencing for adults and therefore denied the child equal protection of the laws.

The central argument advanced for the legality of the statutes where the equal protection issue can be raised is the argument for the need for the juvenile court to be based on the philosophy of parens patriae. It is this concept that compels the court to provide protection and intervention in the lives of children who are exhibiting anti-social behavior; it is this concept that rationalizes the need to treat children differently from adults, and it is this concept of rehabilitation and protection that permits the court to justify differences in the treatment of CHINS and delinquents, and CHINS and dependent children.

RIGHT TO TREATMENT

Radically different from the purpose of intervention in an adult's life by the court, "the underlying principle of legislative and judicial intervention into the lives of children is to take the child in hand and guide him so that the state becomes the protector and guardian because either the unwillingness or inability of the natural parents to guide him towards good citizenship has compelled the intervention of the public authorities."[116] As liberty is taken away from children to provide services and supervision that the parents cannot provide, the courts have begun to recognize the child's right to treatment. The absence of meaningful treatment, when liberty is restricted, may be considered a denial of the constitutional rights guaranteed by the Fourteenth Amendment.

There are many states, most notably Alabama, Georgia, Louisiana, Maryland, New Hampshire, New Mexico, and Tennessee, that specifically mandate within their statutory definition of a status offender that the child must be in need of care or rehabilitation in order to be

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[116] Jane Klaber, "Persons in Need of Supervision: Is There a Constitutional Right to Treatment?", 39 Brooklyn Law Review (1973): 624.

adjudicated by the court. But once adjudicated, is the status offender really receiving any type of treatment that overrides the negative aspects of court involvement? In fact, a federal court has found that the right to treatment concept is guaranteed by the Federal Constitution even if the court finds no specific "right to treatment language in the state statute." (Nelson v. Heyne, 491 F. 2d 352 (7th Cir. 1974))

The following brief summary is presented to give to the reader an overview of the trends within this conceptual legal argument of "right to treatment."

Janet D. v. Carros, ___ Pa. Super. ___ 362 A 2d 1060 (1976)

The juvenile court and the custodian have a responsibility to develop a plan of treatment and failure of the custodian to develop such a plan may result in contempt charge.

In Re I., 33 N.Y. 2d 987, 309 N.E. 2d 140, 353 N.Y.S. 2d 743 (1974)

This case involved a fifteen-year-old girl who had been committed to a training school with a court order that she was to receive psychiatric treatment and care. The training school did not provide this care because it did not have a full-time psychiatrist. The court ordered the girl released, finding that there could be no confinement without treatment.

Inmates of the Boy's Training School v. Affleck, 346 F. Supp. 1354 (D.R.I. 1972)

The court concluded that the right to treatment for juveniles was constitutionally required by procedural due process. The court wrote:

> If a boy were confined indoors by his parents, given no education or exercise and allowed no visits, and his medical needs were ignored, it is likely that the state would intervene and remove the child for his own protection... Certainly, then, the state acting in its parens patriae capacity cannot treat the boy in the same manner and justify having deprived him of his liberty.

Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974)

This case delineated the specific standards of what constitutes treatment:

> Treatment of an adolescent who has tangled with the law or had difficulties with his family or school authorities must ensure that the juvenile receives the ingredients that a normal adolescent needs to grow and develop a healthy mind and body.

The court laid down standards for assessment and placement of youth, personnel standards, treatment approaches, and medical and psychiatric needs. The court implemented their opinion by closing two facilities for being beyond repair and reform.

The court has also found a statutory right to treatment in pre-adjudicatory detention:

Creek v. Stone, 379 F. 2d 106 (D.C. Cir. 1967)

The court found that, although temporary, a detention center must give the juvenile care as nearly as possible equivalent to that which would have been provided by his parents.

Future right to treatment litigation might even turn to the use of probation services for juveniles. As probation departments become more and more overloaded, thus becoming more oriented to surveillance care than real treatment care, the court may start to question the probation restrictions placed upon an adjudicated juvenile.

As briefly indicated, the most successful constitutional attacks to the concept of maintaining the parens patriae integrity of the juvenile court have been in the area of challenging the right to treatment. The cases appear to point out the fact that if the juvenile court does not provide the full gamut of due process protections afforded to an adult when his/her liberty is to be restricted, then the court must guarantee that there is adequate treatment.

CRUEL AND UNUSUAL PUNISHMENT

Litigants have also tried to raise the Eighth Amendment constitutional argument of cruel and unusual punishment, questioning the validity of status offender legislation in imposing sanctions on the basis of status rather than any specific act. Challenges on this basis have met with little success, even though in 1962 the Supreme Court articulated that criminal commitment for a status or disease is cruel and unusual punishment.

Robinson v. California, 370 U.S. 660 (1962)

Supreme Court found that a statute which made the "status" of being a narcotic addict a criminal offense inflicted a cruel and unusual punishment in violation of the Eighth Amendment.

Blondheim v. State, 84 Wash. 2d 874, 529 P. 2d 1096 (1975)

Although incorrigibility is a condition or state of being, one acquires such a "status" by reason of one's conduct. An incorrigible

is one whose conduct places him/her beyond the lawfully exercised control of his/her parents, guardian or custodian. Therefore, the statute did not violate the Eighth Amendment.

Vann v. Scott, 467 F. 2d 1235 (7th Cir. 1972)

The court held that the applicability of the Eighth Amendment was not controlled by the label given to a child in the state's custody, i.e., delinquent, status offender. The court held that:

> ...although a runaway may be subject to cruel and unusual punishment, this is not a constitutional defect in the State's performance of its custodial function following a dispositional order.

It appears inconsistent that a law that penalizes a habitual addict can be seen as punishment for a status and hence unconstitutional, while a law that penalizes a child who habitually disobeys his/her parents, i.e., the incorrigible child, is not considered punishment for a status.

During the discussions on any revision to juvenile status offender legislation, it is important to keep in mind the constitutional issues that are being raised and that the trend would appear on many challenges to be weighing more and more against the tradition of parens patriae unless substantial changes in the juvenile system are forthcoming.

POLICIES AND STANDARDS

OF NATIONAL GROUPS

During the last few years, several national groups have endorsed a position concerning the level of involvement the juvenile court should have in the life of a status offender and his/her family. The following is a concise comparison among the various groups working in the juvenile justice field, who have gone on record as to their position, and the group's rationale for its position.

HEW MODEL ACT--Recommends elimination of court jurisdiction over status offenders. Rationale: Status offense cases divert court resources from delinquency cases.[117]

NATIONAL COUNCIL ON CRIME AND DELINQUENCY--Recommends elimination of court jurisdiction over status offenders. Rationale:

1. There is no proof that court intervention helps status offenders;

2. The court's resources should be devoted to criminally active juveniles; and

3. Incarceration and indeed any contact with the juvenile system is damaging.[118]

NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS--Recommends elimination of court jurisdiction over status offenders. Rationale: Status offenders, once in the stigmatizing court system, tend to be detained and incarcerated longer than delinquents.[119]

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[117]H.E.W. Legislative Drafting Guide for Family and Juvenile Court Acts, (1974).

[118]National Council on Crime and Delinquency, "Jurisdiction Over Status Offenses Should Be Removed from the Juvenile Court: NCCD Policy," (Hackensack, N.J.,, October 22, 1974).

[119]National Advisory Commission on Criminal Justice Standards and Goals, Courts, (Washington, D.C., U.S. Government Printing Office, 1973), p. 293.

INSTITUTE OF JUDICIAL ADMINISTRATION/AMERICAN BAR ASSOCIATION JUVENILE JUSTICE STANDARDS PROJECT--No official position taken yet. Tentative draft recommends jurisdiction over unruly child be eliminated with limited intervention in particular circumstances (youth in danger, need for emergency medical services, runaways). Rationale:

1. Realization that the voluntary community resources are the proper response to a status offender; and

2. Concluding that contact with the court process is stigmatizing and destructive.[120]

NATIONAL TASK FORCE TO DEVELOP STANDARDS AND GOALS FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION--Recommends retention of the court's jurisdiction over status offenses that are specifically defined as: 1) repeated school truancy; 2) repeated disregard for or misuse of lawful parental authroity;3) repeated running away from home; 4) repeated use of intoxicating beverages; 5) repeated or serious delinquent acts by children under ten years of age. Rationale: Retention of the court's power to intervene is appropriate and necessary not only to protect children from themselves, but to serve as a forum where they can seek relief from intolerable circumstances.[121]

NATIONAL ADVISORY COMMITTEE ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION (LEAA)--Recommends the elimination of status offenses from the jurisdiction of the juvenile court. Rationale:

1. Voluntary community agencies will not take the initiative in establishing resources if the court retains jurisdiction;

2. Application of status offender laws are harsher for girls than for boys; and

3. Little difference is seen by the court's handling of a status offender and of a delinquent.[122]

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[120]Institute of Judicial Administration--American Bar Association, Juvenile Justice Standards Project, "Information Packet on Juvenile Justice Standards Project," (Mimeographed, New York, December 22, 1975).

[121]National Task Force on the American Justice Institute, "Jurisdiction--Status Offenses," Vol. V of the Working Papers of the National Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, (Mimeographed, San Jose, California, August 1976).

[122]National Advisory Committee on Juvenile Justice and Delinquency Prevention, "Draft Recommendations on Proposed Juvenile Justice and Delinquency Prevention Standards," (Xeroxed, Washington, D.C., 1976).

1967 PRESIDENTIAL TASK FORCE ON JUVENILE DELINQUENCY AND YOUTH CRIME--Advocates serious consideration be given to complete elimination of jurisdiction over status offenses. Rationale:

1. The court has failed in its rehabilitation model;

2. There are insufficient dispositional alternatives available to the court;

3. Contact with the court is harmful; and

4. There is lack of proof that adolescent misbehavior is a first step towards delinquent activity.[123]

NATIONAL COUNCIL OF JUVENILE COURT JUDGES--Recommends retention of court jurisdiction over status offenders. Rationale:

1. Such offender conduct may violate the rights of the community.

2. Such children have responsibilities and rights which must be enforced by law.[124]

AMERICAN CIVIL LIBERTIES UNION--Recommends elimination of court jurisdiction over status offenders. Rationale:

1. Status offender statutes are usually vague and ill-defined;

2. Status offender legislation is unconstitutional because it punishes a status;

3. Contact with the court process is destructive;

4. Court resources could be better utilized in delinquent and abuse cases; and

5. The growth of voluntary community resources are inhibited because of the court's jurisdiction.[125]

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[123]The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, (Washington, D.C., U.S. Government Printing Office, 1967).

[124]National Council of Juvenile Court Judges, "1976 Resolution," Juvenile Court Newsletter 6 (August 1976): 14.

[125]American Civil Liberties Union, "Equality Committee Meeting Minutes," (New York, April 8, 1976).

The preceding summary of national groups' positions is presented in an attempt to inform the reader of the various policy positions taken regarding what intervention the court should have over the life of a status offender. The trend appears to be towards the elimination entirely of the court's jurisdiction over status offenses or, at least, narrowly defining what status offenses will be classified under the court's jurisdiction, in a category dispositionally separate from criminal-type delinquents.

CONCLUSION

One of the major issues confronting states across the country is how best to deal with children who commit no criminal act against society, but who exhibit some adolescent behavior such as ungovernability, truancy or running away that is considered to be contrary to the interests of society. Seeking to adapt to changing social science theory and to the Federal Juvenile Justice and Delinquency Prevention Act of 1974, states realize that it is essential to pursue alternative ways to handle these children other than through the traditional labeling of them as delinquents with the legally allowed alternative of placing them in correctional institutions.

This report presents to the reader a spectrum of approaches that states are taking towards the status offender and detained juvenile. Additionally, a number of constitutional issues have been raised in the area of juvenile justice; positions are presented of national groups on the matters of status offenders and detained juveniles. All these factors must be considered when weighing the pros and cons of legislative change to the state's juvenile act.

In reviewing the individual state's statutes towards status offenders and detained juveniles, it appears that a common denominator in many statutes is that status offenders are labeled separately from delinquent children and deprived children; however, dispositionally, status offenders are treated in much the same manner as delinquents. As a result, many states, including those with a third category for their status offenders, are now in the process of changing legislation to meet the standards of treating status offenders as distinct from criminal-type delinquents.

Although the success or failure of individual state's attempts to treat status offenders differently from delinquents must, for the most part, be viewed by the reader in light of his/her own experiences, it can be inferred from the states presented in this report that legislation, in or of itself, cannot alone create change and improvement in the juvenile justice system. Although it is impossible to estimate what impact the Federal Juvenile Justice and Delinquency Prevention Act of 1974 will have on those states that seek to develop a different modality for providing services to status offenders and detained juveniles, it must be noted that money alone is not the catalyst for change.

The infusion of federal dollars may alleviate the resource problem and provide incentive for change throughout the state; however, more importantly, it appears that in any state, legislative change must be accompanied by sound planning, allocation of resources to appropriate agencies and geographical areas in need of programs impacting on the status offender and the detained juvenile, along with continuous administrative and legislative review to assure that the intended goals are met.

A concerted commitment by the legislature, the state and county administrative offices, the courts, the communities and the other interested juvenile justice groups is what will provide the solid foundation for constructive change in the way status offenders are dealt with either within or outside of the juvenile justice system.

APPENDIX A

Legal Opinion No. 77-25--Classification of Juveniles as Status Offenders

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
WASHINGTON, D. C. 20531

March 15, 1977

Workbook Entry

Heading: Status Offenders
Section: 223(a)(12)
Instruction: File under Section 223(a)(12)

Peter S. Smith, Director
Maryland Juvenile Law Clinic
500 West Baltimore Street
Baltimore, Maryland 21201

Dear Mr. Smith:

This is in response to your letter of March 7, 1977, regarding a legislative proposal currently pending in the Maryland General Assembly. House Bill 1075 proposes to amend Section 3-801(k) of the Maryland Juvenile Causes Statute, to read as follows:

"(k) 'Delinquent Act' means [an]:

(1) AN act which would be a crime if committed by an adult; OR

(2) AN ACT COMMITTED BY A CHILD IN NEED OF SUPERVISION WHICH VIOLATES A COURT ORDER."1/

You ask whether the legislative proposal, if enacted and applied to an actual case, would be in conformity with Section 223(a)(12) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. §5601, et seq., as amended (Pub. L. 93-415, as amended by Pub. L. 94-503), hereinafter Juvenile Justice Act.

Section 223(a)(12) of the Juvenile Justice Act requires as a condition for the receipt of formula grant funds that the State's plan submitted in accordance with the Act:

"(12) provide within two years after submission of the plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult, shall not be placed in juvenile detention or correctional facilities, but must be placed in shelter facilities;"

LEAA State Planning Agency Grants Guideline M 4100.1F, Chapter 3, Paragraph 52i, January 18, 1977, defines "juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult" as "status offenders." To assist States in distinguishing

1/ Capitals indicate matter added to existing law. Brackets indicate matter deleted from existing law.

status offenders, criminal-type offenders, and non-offenders, the guideline incorporates by reference the classification system developed in "Status Offenders: A Working Definition," a document published under an LEAA grant by the Council of State Governments (COSG).

The COSG document defines a "status offense" as "...any violation of law, passed by the State or local legislative body...which would not be criminal if committed by an adult, and which is specifically applicable to youth because of their minority." (Status Offenders: A Working Definition, Council of State Governments, 1975, at p. 3). This definition of status offense encompasses the Maryland Juvenile Causes Statute's definition of "Child in need of supervision" (§3-801(f)):

> "(f) 'Child in need of supervision' is a child who requires guidance, treatment, or rehabilitation because
>
> (1) he is required by law to attend school and is habitually truant; or
>
> (2) he is habitually disobedient, ungovernable, and beyond the control of the person having custody of him without substantial fault on the part of that person; or
>
> (3) he deports himself so as to injure or endanger himself or others; or
>
> (4) he has committed an offense applicable only to children."

In addition, §3-823(b) of the Maryland Juvenile Causes Statute provides that "A child who is not delinquent may not be committed or transferred to a facility used for the confinement of delinquent children."

Thus, the effect of the proposed amendment to the Maryland Statute would be to permit a juvenile court to adjudicate a status offender a delinquent for violation of the terms of probation or other court order and commit or transfer the juvenile to a detention or correctional facility used for the confinement of delinquent children.

The issue is whether a juvenile adjudicated a status offender who commits an act in violation of a court order can be said to be charged with or have committed an offense that would be criminal if committed by an adult. It is the opinion of this office that such a juvenile would remain a status offender under the classification system unless the act committed in violation of the court order was itself an offense that would be criminal if committed by an adult and until the juvenile was charged with (or adjudicated for) committing the particular offense.

The COSG document's classification system (Appendix A) describes legal circumstances that might exist at the time a juvenile is confined. Thirty-eight classifications are established, including both detention and commitment categories ("Status Offenders," supra, at p. 24). Classification 02, under detention classifications, describes the following situation:

> "A juvenile is placed in detention for violation of probation or parole, after being adjudicated a Status Offender."

Such a juvenile is classified as a status offender. Classification 25, under Commitment Classification, describes the following situation:

> "A juvenile has been adjudicated a Status Offender and is placed on probation. While on probation, the youth is either believed to have perpetrated a Status Offense or is readjudicated a Status Offender, as a result of either the subsequent offence or the technical violation of probation and is institutionalized."

Such a juvenile is classified as a status offender.

The basis for these classifications rests upon the legal nature of the court's right to revoke probation and order institutionalization where an individual violates the court's order of probation. Such action is limited to dispositions that would have been appropriate for the offense for which probation was initially granted. Any resulting institutionalization is not a penalty for failure to keep the terms of probation but is, instead, the invocation of the previously suspended institutional sanction. It is not an independent criminal act that would be criminal if committed by an adult.2/ This conclusion is consistent with the proposed Maryland Code amendment in that the amendment itself distinguishes acts which would be criminal if committed by an adult from acts which violate a court order.

The Maryland statute would make the violation of probation or other violation of a court order grounds for adjudicating a child in need of supervision (Status Offender) as a delinquent. However, the juvenile would remain a status offender under the LEAA classification system and the detention (or commitment) of such a juvenile in a detention (or correctional) facility would constitute noncompliance with the mandate

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2/ For Maryland law on this point see Knight v. State, 7 Md. App. 313, 255 A.2d 441 (1969). Even if the State's criminal code defined violation of probation by a criminal offender as an independent criminal act, we would question the applicability of such a provision to a probation violation by a status offender. A status offense is in the nature of a civil, rather than a criminal, proceeding (See §3-824, Maryland Juvenile Causes Statute).

of Section 223(a)(12) of the Juvenile Justice Act.3/ It is irrelevant whether a State Juvenile Code defines a particular act as a "delinquent" act or as a nondelinquent act. The test to distinguish a status offender and a criminal-type offender is always the nature of the prohibited conduct, i.e., would the conduct, under State law, be criminal if committed by an adult.

Your interest in the juvenile justice programs of the Law Enforcement Assistance Administration is appreciated. If we can be of further assistance, please feel free to contact this office or the Office of Juvenile Justice and Delinquency Prevention.

Sincerely,

Thomas J. Madden
Assistant Administrator
General Counsel

cc: OJJDP
Region III, Philadelphia
Richard Wertz, Maryland SPA

3/ While our conclusion rests on the terms of the Juvenile Justice Act and LEAA Guideline provisions, it should be pointed out that it is consistent with existing standards for the administration of juvenile justice. See, for example, "Report of the Advisory Committee to the Administrator on Standards for the Administration of Juvenile Justice," September 30, 1976, Standard 3.1811--Enforcement of Dispositional Orders--Noncriminal Misbehavior.

LEAA FORM 1331/8 (8-72)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

: Region X - Seattle

DATE: September 18, 1975

THRU : Office of Regional Operations (ORO) -TAN/7A

FROM : Office of General Counsel (OGC)

SUBJECT: Washington State's Proposed Juvenile Shelter/Detention and Court Facility

This is in response to your request of September 5, 1975, for guidance in advising Washington State Officials as to whether or not a proposed juvenile shelter/detention and court facility for Benton-Franklin Counties would be in compliance with the deinstitutionalization of status offenders requirement of the Juvenile Justice and Delinquency Prevention Act of 1974.

The counties anticipate construction of a 20 bed facility, including an unlocked wing to be used as a temporary shelter for approximately five status offenders. The facility would be within the city limits of Kennewick, located near the geographic center of the two counties, but would serve both counties. The counties include approximately 2,975 square miles and have a population of 100,000, most of whom (60,943) reside in the Kennewick-Richland-Pasco Tri-City area.

The issues which you have raised, and their resolution, are as follows:

1. Does an unlocked wing of a facility which is used for juvenile detention qualify as a shelter facility and meet the requirements of the Act?

Section 223(a)(12) of the Juvenile Justice Act requires that, within two years, status offenders shall "not be placed in juvenile detention or correctional facilities but must be placed in shelter facilities." The Act does not define the term "shelter facility." However, Guideline M 4100.1D, CHG 1 suggests that:

> "Shelter facilities for status offenders may be defined as a temporary or emergency care facility in a physically non-restrictive environment. They are used as a temporary living arrangement for the purpose of arranging a longer range plan for the juvenile. The period of shelter care should be sufficiently long to develop a suitable plan for the juvenile and shall not extend beyond that point (preferably within 30 days)." (Guideline, supra, Chap. 3, Par. 82 h.(6)).

This definition should not be construed as implicitly limiting the placement of status offenders to "temporary" or "emergency" short-term care facilities. The preceding paragraph of the guideline requires that ". . . status offenders, if placed outside the home, will be placed in shelter facilities, group homes, or other community-based alternatives . . . rather than juvenile detention or correctional facilities" (guideline, supra). At most this paragraph limits placement to shelter facilities (as defined above) and to "community-based" alternatives such as group homes, which are usually longer term care shelter facilities. Such facilities are often utilized following placement in temporary or emergency short-term care shelter facilities. The guideline definition refers only to the short-term care type of shelter facilities.

Therefore, if the proposed wing is in fact physically non-restrictive (unlocked) and utilized only for temporary or emergency care (as defined by the State) in order to facilitate adjudication and/or arrangement of a suitable longer term plan, it would be within the guideline definition of a (temporary or emergency) shelter facility, and meet the requirements of the Act.

I might add, parenthetically, that an unlocked facility should not be characterized as a "detention" facility since this term connotes confinement as well as custody.

2. Must a shelter facility meet the definitional requirements of a community-based facility?

As the analysis of issue 1 above indicates, while a temporary or emergency short-term care shelter facility need not be community-based, a longer term care shelter facility must meet the guideline requirement of being a "community-based" alternative to detention or correctional facilities. "Community-based" facility is defined in Section 103(1) of the Act and examples of such alternatives are given in Section 223 (a)(10).

Thus if placement of a status offender in the proposed facility could be for a period of time beyond that necessary to arrange a suitable longer term plan (the outside time limit for temporary or emergency placement being established by the State) the facility would have to qualify as "community-based."

3. Does an unlocked wing of the facility described qualify as a community-based facility?

The proposed facility could conceivably qualify as a community-based facility for status offenders if it is determined that the facility is: 1) located near the juveniles home and family; and 2) located n and utilizes, community-based rehabilitation services outside the "institutional" setting.

4a. Must the status offenders be kept entirely separate from the delinquent population?

b. Could the status offenders participate in some of the "locked" programs (i.e., cafeteria, classroom, gymnasium)? If so, could they use these programs at the same time as the delinquent children?

c. Could some low security risk delinquent children also be held temporarily in the open wing of the status offenders?

These issues apparently flow from Section 223(a)(13) which requires that alleged or adjudicated delinquents not be confined where they will have regular contact with adults incarcerated on criminal charges. For purposes of this requirement status offenders should be equated with alleged or adjudicated delinquents, whether or not so considered under State law.

~~Clearly, neither the statute nor the guidelines requires complete separation of status and delinquent offenders. However, status offenders would not be able to participate in "locked" programs if they were physically restricted or the particular facility was locked during their participation.~~ This would constitute placement in a detention facility for purposes of Section 223(a)(12). In addition, if longer term placement was involved the facility would have to utilize community based services as discussed under 3. above for such status offenders. It would seem particularly inappropriate to utilize institutional classroom facilities in such a situation unless specialized educational programs, not available in the community, were provided and the status offender's participation was voluntary. Only if these conditions were met could status offenders use the programs at the same time as the delinquent children. Finally, it would be permissible for low security risk delinquent children to be held temporarily in the open wing with status offenders.

The resolution of these issues, where policy considerations are involved, has been concurred in by the Office of Juvenile Justice and Delinquency Prevention. That Office plans to review and revise the relevant guidelines in order to further clarify these and related issues surrounding deinstitutionalization of status offenders. You may rely on this memorandum as a resolution of the issues presented vis a vis the proposed Washington State facility. However, since the guideline may be subsequently revised, a formal legal opinion will not be issued.

Please contact this Office if further clarification is desired.

Thomas J. Madden
Assistant Administrator
General Counsel

Concur _____ Frederick P. Nader
Acting Assistant Administrator
Office of Juvenile Justice and
Delinquency Prevention

cc: Fred Nader - OJJDP

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