

# Judicial Perspectives on the Deinstitutionalization of Status Offenders in the United States with Recommendations for Policy and Practice



## Introduction

Deinstitutionalization of status offenders (DSO) is one of the four core requirements of the Juvenile Justice and Delinquency Prevention Act (JJDPA). Status offenses are offenses that only apply to minors whose actions would not be considered offenses at the age of majority, such as not attending school, running away, breaking curfew, and possessing alcohol or tobacco. Under the JJDPA, status offenders – with few exceptions – may not be held in secure detention or confinement. The DSO provision seeks to ensure that status offenders who have not committed a criminal offense are not held in secure juvenile facilities for extended periods of time or in secure adult facilities for any length of time.

Status offense cases can be challenging for judicial officers. Specifically, avoiding use of secure detention with status offenders and other non-delinquent youth can be difficult in jurisdictions with limited diversion options or in cases involving youth with complex unmet needs. Nonetheless, research suggests comingling low-risk youth (e.g., status offenders) with high-risk youth (e.g., those charged with multiple serious offenses) can be harmful for low-risk youth.<sup>1</sup> Given the substantial costs associated with unnecessary juvenile justice system involvement,<sup>2</sup> adhering to the DSO provision is preferred practice from both a human and financial perspective.

The purpose of this brief is to present the findings and subsequent policy and practice recommendations from (1) a national survey of juvenile court judges, and (2) a focus group of juvenile court judges about status offenses and the use of secure detention in those cases. The survey and focus group were conducted by the Coalition for Juvenile Justice (CJJ)<sup>3</sup> in partnership with the National Council of Juvenile and Family Court Judges (NCJFCJ)<sup>4</sup> and its research division, the National Center for Juvenile Justice (NCJJ).<sup>5</sup> The online survey was conducted between January 12, 2012 and March 28, 2012, and was distributed via various e-mail lists to professionals in juvenile courts across the United States with a request to forward the survey to colleagues also working in juvenile courts.<sup>6</sup> The focus group on status offenders involved 11 judicial officers and was held January 21, 2012 in Coronado, California. Although results of this study are not generalizable to the entire population of juvenile court judges in the United States due to the methodology employed, they do provide insight into the current state of attitudes toward DSO and associated practice.<sup>7</sup>

## Study Results

### Survey

A total of 287 judicial officers from 43 states responded to the survey. Age of respondents ranged from 39 to 74 years with an average age of 58 years, and the majority (61%) were male. Nearly 60% of respondents indicated they had nine or more years experience as a judge. Most respondents identified themselves as White (87%), followed by African American (4%), Native American (3%), Hispanic or Latino (2%), Pacific Islander (2%), Asian American (2%), and other (2%).

Approximately 90% of respondents reported a docket that included delinquency cases, and one-third of judges reported working in a unified court. The majority (95%) of jurisdictions reported they do not operate within a tribal community. Fifty-one percent of respondents reported their state or territory was in compliance with the DSO requirement, while 68% reported their county was in compliance. Nearly 61% reported their jurisdiction collects reliable data on status offenses being processed, and 70% reported their jurisdiction collects reliable data on status offenders sent to secure detention.

The judges that responded to the survey might have heightened interest in and sensitivity to detention of status offenders than would a random national sample. For example, 74% of judges reported their state or territory uses the valid court order (VCO) exception to detain status offenders, yet nearly half of the 55 United States jurisdictions participating in the JJDPa do not allow use of the VCO exception in statute or practice. Further, 62% reported that judges or other officials in their jurisdictions – often probation officers or probation administrators – do detain or have the authority to detain status offenders. Sixty-seven percent of jurisdictions reported using a validated risk/need assessment to determine if detention is appropriate. Judges perceive that it is most common for law enforcement (51%), public-at-large (47%), school officials (40%), and parents (38%) to encourage the use of detention and advocate for the use of detention. Although the NCJFCJ supports the ultimate elimination of the VCO exception to the DSO requirement of the JJDPa, less than one quarter (23%) of respondents in this sample supported elimination of the VCO exception in the JJDPa - even while 60% mostly or completely agreed that detention is an ineffective response to the needs of status offenders. Moreover, seventy-six percent reported believing research has demonstrated detention is harmful to status offenders, and 40% mostly or completely agreed that detention is harmful for status offenders and should never be used.

Many jurisdictions reported having implemented reform initiatives such as Juvenile Detention Alternatives Initiative (58%), NCJFCJ Model Courts (36%), or Models for Change (13%). Seventy-two percent reported detention alternatives are available in their jurisdiction, but that there are not adequate diversion options. The majority of respondents agreed that diversion programs are generally effective (91%) and that diversion programs adequately protect the interest of the community and victims (93%). Further, 72% of judges mostly or completely agreed that diversion programs can provide youth with access to more resources and support than formal court processing, and 81% mostly or completely agreed that diversion programs are more cost effective than formal court processing. In terms of diversion, judges indicated they often or always divert status offenses at the following rates: runaways (54%), truancy (53%), curfew violation (50%), incorrigible/ungovernable (49%), possession or use of tobacco (46%), possession of alcohol (36%), and use of alcohol (35%).

Lastly, the majority of respondents reported some effort is made to engage the family in responses to status offenses (e.g., phone call, home visit, mandatory appearance, required participation in intervention, etc.).

Judicial officers most often identified “sexting” and cyberbullying as emerging issues in regards to types of status offenses. Respondents indicated that the largest challenges they face regardless of offense type are lack of resources, limited prevention/early intervention, and parental modeling/acceptance of child’s behavior. There was no consistent theme ascertainable from responses in terms of effective responses to status offenses, but interventions noted included specialty dockets, counseling/treatment, diversion, and parental involvement/parenting classes. Lastly, 85% of judges indicated they would like training on the most effective practices for preventing and responding to behaviors that could be defined as status offenses.

## Focus group

Eleven judicial officers participated in the one-day focus group facilitated by CJJ, NCJFCJ, and NCJJ staff. Questions were designed to elicit information regarding attitudes toward DSO and promising practices to eliminate the use of detention with status offenders. Further, participants reviewed and commented on the initial results of the national survey.

While the focus group participants had extensive discussions about many other factors that influence youth system-involvement – family dynamics and economic deprivation, for instance – recommendations that emerged propose changes and action within the purview or power of the juvenile court, only. Specifically, recommendations are directed at judges and court officers who are key decision-makers regarding how and whether youth who engage in status offense behaviors enter the juvenile justice system and how their needs are addressed if they do become system-involved.

Three dominant principles emerged from the focus group:

**Principle #1:** The juvenile court – and the juvenile justice system as a whole – should be the forum of last resort to address the needs of youth who engage in status-offending behaviors.

**Principle #2:** If youth who engage in status-offending behaviors cannot, after best efforts, be diverted from the juvenile justice system, detention should not be an option except under extraordinary circumstances.

**Principle #3:** If youth who engage in status-offending behaviors become system-involved or securely confined, families and/or supportive adults should be engaged and empowered to address the youths’ needs and to facilitate the speedy termination of juvenile justice system involvement.

## Recommendations to Deinstitutionalize Status Offenders

The following policy, system change, and judicial practice recommendations are based on the results of the judicial survey and judicial focus group. Specifically, juvenile and family court judges should consider:

## Policy Change

- Supporting or developing policies that discourage the referral to juvenile court of those status offending behaviors related to school attendance, school disengagement and non-violent disciplinary problems.
- Supporting or developing policies that favor the use of community-based alternatives to addressing the needs of youth exhibiting status offending behaviors and their families. This could include the development and use of protocols and memoranda of agreement with service providers to support a family and community-based continuum of care.
- Supporting or developing policies that require the collection and examination of data on the use and effectiveness of specific sanctions for status offending behavior in their jurisdiction and act on the results, including supporting the reclassification of status offenses as dependency rather than delinquency cases.
- Supporting the use of state and federal funding streams that support the needs of youth (e.g., TANF funds) to provide resources for diversion strategies, like family assistance centers outside of the juvenile justice system.

## Systems Improvement

- Convening working groups or coalitions of public agencies and multidisciplinary teams that address the needs of youth to develop systems or continuums of care.
- Supporting the shifting of resources, where appropriate, from enforcement and prosecution to retraining of personnel in evidence-based practices to address status offending behaviors, and pre-intervention services. Judicial officers – particularly those new to the juvenile court bench – should be thoroughly familiar with the basics of child and adolescent development, the iatrogenic effects of detention on low-risk youth, the availability of diversion options for status offenders and strategies to enhance those options, and the various approaches to convening an effective multi-disciplinary stakeholder group.
- Facilitating, encouraging, or requiring the engagement of culturally competent stakeholders and approaches to address the needs of minority youth.

## Judicial Practice

- Using their convening powers to bring together system stakeholders to develop diversion options and alternatives to detention. As noted in the Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases under Key Principle #1 – “Juvenile delinquency court judges should engage in judicial leadership and encourage system collaboration. The juvenile delinquency court judge should regularly convene system stakeholders and the community to promote mutual respect and understanding within the juvenile delinquency court system. The juvenile delinquency court judge and court administrator should engage the state chief justice and state court administrator in system collaboration.”
- Requiring a pre-intake screening process which should be separated (if possible, physically as well as symbolically) from the court itself and involve any family or supportive adult available to the youth. The purpose of the screening is to determine the availability and appropriateness of alternatives other than formal court involvement to address the needs of the youth and family.

- Requiring the use of evidence-based assessments for youth and families that should then be used to support the remedy being recommended by system actors to address the particular behaviors with which youth are charged. Assessments should include, at a minimum, trauma and mental health screening, a needs assessment and a consideration of protective factors.
- Using their inherent powers to develop alternative methods to address youth's needs without formal court involvement and without secure confinement, including convening representatives from the various systems that impact a particular youth (e.g., social worker, school truancy officer, etc.)
- Requiring that all detention recommendations are accompanied by a comprehensive report on the exhaustion of all other remedies and community-based services. The report should also include an individualized plan – developed by appropriate agencies – to address the needs that may have led or contributed to the status offending behaviors.

## Summary

Results presented here suggest two main findings:

1. While there is a need for additional education regarding the harmful effects of secure detention, there is also substantial recognition that secure detention is not a recommended practice for responding to the behaviors of youth that meet the definition of a status offense; and
2. There is a growing awareness among judges of potential system improvements, but also the need for much more education and ongoing support – financial and via technical assistance – to help judges develop or adopt sufficient diversion and alternative placement options for youth who engage in status-offense behaviors.

In the short and long-term, these additional resources and supports are critical to helping jurisdictions not only meet the mandates of the JJDP A DSO core requirement, but also comprehensively respond to behaviors defined as status offenses in the most effective ways.

Anticipating these findings, two years ago CJJ initiated the Safety, Opportunity & Success: Standards of Care for Non-Delinquent Youth Project (“SOS Project”). This multi-year partnership engages CJJ members and other key stakeholders to promote policies and practices that eliminate the use of locked detention for status offenders and other non-delinquent youth, and divert these youth and their families from the court in the first instance to connect them to family-centered and community-based systems of care that more effectively meet their needs. A key strategy of the CJJ SOS Project is to identify and elevate examples of judicial leadership that are aligned with the Project’s main goals. The survey and focus group that underpin this Issue Bulletin are but two examples of the SOS Project’s focus on judicial leadership. NCJFCJ is an early and active partner to this effort, and is proud to bring to the SOS Project the deep and varied expertise and wisdom of NCJFCJ members. To learn more about the larger CJJ SOS Project, and its particular focus on judicial leadership, go to <http://www.juvjustice.org/sos.html>.

## End Notes

1. Dishion, T. J., McCord, J., & Poulin, F. (1999). When interventions harm: Peer groups and problem behavior. *American Psychologist*, 54(9), 755-764.
2. Greenwood, P. (2008). Prevention and intervention programs for juvenile offenders. *The Future of Children*, 18(2), 185-210.
3. [www.juvjustice.org](http://www.juvjustice.org)
4. [www.ncjfcj.org](http://www.ncjfcj.org)
5. [www.ncjj.org](http://www.ncjj.org)
6. This survey methodology is referred to as a “snowball sample”. While this approach is designed to maximize population coverage and responses, it does so at the cost of generalizability and the ability to assess overall response rate.
7. This brief serves as an overview of this study and judicial perspectives on DSO issues. Future technical assistance bulletin(s) will present more comprehensive analyses of data and guidelines for achieving policy and practice recommendations.

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