

Overview on Diversion Programs Across the Country

Research suggests that youth and their families are better served by status offender systems that offer immediate services focused on the family and the community rather than the often punitive and adversarial court system.¹ States that have implemented best practices programs where the court system is a last resort and not the first when dealing with status offender have been achieving positive results. By focusing on supportive services to youth and their families outside of the juvenile court system states that have implemented a form of best practice have been able to achieve many of the goals they set out for themselves.

Connecticut, Florida, Illinois, New York, New Jersey and Pennsylvania all have implemented programs requiring some form of diversion services before court proceedings may ever begin. (Baltimore County, Maryland also has a pilot program). This means that before a youth enters into the juvenile court system they will receive immediate social services to help families solve problems and create better general outcomes. Some services include ADR, short term immediate crisis services (some 24-hours a day) and counseling services.

New York's diversion program began with state incentive funding for counties that were interested, when incentive funding ran dry NY began to rely on a combination of funding from social services, youth services and probation.² Depending on the county either a local social service agency or the probation department are the lead agencies. An independent study of the New York program has revealed that the 4.5 million dollars which were invested in the program ended up saving the state almost 21 million dollars in placement costs, and reduced overall costs by approximately 10 percent.³ The study also found that the number of PINS cases opened by probation officers dropped 79% (3,345 to 697)⁴. Additionally, the number of court referrals decreased by 55% (1,043 to 474) and the number of court ordered out of home placements decreased by 21% (343 to 272)⁵.

An evaluation of the Florida program showed that 77% completed the service program that only 5% of youth in residential services committed another offense and only 6% who were not in residential services committed another offense.⁶ Furthermore, the percentage of youth who reoffended with 6 months of completing the program was 15% for youth in residential services and only 7% for youth who were in not in residential services.⁷ Florida's tax watch documented although it was hard to measure the exact amounts saved, they were able to determine that if 10% of youth were prevented from committing

¹ Jessica R. Kendall, American Bar Association- Center on Children and the Law, *Families in need of Critical Assistance: Legislation and Policy Aiding Youth Who Engage in Noncriminal Misbehavior* vii (2007)

² Kathleen R. Skowrya & Joseph J. Coccozza, National Center for Mental Health and Juvenile Justice Policy Research Associates, *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System* 90 (2007), available at <http://www.ncmhjj.com/Blueprint/pdfs/Blueprint.pdf> (last visited Jun. 9, 2010).

³ Id.

⁴ Jessica R. Kendal, American Bar Association-Division for Public Education, *Technical Assistance Bulletin #29- Juvenile Status Offenses: Treatment and Early Intervention* 6 (2007) available at <http://www.abanet.org/publiced/tab29.pdf> (last visited Jun. 9, 2010).

⁵ Id.

⁶ Id.

⁷ Id.

delinquent acts for 6 months it could save somewhere between 5 and 10 million dollars over a 12 month period.⁸

Connecticut diversion program is fairly new however some preliminary data of the program has been developed by comparing October 2006-March 2007 with the same period a year later. This preliminary data has shown a 41% decrease in the number of status offense court referrals (2,131-1,267), a 94% decrease in judicial handling of “CHINS” cases (1309 to 80 cases), and a 80 % drop in the number of “CHINS” commitments (30 to 6 cases).⁹ From 2007-2009, 81% of the youth who completed the program had no further involvement in the juvenile system.¹⁰ Finally, the number of status offenders who were held in a juvenile detention facility each year dropped from approximately 300 to none in 2008.¹¹

Illinois program contracts with community agencies statewide to provide crisis intervention services. YOS is one of these particular community agencies servicing Cook County (Chicagoland area). YOS was able to reduce the rate of youth entering into shelter care and remaining in shelter care and the number of repeat offenders in the juvenile justice system reduced by almost 75%.

For example, New Jersey’s status offense diversion program received 7,713 referrals in 2004. Of those, 7,395 cases were disposed of or closed after crisis intervention services were offered.

One county in Michigan has restructured and reassigned staff to effectuate their goal of directing youth and families to community resources as opposed to the court. Particularly two probation officers have been assigned exclusively to status offenses.¹²

Kentucky has begun to utilize a number of different approaches because they have recognized the need for some change, however, have yet to implement one particular approach. They have found that the most effective community programs are family focused. Their goal of the programs is to make the court system a last resort.¹³

In Minnesota, through a group of participating local police departments they have implemented the Northern Star Juvenile Diversion Program which provides youthful offenders with a positive alternative to the court system.¹⁴

Bosie, Idaho conducted a study to determine how effective a new diversion program would be. Ultimately their findings determined that the diversion program studied processed more juveniles at a lower cost than the other treatment groups. Furthermore, it reduced the case load of the magistrate court system allowing

⁸ Id. at 6-7

⁹ Office of Juvenile Justice and Delinquency Prevention, *Connecticut Families with Service Needs 2* available at <http://www.kidscounsel.org/OJJDP%20CT%20FWSN.pdf> (last visited Jun. 9, 2010).

¹⁰ Id.

¹¹ Id.

¹² Hon. Donald E. Shelton, *An Evaluation of Status Offense Diversion Program in the Juvenile Court of Washtenaw County, Michigan* 9 available at http://works.bepress.com/cgi/viewcontent.cgi?article=1007&context=donald_shelton (last visited Jun. 9, 2010).

¹³ Blueprint for Kentucky’s Youth, *Reducing the Use of Detention for Status Offenses in Kentucky* 5 (2009) http://www.kyyouth.org/documents/09brief_StatusOffensesFinal2.pdf (last visited Jun. 9, 2010).

¹⁴ The Northern Star Juvenile Diversion Program, available at <http://www.juvenilediversion.org/Program/tabid/265/language/en-US/Default.aspx> (last visited Jun. 9, 2010).

it to deal with more serious cases. These findings have led to the juvenile diversion program being expanded.¹⁵

In New Mexico, the legislature recently amended its statute making the state's social service agency, the Children Youth and Families Department (CYDF), the main agency accountable for responding to all status offenses.¹⁶

In 1993 Hawaii established an Adolescent Diversion program that diverts non-violent juvenile offenders and status offenders from being locked up in adult facilities at the time of their arrest. The program provides 24-hour crisis intervention, referral services, case management services, and helps youth access various other appropriate services.¹⁷

In 2007, Congress was set to begin to consider reauthorizing the JJDP Act. With reauthorization comes the opportunity to strengthen the Act's goals of deinstitutionalizing and increasing prevention and diversion service for status offenders. There is little information on what exactly congress has been doing, but the American Bar Association has made recommendations that diversion programs are considered as a mechanism for strengthening the Act.¹⁸

Models for Change is an organization working on reforming Juvenile Justice Systems across the country. They have begun an initiative with four different action networks dealing with various issues in the juvenile justice system. There are four core states participate in all Action Networks whereas the other 12 participating states are only working on one of the action networks. Maryland, Wisconsin, Kansas, North Carolina are participating in the Disproportionate Minority Contact Action Network; California, Florida, Massachusetts, New Jersey are participating in the Juvenile Indigent Defense Action Network; and Connecticut, Colorado, Ohio, Texas are participating in the Mental Health/Juvenile Justice Action Network.¹⁹

¹⁵Steven Patrick & Robert Marsh, Department of Sociology-Boise State University, *Juvenile Diversion: Results of a Three Year Experimental Study 7* (2005) available at http://scholarworks.boisestate.edu/cgi/viewcontent.cgi?article=1002&context=sociology_facpubs (last visited Jun. 9, 2010).

¹⁶ N.M. Stat. Ann. § 32A-3A-1, *et. seq* (West 2005).

¹⁷ National Center for Juvenile Justice-State Juvenile Justice Profiles, Hawaii, available at <http://70.89.227.250:8080/stateprofiles/profiles/HI06.asp> (last visited Jun. 9, 2010).

¹⁸ American Bar Association-House of Delegates Recommendation, *see attached*

¹⁹Models for Change: Systems Reform in Juvenile Justice, available at <http://www.modelsforchange.net/about/States-for-change.html?tab=states> (last visited Jun. 9 2010).

**AMERICAN BAR ASSOCIATION
ADOPTED BY THE HOUSE OF DELEGATES
August 13-14, 2007**

RECOMMENDATION

RESOLVED, That the American Bar Association urges state, local, territorial, and tribal jurisdictions to pass laws and support policies and programs that divert alleged juvenile status offenders from court jurisdiction that:

- (1) Mandate the development and implementation of targeted evidence-based programs that provide juvenile, family-focused, and strength-based early intervention and pre-court prevention services and treatment to alleged juvenile status offenders and their families; and
- (2) Promote the development of gender-responsive programs, treatment, and services for alleged juvenile status offenders.

FURTHER RESOLVED, That the American Bar Association urges Congress to make the availability of federal funds contingent on compliance with the following requirements related to juvenile status offenders:

- (1) Articulate minimum guidelines with which states, territories, and tribal jurisdictions must comply in implementing early intervention and diversion programs for alleged juvenile status offenders. These programs should be evidence-based, gender-responsive, family and youth-focused and attempt to exhaust voluntary treatment and services to avoid court involvement and out-of-home placement;
- (2) Expand and support the ability of state, local, territorial, and tribal youth-serving social service agencies to be a timely first responder to situations involving juvenile status offenders and provide effective services and treatment to both alleged and adjudicated juvenile status offenders; and
- (3) Promote community-based services to alleged and adjudicated status offenders and families in their homes, communities, or in respite, foster, group, or staff-secure settings, if necessary for the protection and safety of the juvenile.

REPORT

ABA Youth at Risk Initiative and Relevant ABA Policy

In August 2006, American Bar Association (ABA) President Karen Mathis launched the ABA Youth at Risk Initiative geared towards youth ages 13 to 19 who are at risk of entering juvenile and criminal justice systems. The initiative has focused on, among other things, better ways to serve juvenile status offenders, meet the needs of youth aging out of foster care, and assure meaningful participation by youth in court proceedings.

For example, the President's ABA Commission on Youth at Risk (Commission) and other ABA entities have sponsored several CLE events relating to juvenile status offense legislative and policy reform. In August 2006, the ABA Criminal Justice Section sponsored a CLE on truancy prevention. In January 2007, the Commission, with the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention and the U.S. Department of Health and Human Services, Family and Youth Services Bureau sponsored the first ever videoconference on addressing the needs of juvenile status offenders and their families. In February 2007, the Commission sponsored an ABA Presidential Showcase CLE program at the ABA midyear meeting entitled "Juvenile Status Offenders: What's the Right Approach?" In each of these programs the Commission and other entities, through panels of experts, explored the salient legal, judicial, and social service issues facing juvenile status offenders as well as promising policies, programs, and legislative approaches.

The ABA has long supported laws that encourage the enhancement of services to youth and families and promoted the use of community-based alternatives to court intervention. Beginning with the IJA/ABA *Juvenile Justice Standards* of the 1970s, the Association has frequently been on record in supporting progressive reforms aimed at children and youth.

For example, in 1979, the *Standards Relating to Youth Service Agencies* called for "delivery of needed services to juveniles in the community and their families," including juveniles diverted from the courts. They called for "developing . . . needed resources to provide effective services" within a comprehensive, coordinated services system (Standard 2.1). In February 1984, the ABA House of Delegates urged "members of the legal profession, as well as state and local bar associations, to respond to the needs of children by directing attention to issues affecting children including ... the needs of children who have no effective voice of their own in government . . . [and] implementation of statutory and programmatic resources to meet the health and welfare needs of children." In August 1995, the House called for state legislatures and courts to "assist in the formation and expansion of diversion programs," such as youth courts. And in August 1996, the House encouraged courts to "ensure that counseling, treatment, advocacy and other assistance are made available to child victims of abuse and domestic violence through all available means."

More recently, in August 2006, the House of Delegates approved a recommendation urging state, territorial, and tribal governments to ensure that "community mental health systems serving youth are reinvigorated and significantly expanded to provide greater access to troubled youth and their caretakers." This resolution also urged governments to assure that adequate services are made readily available to at-risk youth by ensuring that treatment and services are provided by "appropriate juvenile justice and child welfare intervention systems without the necessity or requirement of courts exercising jurisdiction over or adjudicating them."

The ABA has also long spoken out on the importance of reauthorizing the federal Juvenile Justice and Delinquency Prevention Act (JJDP Act), making recommendations specific to the Act's treatment of juvenile status offenders. In February of 1992 and again in August of 1995, the House of Delegates supported the reauthorization of the JJDP Act, so long as the reauthorization included, among other things, an "elimination of waivers for States which did not comply with the Act's objectives" and "a prohibition on the secure confinement of status offenders."

Background

A juvenile status offense is conduct by a minor that is unlawful because of the minor's age. An adult may legally engage in the same acts that are considered a public offense if performed by a minor. Common examples of status offenses include running away from home, chronic truancy, alleged out-of-control or incorrigible behavior, alcohol possession, or curfew violations.

In 2004, over 400,000 youth were arrested or held in limited custody by police because of a status offense. This number represented approximately 18% of all juvenile arrests that year.²⁰ The most recent national estimates regarding all status offense court petitions were collected in the mid-1990s. In 1996, 162,000 status offense cases were formally processed.²¹ From 1987 to 1996, the total number of court petitioned juvenile status offense cases increased 101%.²²

Until the mid-1970's, the juvenile delinquency system was responsible for youth who committed status offenses. As a consequence, this population was subject to all dispositional or probationary options applied to delinquents. A court could place a chronically truant youth in the same secure detention facility as a violent repeat juvenile offender. Concerned about the short and long-term effects of placing youth engaged in noncriminal status behaviors into secure detention, several states enacted legislation replacing the status offender label with more innocuous terms like "child in need of services" and implementing initial social service responses. Other states, such as Pennsylvania, altered their definitions of child neglect or dependency to include youth who engage in status offenses.

In 1974, Congress reacted to and further encouraged the states' trend of decriminalizing status offenses by enacting the Juvenile Justice and Delinquency Prevention Act (JJDP Act). Under the Act, to receive federal money, states were prohibited from, among other things: (1) placing noncriminal status offenders in secure facilities; and (2) allowing contact between juvenile and adult criminal offenders. In 1980, the Act was amended to allow courts to place status offenders in secure confinement if they

²⁰ *OJJDP Statistical Briefing Book*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2006.
<<http://ojjdp.ncjrs.gov/ojstatbb/crime/qa05101.asp?qaDate=2004>>.

²¹ Snyder, Howard N. and Melissa Sickmund. Chapter 6 in *Juvenile Offenders and Victims: 1999 National Report*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 1999. <<http://www.ncjrs.gov/html/ojjdp/nationalreport99/toc.html>> (The U.S. Department of Justice issued a new version of *Juvenile Offender and Victims* in 2006. It did not include new national estimates on the number of petitioned status offense cases).

²² *Ibid*. On January 16, 2007, the National Center for Juvenile Justice released an OJJDP briefing paper that found that the number of court petitioned juvenile status offenses cases more than doubled between 1985 and 2004. The briefing paper did not include an estimate of the total number of court cases petitioned for any year after 1996. Puzzanchera, Charles. *Trends in Justice System's Response to Status Offending: OJJDP Briefing Paper*. Pittsburgh, PA: National Center for Juvenile Justice, 2007 (prepared for the U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention).

violated a valid order of the court. This amendment is commonly referred to as the “Valid Court Order Exception.”

About 30 years have passed since the JJDP Act was first enacted. Today, surveying the national landscape of status offense systems is not easy.²³ Approximately two-thirds of the states have a separate legislative category for status offenders or children or juveniles in need of supervision, services, or care. There are, however, significant variations in how states approach status offense cases, despite a commonly expressed state goal – to preserve families, ensure the safety of the public, and prevent youth from entering the delinquency or criminal system.

Some state legislatures have *increased* the upper age by which youth may be brought into the status offense system, others have *increased* the use of residential placements for alleged status offenders, while several states have *restricted* access to a more formal court process by emphasizing the provision of community-based and in-home services for families and youth prior to any court involvement.

Juvenile status offenders are at high risk to enter the juvenile and criminal justice systems and research has clearly linked involvement in the juvenile status offense system with later delinquency.²⁴ Many of these youth are faced with a myriad of complex problems: abuse, neglect, high family conflict and domestic violence; desperately poor and violent neighborhoods; serious mental health needs, learning disabilities, emotional or behavioral problems; gangs; bad peer group choices; and poor educational and employment options.

Often they are brought before the court by their parents, not because they committed an act of delinquency but because their troubles include such things as chronically running away from home, being allegedly out of control or repeatedly missing school. These behaviors may signal that a youth is in critical need of assistance, and that appropriate service-focused interventions may significantly help curtail future delinquency and involvement in the criminal justice system.

In 2007, Congress will begin to consider reauthorizing the JJDP Act. With reauthorization comes the opportunity to strengthen the Act’s goals of deinstitutionalizing and increasing prevention and diversion service for status offenders.

Mandating Pre-Court Diversion Services

The first part of this recommendation urges states to pass laws and support policies and programs that divert alleged juvenile status offenders from court jurisdiction by requiring the development and implementation of evidence-based programs²⁵ that provide family-focused and strength-based pre-court interventions to alleged status offenders. The second part of this recommendation also calls upon the Congress to articulate, through the JJDP Act, minimum guidelines by which states must comply to implement early intervention and diversion programs for alleged

²³ See generally, Maxson, Cheryl L. and Malcolm W. Klein. Chapter 4 in *Responding to Troubled Youth*. New York, NY: Oxford University Press, 1997. (conducting a legislative analysis of state juvenile codes as of 1987 to determine whether state status offense laws were treatment, deterrence, or normalization oriented).

²⁴ See, e.g., Henry, K. and Huizinga, D. “Effect of Truancy on Onset of Drug Use and Delinquency.” Presented at Annual Meeting of American Society of Criminology, November, 2005.

²⁵ “Evidence-based” prevention, intervention, and treatment programs for youth and their families are resources that have been carefully evaluated to determine their long-term positive outcomes.

juvenile status offenders. These recommendations intend to promote the development of laws, policies, and programs that decrease the number of status offenders who fall deeper into the criminal and juvenile justice systems by providing them with proven pre-court diversion services that remedy their noncriminal misbehaviors and are tailored towards their needs and the needs of their families.

Underlying the JJDP Act is the premise that “juvenile status offenders generally are inappropriate clients for the formal police, courts, and corrections process of the juvenile justice system. [Rather] these children and youth should be channeled to those agencies and professions which are mandated and in fact purport to deal with the substantive human and social issues involved in these areas.”²⁶ But the Act is silent on the degree to which states may or should use these agencies and professionals to respond to status offenders and their families. Instead, the Act only broadly directs states receiving grants to provide services to keep youth, including status offenders, in their communities, and encourages the use of probation officers to achieve this aim.²⁷ This lack of federal guidance has led to disparate approaches between states, often to the detriment of youth, as states struggle to address their increasing juvenile status offense populations.

For example, many states respond to the Act’s requirements by permitting some alleged status offenders a period of “informal adjustment,” or time to correct their misbehavior. These states permit the filing of a formal court petition if the adjustment period, which may include the provision of services or the creation of a behavior modification contract with the youth, does not end the status offense behavior within a set time frame. Many systems that use under-staffed probation supervision without a therapeutic component often find that the supervision only delays court petitions instead of preventing them. Rather than sharing responsibility, these systems mix social service or probation diversion with eventual family court involvement resulting in diversion providers and courts blaming each other when neither response results in positive outcomes for families.

Several states, however, require pre-court diversion services for status offenders and their families. These statutory mandates emphasize programs that prevent youth from being placed out-of-home and offer family-focused, strength-based services²⁸ that enable families to handle future parent-teen conflicts without public intervention. They also identify which agency must respond to status offenses, how they are to respond, who will pay, and/or who will evaluate the process to assure positive and cost-effective outcomes. Although these statutes vary, a common theme resonates in their implementation: when safety is not at issue, *helping families resolve their problems internally creates better outcomes for teens and parents*. The first part of this recommendation promotes the broader implementation of these successful approaches.

For example, legislation in states like Florida, Illinois, New Jersey, and New York show that offering family-focused community services enables families to handle conflicts without court involvement. In Florida all status offense cases are first referred to voluntary pre-court prevention services. Only if these services fail will the designated status offense agency contemplate whether court involvement is appropriate.²⁹

²⁶ Report on S. 821 (report No. 93-1011) Senate Committee on the Judiciary (July 16, 1974).

²⁷ 42 U.S.C. 5633 (2006).

²⁸ Rather than focus on ‘what’s wrong,’ a strengths-based approach identifies the positive resources and abilities that children and families have.

²⁹ Fla. Stat. Ann. §§ 984.04 (1), 984.10, 984.12, 984.15 (2) (West 2006).

Similarly, New York's status offense statute outlines the procedural prerequisites for court involvement. In New York, courts cannot accept a status offense petition unless the petitioner already participated in diversion services. New York requires the lead status offense agency to, among other things, convene a conference with the individual(s) seeking to file a status offense petition to discuss providing diversion services before filing and document attempts to engage the family in targeted community-based services. In New York, a status offense petition can *only* be filed if the lead agency states it terminated diversion services because there was "no substantial likelihood that the youth and his or her family will benefit from further attempts . . ."³⁰

When family-focused pre-court diversion services are offered, status offense court petitions drop. For example, New Jersey's status offense diversion program received 7,713 referrals in 2004. Of those, 7,395 cases were disposed of or closed after crisis intervention services were offered. During 2004, only 484 juvenile-family crisis (status offense) petitions were filed.³¹ A 2005 study by the Vera Institute of Justice found that New York City's status offense diversion program cut the number of status offense court referrals. Comparing the number of cases filed before and after the implementation of the diversion program, the number of cases filed post-program with the Department of Probation dropped 79% and the number of court referrals dropped 55%.³²

Providing pre-court diversion services that are family-focused also decreases: (1) the time youth spend in out-of-home care and (2) the number of youth placed out-of-home. For example, in Florida, the average stay in an out-of-home setting for a status offender was 11 days in fiscal year 2003-2004.³³ In fiscal year 2005-2006, 74% of youth placed out-of-home by Cook County, Illinois' largest status offense diversion program were reunited with family within 14 days of entering care. In addition, during that time, 67% of youth served by that program did not require out-of-home placement.³⁴

Pre-court diversion services for status offenders also saves money by keeping more youth at home or in relative care instead of costlier out-of-home placements. In addition, if diversion efforts prevent even a small percentage of at-risk youth from entering the delinquency system, states save money. For example, a 2001 study found that if the state of Florida prevented *only* 10% of its most at-risk status offenders from committing a delinquent act, the state would save over \$10 million dollars in 12 months.³⁵

³⁰ N.Y. Family Court Act § 735 (McKinney 2006) (Under New York law, diversion services may continue as long as needed to preserve families and prevent youth from engaging in risky behaviors).

³¹ New Jersey Administrative Office of the Courts, Family Practice Division. *Crisis Intervention Unit Report—Statewide Total, January 1, 2004—December 31, 2004* (provided by the New Jersey Administrative Office of the Courts, Family Division).

³² Shubik, Claire and Ajay Khashu. *A Study of New York City's Family Assessment Program*. New York, NY: Vera Institute of Justice, 2005. <http://www.vera.org/publication_pdf/323_595.pdf>.

³³ Florida Department of Juvenile Justice. *2006 Outcome Evaluation Report*. Tallahassee, FL: Department of Juvenile Justice, 2006, 12-36, Prevention and Victim Services Appendix. <http://www.djj.state.fl.us/Research/OE/2006/2006_OE.pdf>.

³⁴ Youth Outreach Services. *Youth Outreach Services CCBYS FY2007 Program Plan*. Chicago, IL: Illinois Department of Human Services, Bureau of Youth Services and Delinquency Prevention, 2006.

³⁵ Horkan, Louise. "Assessment of Prevention Services of Florida Network of Youth and Family Services." Tallahassee, FL: Florida Tax Watch, 2001, 29. <<http://www.floridataxwatch.org/resources/pdf/092001assessmentOfPreventionServices.pdf>>.

Finally, states that offer pre-court diversion services for status offenders decrease the number of youth who re-enter status offense systems and delinquency or criminal systems. In fiscal year 2003-2004, only 7% of Florida status offenders who completed nonresidential services and 15% who completed out-of-home services committed a delinquent or criminal offense within six months.³⁶ In fiscal year 2005-2006, 90% of the youth served by temporary shelters affiliated with Cook County, Illinois' largest status offense diversion program did not recidivate.³⁷

Promoting Gender-Specific Services

The first and second parts of this recommendation also urge federal and state laws to promote the development of gender-responsive programs, treatment, and services for alleged and adjudicated juvenile status offenders. Despite a rise in the number of adjudicated female status offenders, there has been little legislative action to support programs that provide gender-responsive services to females and males. The JJDP Act³⁸ and state status offense legislation should promote gender-responsive services for youth at risk of entering the status offense system and adjudicated status offenders.

Girls are one of the fastest growing groups in the juvenile justice system.³⁹ Over the last few decades juvenile arrest rates for girls have risen approximately 35%.⁴⁰ The status offense system is seeing similar and alarming rises in the number of girls who are petitioned as status offenders. The most recent statistics on petitioned status offense cases found that 61% of all petitioned runaway cases were female.⁴¹ Females comprise almost half of other major status offense categories.⁴² Recent statistics also show that female status offenders are held in custody two times longer than male offenders and they are more likely than females accused of delinquent behaviors to be held in custody.⁴³

Research shows that girls who are physically or sexually abused are at higher risk for engaging in risky behaviors that may lead to delinquency.⁴⁴ These traumatic events or other family dysfunction negatively impact and may diminish a girl's healthy development and transition into adulthood.

³⁶ Florida Department of Juvenile Justice, 2006, Prevention and Victim Services Appendix.

³⁷ Youth Outreach Services, 2006.

³⁸ See 42 U.S.C. § 5633(a) (7) (B) (West 2006) (Title II of the JJDP Act mandates that states have a plan for "providing needed gender-specific services for the prevention and treatment of juvenile delinquency").

³⁹ American Bar Association and National Bar Association. *Justice by Gender: The Lack of Appropriate Prevention, Diversion and Treatment Alternatives for Girls in the Justice System*. Washington, DC: ABA and NBA, 2001, 1. <<http://www.abanet.org/crimjust/juvjus/justicebygenderweb.pdf>>

⁴⁰ Snyder, Howard N. "Juvenile Arrests 2000." *Juvenile Justice Bulletin*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, November 2002. <http://www.ncjrs.gov/html/ojjdp/jjbul2002_11_1/contents.html>.

⁴¹ Snyder, Howard N. and Melissa Sickmund. *Juvenile Offenders and Victims: 2006 National Report*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2006, 191. <<http://ojjdp.ncjrs.org/ojstatbb/nr2006/index.html>>.

⁴² *Ibid.*

⁴³ Snyder, 2006, 206-217.

⁴⁴ Greene et al. with the Northwest Regional Education Laboratory. *Guiding Principles for Promising Female Programming: An Inventory of Best Practices*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice Delinquency Prevention, 1998, Chapter 1. <<http://ojjdp.ncjrs.org/pubs/principles/contents.html>>.

Common experiences between girls who enter the justice or status offense systems include histories of victimization, family turmoil, mental health disorders, and poor school records.⁴⁵

However, when girls enter the status offense system due to behavior (such as aggression towards caregivers or running away) resulting from prior abuse, they face a law enforcement and judicial system that struggles to meet their needs. They are detained longer than males who show the same behaviors and even their female counterparts in the delinquency system. In addition, once a girl is adjudicated a status offender, few programs are geared to meet her specific treatment and service needs in disposition, especially regarding prior victimization and trauma.

Many states need to ensure, through policy and legislation, that youth in the status offense system receive appropriate gender-responsive services. A few states, such as Connecticut, Oregon, and Minnesota, have enacted legislation that respond to the above research findings and promote gender-responsive services, treatment, and programs for females; only Oregon, however, includes gender-responsive services that may be offered to status offenders.⁴⁶ These statutes share common themes, in that they support gender-responsive services that offer rehabilitative treatment regarding prior victimization, physical and sexual abuse, and dependency issues (e.g., drug dependency) and develop and implement rehabilitative treatment and services specific to females that are customized to the offenses females generally commit.

Supporting the Use of Social Service Agencies as a First Responder

The second part of this recommendation also urges Congress to expand the use of child-serving or social service agencies to first respond and provide services and treatment to alleged and adjudicated juvenile status offenders. Currently, the JJDP Act encourages states to expand their use of probation officers “particularly for the purpose of permitting nonviolent juvenile offenders (including status offenders) to remain at home with their families as an alternative to incarceration or institutionalization.”⁴⁷ The Act does not speak to expanding or enhancing the use of other social service or child-serving agencies to also provide these intervention and alternative services.

As a result, many states designate the juvenile justice agency or probation department to respond to status offense as well as juvenile delinquency referrals. This practice raises inherent problems regarding whether juvenile justice agencies and probation departments, which are used to responding to criminal or delinquent behavior, are best suited to handle status or noncriminal offenses. In turn, some advocates argue that status offense referrals should be handled either by agencies that specialize in status offenses or by social service agencies that take a less punitive approach.⁴⁸

Moreover, many of the states that are successfully diverting youth from court systems and out-of-home placements are doing so by utilizing the expertise of agencies that are either devoted solely to working with juvenile status offenders and/or are social service agencies. Both of these types of

⁴⁵ *Justice by Gender*, 2002, 6-7.

⁴⁶ Conn. Gen. Stat. Ann. §§ 17a-6, 46b-121h, 46b-121k (West 2006); Minn. Stat. Ann. § 241.70 (West 2006); Or. Rev. Stat. §§ 417.270 (1), (2) (2006).

⁴⁷ 42 U.S.C. § 5633 (a) (9) (F) (i) (West 2006).

⁴⁸ Cf. Chiu, Tina and Sara Mogulescu. *Issues in Brief: Changing the Status Quo for Status Offenders: New York State's Efforts to Support Troubled Teens*. New York, NY: Vera Institute of Justice, Youth Justice Program, 2004. <http://www.vera.org/publication_pdf/253_496.pdf>.

agencies are often best equipped to provide non-coercive family-centered services and treatment. For example, in Florida, the Department of Juvenile Justice has contracted all status offense referrals to the Florida Network of Youth and Family Services, which only handles status offense cases. In New Mexico, the legislature recently amended its statute making the state's social service agency, the Children Youth and Families Department (CYDF), the main agency accountable for responding to all status offenses.⁴⁹ New York state law allows each county to decide, based on its needs and capabilities, whether to designate the child welfare agency or the probation department as the lead responder to status offense referrals.⁵⁰

Promoting In-Home and Community-Based Services

The second part of this recommendation also urges Congress to promote the use of non-residential and residential non-secure community-based alternatives, such as respite care and staff-secure shelters for juvenile status offenders. This part supports existing ABA policy that encourages Congress to prohibit the secure detention of juvenile status offenders. This part reinforces this policy by promoting home and community-based alternatives to detention. Research shows that punitive approaches, such as secure detention, are ineffective at reducing recidivism, stigmatize youth, and cost significantly more than pre-court diversion services, the latter of which results in better outcomes for youth and families.

In fact, clinical experts question whether secure confinement is *ever* appropriate for status offenders or those charged with nonserious offenses.⁵¹ These questions are bolstered by studies that have found community-based rehabilitative interventions, if done properly, are more effective in reducing recidivism, cost significantly less, and better promote maintaining the family unit. Studies show the most successful interventions include rehabilitative treatment that is intensive and sustainable over time.⁵² Expanded diversion and community-based alternatives could also help to address the issues of disproportionality and disparate outcomes for minority youth.

Moreover, a central and core requirement of the JJDP Act is to encourage states, through federal grants, to deinstitutionalize status offenders. The purpose of this provision, along with the Act's emphasis on pre-court diversion, is to segregate status offenders from delinquents, decrease isolation and stigmatization of status offenders, and encourage community-based responses for incorrigible, truant, and runaway youth.⁵³

In 1980, the issue of detaining status offenders was re-visited when some judges complained that the de-institutionalization mandate impaired their ability to enforce courts' authority to detain youth who disobeyed court orders. Based on these concerns, the JJDP Act was amended to permit secure detention of status offenders "who are charged with or who have committed a violation of a

⁴⁹ N.M. Stat. Ann. § 32A-3A-1, *et. seq* (West 2005).

⁵⁰ N.Y. Family Court Act § 735 (a) (McKinney 2006).

⁵¹ James, 2005.

⁵² *Ibid.*, 21-22; see also Quraishi, Fiza, Heidi J. Segal, and Jennifer Trone. *Respite Care: A Promising Response to Status Offenders at Risk of Court-Ordered Placements*. New York, NY: Vera Institute of Justice Youth Justice Program, Dec. 2002. <http://www.vera.org/publication_pdf/188_356.pdf> (arguing that the use of temporary respite care programs for alleged status offenders is a promising approach that can reduce the stigma associated with the status offense label, maintain the parent-youth relationship, and cost less than detention).

⁵³ 120 Cong. Rec. S13488 (July 25, 1974) (statement of Sen. Bayh).

valid court order.”⁵⁴ Today, there are two primary circumstances in which status offenders may be securely detained under the JJDP Act. First, status offenders can be held in a secure juvenile detention facility for up to 24 hours, exclusive of weekends and holidays, before an initial court appearance and for an additional 24 hours following that appearance. Second, status offenders can be securely detained pursuant to the valid court order exception.

Since the passage of the valid court order exception states that seek federal juvenile justice funding are left to sort out how, if at all, they wish to harmonize this sanctioned use of detention with the otherwise child-focused, supportive intent of the JJDP Act’s deinstitutionalization requirement. As a result, a significant minority of states simply prohibit the use of the valid court order exception, including but not limited to Iowa, Maryland, Massachusetts, New Jersey, New York and Pennsylvania.⁵⁵

These states recognize that the punitive features associated with placement in a secure juvenile detention center imply some wrongdoing on the youth’s part. A youth placed in this setting carries the stigma of being a “bad seed.” A youth adjudicated a “status offender” and placed in a detention center may be viewed or treated as a “delinquent,” despite the fact that s/he has not committed a delinquent offense. Moreover, where these youth are placed affects which services they receive to resolve the issues that brought them into public systems. Placing them in secure facilities increases the possibility of their engaging in antisocial behavior, while also limiting their access to interventions they may otherwise receive in the home and community.⁵⁶

In addition, placing these youth in out-of-home secure settings as a part of the status or delinquency system is simply ineffective at reducing recidivism. Research shows that punitive programs that remove a youth from his community and family make it harder to resolve his problems in the long term.⁵⁷ Studies also show high recidivism rates among youth placed in large secure facilities. In fact, studies from 2005, 1997, and 1996 show that between 50% and 70% of youth in large secure detention facilities are re-arrested within two years of release.⁵⁸

Despite a lack of empirical support showing detention deters juvenile crime or status offending behavior, a 2001 study found approximately one-third of youth held in juvenile detention centers were held for technical probation violations or status offenses.⁵⁹ In fact, the latest Census of Juveniles in Residential Placement indicates that on any given day in 2003, approximately 4,800 status offenders were in custody in a juvenile justice facility, accounting for 5% of juveniles in residential placement.

⁵⁴ Juvenile Justice Amendments of 1980, Pub.L. No. 96-509, 94 Stat 2750 (codified as 42 U.S.C. § 223(11)).

⁵⁵ Iowa Code Ann. § 232.2, *et. seq.*, Md. Cts. & Jud. Proc. Code Ann. § 3-8A-01, *et. seq.*, Mass. Gen. Laws. Ann. ch. 119, § 21, *et. seq.*, N.J. Stat. Ann. § 2A:4A-20, *et. seq.*, N.Y. Family Court Act § 712, *et. seq.*, 42 Pa. Cons. Stat. Ann. § 6302, *et. seq.*.

⁵⁶ Zatz, Julie. “Problems and Issues in Deinstitutionalization: Laws, Concepts, and Goals,” in *Neither Angels Nor Thieves: Studies in Deinstitutionalization of Status Offenders*. Edited by Handler, Joel F. and Julie Zatz. Washington, DC: National Academy Press, 1982; Weithorn, 2005, 1455.

⁵⁷ Sexton, Thomas and James Alexander. “Functional Family Therapy.” *Juvenile Justice Bulletin*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, December 2002.
<http://www.ncjrs.gov/html/ojjdp/jjbul2000_12_4/contents.html>.

⁵⁸ Austin, James, Kelly D. Johnson, and Ronald Weitzer. “Alternatives to the Secure Detention and Confinement of Juvenile Offenders.” *Juvenile Justice Bulletin*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, September 2005, 2-3.

⁵⁹ *Ibid.*, 1.

When including juvenile offenders in residential placement due to a technical violation (typically a violation of a valid court order), the number increases to nearly 19,000 (or 20% of youth in custody).⁶⁰

Finally, maintaining youth in these facilities is very costly. For example, Ohio's 2004 average daily population in juvenile facilities was 1,778. Offending youth who were housed in juvenile facilities remained there for, on average, 10 months with an average daily cost of \$158.46.⁶¹ Therefore, if one youth remained in an Ohio juvenile facility for 10 months, it would cost the state about \$47,538. In turn, to house 1,778 youth for 10 months would cost the state about \$84 million. Ohio statistics show that approximately 36%, or 640, of these youth would recidivate within six months of their release.⁶²

In 1995, Washington state passed the "Becca Bill," which allowed state officials to place alleged status offenders in secure or semi-secure facilities for treatment or detention.⁶³ "Within available funds," the bill supported establishing crisis residential centers (CRCs).⁶⁴ However, several years after the bill passed, Washington counties struggled to fund CRCs to respond to the increased number of status offense petitions. A comparison of pre and post Becca bill detention rates shows the number of youth placed in detention skyrocketed from 233 in 1994 to 2,085 in 1997—an increase of 835%.⁶⁵ With minimum financial support from the state, counties were spending thousands of dollars to process status offense petitions and assure bed space for youth. Plus, with an average cost of \$100 per day per youth in detention, in fiscal year 1997-1998, it was estimated that taxpayers spent \$11 million to ensure bed space at CRCs.⁶⁶ Without state support, counties were forced to reallocate funds to comply with the bill; some counties began to send bills to the state and several other counties filed suit demanding reimbursement from the state.⁶⁷

Conclusion

In February 2006, then ABA President-Elect Karen Mathis held a planning conference for her Youth at Risk Initiative. Sixty child welfare and juvenile justice experts participated in the conference and recommended that the ABA encourage the passage of laws that:

Mandate pre-petition/pre-court services for youth and families on the verge of entering the status offense system, to avoid

⁶⁰ Sickmund, Melissa, T.J. Sladky and Wei Kang. *Census of Juveniles in Residential Placement Databook*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2005. <<http://www.ojjdp.ncjrs.org/ojstatbb/cjrp>>.

⁶¹ Ohio Department of Youth Services. *Annual Report Fiscal Year 2004*. Columbus, Ohio, 2004. <<http://www.dys.ohio.gov/PDF/FY%202004%20Annual%20Report.pdf>>.

⁶² *Ibid.*

⁶³ Wash. Rev. Code §§ 13.32A.010, 13.32A.050 (West 2006).

⁶⁴ *Ibid.*, § 13.32A.010.

⁶⁵ Pitman, Mistee. "The Becca Bill: A Step Towards Helping Washington Families." *Gonzaga Law Review* 34, 1998-1999, 385, 405.

⁶⁶ *Ibid.*, 414.

⁶⁷ *Ibid.*, 387; see also Burley, Mason and Jim Mayfield. *At-Risk and Runaway Youth in Washington State: Outcomes for Youth Admitted to Secure Crisis Residential Centers and Mandatory Chemical Dependency Treatment*. Olympia, WA: Washington State Institute for Public Policy, 2001. <<http://www.wsipp.wa.gov/rptfiles/AtRiskRunawayYouthWA.pdf>>; Aos, Steve. *Costs and Benefits of Prevention and Early Intervention Programs for At-Risk Youth: Interim Report*. Olympia, WA: Washington State Institute for Public Policy, 2003. <<http://www.wsipp.wa.gov/rptfiles/ARYinterim.pdf>>.

unnecessary judicial and state child protection or juvenile justice agency involvement that could stigmatize youth unnecessarily; and

Repeal the “valid court order” provisions of federal and state laws, which provide for status offenders to be treated as delinquents and housed in secure detention and confinement settings after a judge’s finding that a prior order was violated by the youth. Instead there should be statutory authority for the development and expansion of community-based residential alternatives for such youth.

This recommendation is a step towards achieving these goals. Some state legislators have taken action and proven the benefits associated with pre-court diversion programs for juvenile status offenders. However, there needs to be more federal guidance to states regarding the provision of pre-court interventions. It is time for the ABA to again support the reauthorization of the JJDP Act, but to do so with concrete suggestions on how the federal government and states can better respond to the issues and problems facing juvenile status offenders and their families. With the impending reauthorization of the JJDP Act this year, the ABA is poised to make a significant impact on how the federal, state, and local governments respond to juvenile status offenders and improve outcomes on their behalf.

Respectfully submitted by Dwight Smith
Chairperson, ABA Commission on Youth At Risk
August 2007

GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

Submitting Entity: Commission on Youth At Risk

Submitted By: Dwight Smith, Chair

1. Summary of Recommendation(s).

This recommendation encourages states and the federal government to pass laws that require the provision of evidence-based pre-court diversion and early intervention services for youth who are alleged to commit status offenses, such as truancy, ungovernability or running away. It also supports the use of in-home or community-based services as an alternative to secure detention.

2. Approval by Submitting Entity.

The Recommendation was tentatively approved by the Commission on Youth at Risk at its meeting on April 17, 2007 and was approved in its final form by a subsequent telephone and e-mail poll of members.

3. Has this or a similar recommendation been submitted to the ABA House of Delegates or Board of Governors previously?

No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

The ABA has long supported laws that encourage the enhancement of services to youth and families and promoted the use of community-based alternatives to court intervention. Beginning with the IJA/ABA *Juvenile Justice Standards* of the 1970s, the Association has frequently been on record in supporting progressive reforms aimed at children and youth.

For example, in 1979, the *Standards Relating to Youth Service Agencies* called for “delivery of needed services to juveniles in the community and their families,” including juveniles diverted from the courts. They called for “developing . . . needed resources to provide effective services” within a comprehensive, coordinated services system (Standard 2.1). In February 1984, the ABA House of Delegates urged “members of the legal profession, as well as state and local bar associations, to respond to the needs of children by directing attention to issues affecting

children including ... the needs of children who have no effective voice of their own in government . . . [and] implementation of statutory and programmatic resources to meet the health and welfare needs of children.” In August 1995, the House called for state legislatures and courts to “assist in the formation and expansion of diversion programs,” such as youth courts. And in August 1996, the House encouraged courts to “ensure that counseling, treatment, advocacy and other assistance are made available to child victims of abuse and domestic violence through all available means.”

More recently, in August 2006, the House of Delegates approved a recommendation urging state, territorial, and tribal governments to ensure that “community mental health systems serving youth are reinvigorated and significantly expanded to provide greater access to troubled youth and their caretakers.” This resolution also urged governments to assure that adequate services are made readily available to at-risk youth by ensuring that treatment and services are provided by “appropriate juvenile justice and child welfare intervention systems without the necessity or requirement of courts exercising jurisdiction over or adjudicating them.”

The ABA has also long spoken out on the importance of reauthorizing the federal Juvenile Justice and Delinquency Prevention Act (JJDP Act), making recommendations specific to the Act’s treatment of juvenile status offenders. In February of 1992 and again in August of 1995, the House of Delegates supported the reauthorization of the JJDP Act, so long as the reauthorization included, among other things, an “elimination of waivers for States which did not comply with the Act’s objectives” and “a prohibition on the secure confinement of status offenders.”

5. What urgency exists which requires action at this meeting of the House?

The Juvenile Justice and Delinquency Prevention Act (42 U.S.C. § 5601, *et. seq*) is up for reauthorization in 2007 and will likely be considered by Congress in the fall.

6. Status of Legislation. (If applicable.)

The Juvenile Justice and Delinquency Prevention Act (42 U.S.C. § 5702, *et. seq*) is up for reauthorization in 2007 and will likely be considered by Congress in the fall. This resolution encourages Congress to tie federal funding under the Act to states’ compliance with several requirements specific to the treatment of juvenile status offenders.

7. Cost to the Association. (Both direct and indirect costs.)

None.

8. Disclosure of Interest. (If applicable.)

The Report and Recommendation is co-sponsored by the Commission on Homelessness and Poverty. There is no known opposition at this time.

9. Referrals. (List entities to which the recommendation has been referred, the date of referral and the response of each entity if known.)

This recommendation and report were referred to the following entities on May 4, 2007:
Commission on Homelessness and Poverty (agreed to co-sponsor on May 7, 2007).
Commission on Domestic Violence (agreed to support on May 14, 2007)
Criminal Justice Section
Family Law Section (agreed to support on May 8, 2007)
Commission on Women in the Profession
Commission on Ethnic and Racial Diversity in the Profession
Individual Rights and Responsibilities
Commission on Mental and Physical Disability Law
National Association of Women Lawyers

10. Contact Person. (Prior to the meeting. Please include name, address, telephone number and email address.)

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11. Contact Person. (Who will present the report to the House. Please include email address and cell phone number.)

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