National Standards for the Care of Youth Charged with Status Offenses

Coalition for Juvenile Justice | SOS Project

Safety, Opportunity & Success (SOS): Standards of Care for Non-Delinquent Youth

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ABOUT THE COALITION AND THE SOS PROJECT

The Coalition for Juvenile Justice (CJJ) is a nationwide coalition of State Advisory Groups (SAGs) and allies dedicated to preventing children and youth from becoming involved in the courts and upholding the highest standards of care when youth are charged with wrongdoing and enter the justice system. CJJ envisions a nation where fewer children are at risk of delinquency; and if they are at risk or involved with the justice system, they and their families receive every possible opportunity to live safe, healthy, and fulfilling lives.

The CJJ "Safety, Opportunity & Success (SOS): Standards of Care for Non-Delinquent Youth," ("SOS Project") is a multi-year partnership that engages State Advisory Group (SAG) members, judicial leaders, practitioners, service providers, policymakers, and advocates. The SOS Project aims to guide states in implementing policy and practices that divert status offenders from the courts to family- and community-based systems of care that more effectively meet their needs. The SOS Project also seeks to eliminate the use of locked confinement for status offenders and other non-delinquent youth.

To accomplish this goal, the SOS Project develops tools, resources, and peer leadership to help key stakeholders reform the treatment of youth at risk for and charged with status offenses in their juvenile justice systems. The project builds on more than two decades of CJJ leadership to advance detention reform and promote detention alternatives that better serve court-involved youth, including youth charged with status offenses.

The SOS Project is made possible with the generous support of CJJ's 1,800 members nationwide and the Public Welfare Foundation. For more information about CJJ, visit our website at www.juvjustice.org.

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INTRODUCTION

Since the 1970s, local and state courts, as well as state and federal policymakers, have sought to distinguish youth who commit delinquent offenses from youth who commit status offenses. Status offenses are non-delinquent/non-criminal infractions that would not be offenses but for the youth's status as a minor. This includes running away, failing to attend school (truancy), alcohol or tobacco possession, curfew violations, and circumstances where youth are found to be beyond the control of their parent/guardian(s), which some jurisdictions call "ungovernability" or "incorrigibility."

Status offenses are often symptomatic of underlying personal, familial, community, and systemic issues, as well as other, often complex, unmet, and unaddressed needs. Issues that underlie status offense allegations are especially acute for minority youth and adolescent girls.[1] Minority youth identified as status offenders are more likely to have their cases formally petitioned to court than similarly-situated white youth.[2] Research also shows that girls accused of status offenses are petitioned to court more often and detained twice as long as boys.[3]

Until the mid-1970s, it was common for the juvenile delinquency system to handle status offense cases. Therefore, children were subject to all dispositional or probationary options applied to delinquent youth, including incarceration. Concerned about the short and long-term effects of detaining and institutionalizing non-delinquent youth, many states began implementing different social service responses. A handful of states altered their definitions of child neglect or dependency to include status offenses.

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[1] Arthur, P.J. & Waugh, R. (2009). "Status Offenses and the Juvenile Justice and Delinquency Prevention Act: The Exception Swallowed the Rule." *Seattle Journal for Social Justice: Homeless Youth and the Law*. Vol. 7, Issue 2.

[2] Puzzanchera, C., Adams, B., & Sarah Hockenberry (2012). *Juvenile Court Statistics 2009*. Pittsburgh, PA: National Center for Juvenile Justice.

[3] *Id.*

In 1974, Congress affirmed and further encouraged state trends toward decriminalizing status offenses by enacting the Juvenile Justice and Delinquency Prevention Act (JJDPA) which, among other things, established the Deinstitutionalization of Status Offenders (DSO) core requirement. In keeping with the DSO core requirement, states receiving federal grants under the JJDPA agreed to prohibit the locked placement of youth charged with status offenses and reform their systems so that youth at risk for, or charged with status offenses and their families would receive family-and community-based services. In the early years of the JJDPA, between 1974 and 1980, the number of court referrals for status offenses decreased 21% and status offender detentions decreased 50 percent.[4]

The lines, however, between the delinquency system and the status offense system remained blurred and judges and court services professionals expressed concerns that apart from locked confinement there were few dispositional options for youth who commit status offenses. Thus, in 1980, a valid court order (VCO) exception was added to the JJDPA, giving judges the authority to "bootstrap" status offenders into the delinquency system and place them in secure confinement if they violated a valid order of the court, i.e., attend school regularly or be home by a certain time.[5]

Today, according to the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP), the vast majority of the 56 U.S. states and territories are in compliance with the DSO core requirement, and current detention numbers are drastically fewer than the hundreds of thousands of youth who were detained annually before implementation of the JJDPA.[6] Yet, every year, state and local policies and practice result in the locked detention of thousands of youth charged only with status offenses. In addition, more than half of U.S. states continue to allow use of the VCO exception to detain youth

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[4] Office of Juvenile Justice and Delinquency Prevention. (Fall/Winter 1995). "Deinstitutionalizing Status Offenders: A Record of Progress." *Juvenile Justice, II* (2). Washington, DC: U.S. Department of Justice.

[5] Bootstrapping is a practice whereby courts re-label status offenses as delinquent offenses or punish status offending behaviors with punishments otherwise reserved for delinquent youth.

[6] Unofficial data provided by the Office of Juvenile Justice and Delinquency Prevention.

charged with status offenses.[7] OJJDP currently reports approximately 12,000 annual uses of the VCO exception.[8]

Research and evidence-based approaches have proven that secure detention of status offenders is ineffective and frequently dangerous. Specifically, research has shown that:

- Detention facilities are often ill-equipped to address the underlying causes of status offenses.
- Detention does not serve as a deterrent to subsequent status-offending and/or delinquent behavior.
- Detained youth are often held in overcrowded, understaffed facilities—environments that can breed violence and exacerbate unmet needs.[9]
- Almost 20 percent of detained status offenders and other non-offenders (e.g., youth involved with the child welfare system) are placed in living quarters with youth who have committed murder or manslaughter and 25 percent are placed in units with felony sex offenders.[10]
- Placing youth who commit status offenses in locked detention facilities jeopardizes their safety and well-being, and may increase the likelihood of delinquent or criminal behavior.
- Removing youth from their families and communities prohibits them from developing the strong social networks and support systems necessary to transition successfully from adolescence to adulthood.[11]

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[7] Hornberger, N. G., (Summer 2010). "Improving Outcomes for Status Offenders in the JJDPA Reauthorization." *Juvenile and Family Justice Today*. Reno, NV: National Council of Juvenile and Family Court Judges. Available at: http://www.juvjustice.org/media/announcements/announcement_link_156.pdf.

[8] *Id.*

[9] Holman, B. & Ziedenberg, J. (2006). *The Dangers of Detention*. Washington, DC: Justice Policy Institute.

[10] Sedlak, A. J., & McPherson, K. S. (May 2010). "Conditions of Confinement: Findings from the Survey of Youth in Residential Placement." Washington, DC: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.

[11] Nelson, D. (2008). "A Road Map for Juvenile Justice Reform." *2008 National KIDS COUNT Data Book*. Baltimore, MD: Annie E. Casey Foundation.

Given that states and localities are primarily responsible for achieving the goals of the DSO core requirement, and that there is a well-supported movement to better respond to the unmet and complex needs of children and youth without court involvement or detention, the Coalition for Juvenile Justice joined forces with several national organizations and experts to develop the *National Standards for the Care of Youth Charged with Status Offenses* (*"National Status Offense Standards," "National Standards," or "Standards"*). The *Standards* aim to promote best practices, based in research and social service approaches, to better engage and support youth and families in need of assistance. Given what we know, the *National Standards* call for an absolute prohibition on the detention of status offenders and seek to divert them entirely from the delinquency system by promoting the most appropriate services for families and the least restrictive placement options for status offending youth. The *Standards* also promote uniform practice and policy across the states, as well as high quality and equitable services and representation for status offending youth and their families.

The *National Standards* build on the original intent of the JJDPA DSO core requirement, recent efforts to eliminate the VCO exception in Congress,[12] and the "safety, permanency and well-being" framework set forth in the Adoption and Safe Families Act of 1997 (ASFA).[13] Like ASFA's focus on the child's best interest, the *Standards* call for system responses that keep youth and their families' best interests at the center of the intervention. Individually and collectively, the *Standards* promote system reforms and changes in system culture, as well as the workforce needed to ensure adoption and implementation of empirically-supported policies, programs, and practices that effectively meet the needs of youth, their families, and the community.

To capitalize on the value of peer expertise, the *National Standards* were developed by the Coalition for Juvenile Justice (CJJ) in partnership with the

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[12] S. 3155, The Juvenile Justice and Delinquency Prevention Reauthorization Act of 2008. Available at http://www.gpo.gov/fdsys/pkg/BILLS-110s3155rs/pdf/BILLS-110s3155rs.pdf. S. 678, The Juvenile Justice and Delinquency Prevention Reauthorization Act of 2009. Available at: http://www.gpo.gov/fdsys/pkg/BILLS-111s678rs/pdf/BILLS-111s678rs.pdf.

[13] Adoption and Safe Families Act, 42 U.S.C. Section 1305, *et. seq.* (1997).

National Council of Juvenile and Family Court Judges (NCJFCJ) and a team of experts from various jurisdictions, disciplines and perspectives, including juvenile and family court judges, child welfare and juvenile defense attorneys, juvenile corrections and detention administrators, community-based service providers, and practitioners with expertise in responding to gender-specific needs (see Acknowledgements for list). Many hours were devoted to discussing, debating and constructing a set of ambitious yet implementable standards that are portable, easily understood, and designed to spur and inform state and local policy and practice reforms. Once drafted, CJJ invited review and input into the initial draft from additional key stakeholders, and secured several partnerships for the purpose of promoting and supporting the *Standards*' broad dissemination and implementation plan. (See http://juvjustice.org/our-work/safety-opportunity-and-success-project for complete list of involved leaders and organizations).

The *National Standards* aim to inspire and assist individuals responsible for how local and state systems respond on a macro- and micro-level to the needs of youth at risk for, or charged with status offenses and their families. The *Standards*' key audiences include policymakers, legislators, and systems design professionals, as well as day-to-day decision makers and practitioners working with youth who commit status offenses and their families. These audiences include the following, among others:

- Juvenile and family court judges and magistrates;
- State and local court administrators and court personnel;
- Case workers and supervisors, case intake workers, and probation staff;
- Prosecutors;
- Attorneys representing status offenders and guardians ad litem;
- Juvenile justice and child welfare administrators;
- Administrators of public and private residential facilities where status offenders are held;
- Public and private nonresidential community-based service providers;

- Mental health administrators and professionals;
- Educators, school administrators, school boards and guidance counselors;
- Runaway and homeless youth program staff;
- Law enforcement officers, including school resource officers; and
- Policymakers, state and local government officials, legislators, and state advisory boards.

To help each reader chart a path to implementation of each standard, the *National Standards* are organized to maximize understanding as follows:

- The Standard to be adopted is articulated in full – "the black letter."
- The need and underlying argument for the Standard is presented.
- One or more concrete practice or policy actions items are recommended that readers can take to advance and implement the Standard.

KEY PRINCIPLES

Section 1. Principles for Responding to Status Offenses

***Judicial, legal, law enforcement, justice, social service, and school professionals working with youth alleged to have committed status offenses and their families should*:**

1. Apply a child and family-centric approach to status offense cases by prioritizing child and family safety, well-being, and permanency for the child.
2. Understand and apply current and emerging scientific knowledge about adolescent development, particularly as it relates to court-involved youth.
3. Understand positive youth development principles and how they can be used to achieve better outcomes for court-involved youth.
4. Ensure that past trauma and other experiences, which may underlie or lead to status-offending behaviors, are identified and responded to with appropriate screening, assessment, treatment, services, and supports.
5. Implement a status offense system framework that promotes shared leadership and responsibility by encouraging youth engagement in court, agency, and other meetings affecting their case, safety, well-being, treatment services, and/or placement.
6. Utilize alternative dispute resolution strategies to resolve youth and family conflicts outside of the court system.
7. Employ family engagement strategies that identify and emphasize a family's strengths, and empower families to find and implement solutions outside of the court system.
8. Eliminate racial and ethnic disparities by being culturally aware and ensuring impartial and equal access to culturally-competent prevention and intervention services and treatment for youth charged with status offenses and their families.

9. Understand the developmental, behavioral, and social differences between boys and girls and how their service needs are accordingly different. Make gender-responsive choices regarding interventions, treatment, and services before, during, and following court involvement.
10. Ensure that lesbian, gay, bisexual, transgender, or questioning (LGBTQ) youth who are charged with status offenses receive fair treatment, equal access to services, and respect and sensitivity from all professionals and other youth in court, agency, service, school, and placement.
11. Ensure children do not enter the status offense system because of learning, mental health, sensory, speech/language, or co-occurring disabilities. Ensure that children with disabilities who do enter the status offense system are treated fairly and given access to needed evaluations, treatments, and services.
12. Coordinate with other relevant formal and informal systems of care to better serve children and families.

Section 2. Efforts to Avoid Court Involvement

Education, social service, community-based, child welfare, runaway and homeless youth, mental health, law enforcement, and juvenile justice systems should:

1. Aim to resolve all status offense matters through the provision of voluntary diversion services.
2. Determine the proper course of action by identifying the family circumstances, unmet needs, or other factors that led to contact with the status offense system.
3. Train professionals who first respond to alleged status offenses about family and community dynamics and other factors that can cause status behaviors, as well as the availability and role of screenings, assessments, and services.

Law enforcement systems should:

4. Focus on prevention and intervention by connecting children and families to needed services in lieu of charging or detaining children alleged to have committed status offenses.

Education systems should:

5. Implement responses to truancy that match the reasons youth are absent from school and that aim to avoid court involvement, school suspension, or expulsion.

Child welfare, juvenile justice, and runaway and homeless youth systems should:

6. Implement responses to alleged status behaviors that aim to avoid court involvement and are tailored to the reasons the youth and family have been referred to the child welfare, juvenile justice, or runaway and homeless youth system.

Court intake personnel should:

7. Not accept jurisdiction over any status offense case until it has been determined that the applicable statutory requirements were met and that the agency that first responded to the claim made reasonable efforts to avoid court involvement by exhausting all available, culturally appropriate pre-court assessments, services, entitlements, and treatments.

Section 3. Efforts to Limit Court Involvement

Judicial officers should:

1. Dismiss or, alternatively, stay proceedings when community-based services or other formal or informal systems approaches would circumvent the need for continued court jurisdiction.

2. Assess early whether the Indian Child Welfare Act (ICWA) applies.
3. Ensure youth charged with status offenses have independent, qualified, and effective representation throughout status offense proceedings.
4. Not allow children in status offense cases to waive counsel or alternatively only allow waiver if: (1) the waiver is on the record, (2) the court has fully inquired into the child's understanding and capacity, and (3) the waiver occurs in the presence of and in consultation with an attorney.
5. Exercise their statutory and inherent authorities to determine, prior to adjudication, whether youth and families received, in a timely manner, appropriate interventions that could have limited their court involvement.
6. Exercise their statutory and inherent authorities throughout the child and family's court involvement to ensure that service delivery systems are providing the appropriate assessments, treatments, and services to children and families in status offense cases.
7. Assess alternatives to out-of-home placement or secure confinement.
8. Not securely detain or confine youth at any point in the status offense process.

Lawyers for alleged and adjudicated status offenders should:

9. Advocate for voluntary and community-based assistance to limit and/or avoid continued court involvement and secure confinement.
10. Advocate for child clients to be treated fairly throughout the court process and for their due process rights to be protected.
11. Ensure that child clients' rights and entitlements under relevant federal and state laws are protected.

Judicial officers and entities providing case management services should:

12. Effectively manage and close court and agency cases in a timely manner.

Section 4. Recommendations for Policy and Legislative Implementation

State and local policymakers and advocates should:

1. Eliminate juvenile court penalties and sanctions for behaviors labeled status offenses and ensure that systems are accurately responding to behaviors as either episodes of normal adolescent behavior, or critical unmet youth and family needs that are best resolved through non-judicial interventions and supports.

2. Support an infrastructure of community-based and child- and family-serving programs and systems to ensure direct youth and family access to a seamless, comprehensive and non-judicial continuum of care that is empowered and resourced to respond to behaviors that might otherwise be labeled as status offenses.

3. In those limited circumstances where court involvement is necessary, ensure court mechanisms are in place that allow the appropriate court division to effectively serve the needs of the youth and family without inappropriate use or risk of more punitive outcomes for the child and family.

4. Prohibit schools from referring youth who engage in status offense behaviors to court unless and until the school has made all reasonable efforts to avoid court involvement.

5. Prohibit parents/caregivers from referring youth who engage in status offense behaviors to the juvenile court until the family has first sought and meaningfully engaged non-judicial interventions.

6. Promote coordinated, blended, or braided public funding streams that create a seamless, comprehensive, community-based continuum of care for youth and families.

7. Enact laws that ensure the right to counsel for youth who come into contact with the juvenile court for a status offense by not allowing youth to waive their right to counsel or only allowing waiver if: (1) it is on the record, (2) the court has fully inquired into the child's understanding and capacity, and (3) the waiver occurs in the presence of and in consultation with an attorney.

8. Prohibit the use of locked confinement for youth petitioned to court for a status offense.

9. Mandate meaningful efforts to engage youth and families in all aspects of case planning, service delivery, court proceedings, and disposition strategies.

Federal policymakers and advocates should:

10. Amend the JJDPA to prohibit the use of the valid court order (VCO) exception to securely confine youth adjudicated for status offenses.

11. Strengthen relevant federal agencies to provide research, training and technical assistance to state and local authorities to better assist state status offense system reform efforts.

12. Create coordinated approaches between federal government agencies and programs that serve youth and families that will help states coordinate, blend, or braid federal funding streams to create a seamless, comprehensive, and, to the greatest extent possible, non-judicial continuum of care for youth and families.

SECTION 1. PRINCIPLES FOR RESPONDING TO STATUS OFFENSES

This section of the *National Standards* provides a frame and foundation from which professionals working day-to-day with families and youth alleged to have committed status offenses can operate to achieve positive outcomes for everyone. In doing so, this section highlights 12 key principles to which professionals should adhere to protect youth and family safety, promote family connections and permanence, and ensure youth and family well-being. Collectively and individually, these 12 principles acknowledge and address the individual, familial, and community contexts in which status offenses may occur, and underlie all subsequent *Standards* articulated herein.

***Judicial, legal, law enforcement, justice, social service, and school professionals working with youth alleged to have committed status offenses and their families should*:**

1.1 Apply a child- and family-centric approach to status offense cases by prioritizing child and family safety, well-being and permanency for the child.

Youth who come into contact with the court system because of an alleged status offense have often experienced poverty, trauma, abuse and neglect, as well as other physical and emotional injuries and disadvantages. When investigating such cases, it is not uncommon for a first responder to discover that the youth could be referred to and better served by the child welfare system instead of the delinquency system. Recognizing the significant need for child and family-centered responses, several states have empowered their child welfare systems to respond to status offense cases.[14] Yet, despite the fact that youth charged with status offenses have not been accused of a criminal or delinquent offense, more than half the states (and their local jurisdictions) vest the authority to respond to status offenses with their respective delinquency systems rather than their child welfare systems. In

[14] *See, e.g.*, 42 Pennsylvania Consolidated Statutes Annotated Judiciary and Judicial Procedures § 6302; 31 Delaware Code Annotated § 301; Minnesota Statutes Annotated § 260C.007.

many cases, whether a child enters one system over the other is simply a function of the child's age.

The *National Standards* propose a different construct, one that mirrors the "safety, permanency, and well-being" framework of the child welfare system's Adoption and Safe Families Act of 1997 (ASFA).[15] Like ASFA's focus on the child's best interests, the *National Standards* advocate that states and local jurisdictions configure their systems to quickly identify the root cause of a youth's alleged charge and consistently keep youth and their families' interests at the center of any response or intervention. Pursuing these and other reforms in systems and system culture will ensure implementation of policies, programs, and practices that can most effectively meet the needs of youth and their families with little or no court intervention.

Important principles adapted from ASFA that can and should be considered when responding to families and youth alleged to have committed a status offense include:[16]

- Efforts to identify the cause of the status offense should begin well before court involvement and be expedited, where appropriate, with the provision of services to the youth and family. It is critical that relevant stakeholders, where appropriate, provide services or supports as quickly as possible to enable youth and/or families in crisis to address and resolve problems. When timely and intensive services are provided, agencies and courts can make informed decisions about the youth's/family's ability to function without deeper system assistance. It is also important that those same stakeholders not widen the justice system net by providing diversion or intervention services where no action is needed or if even nominal justice system involvement could

[15] Adoption and Safe Families Act, 42 U.S.C. Section 1305, *et. seq.* (1997).
[16] Principles discussion adapted from: U.S. Department of Health and Human Services, Administration for Children and Families. (1998). "Program Instruction, Log No. ACYF-CB-PI-98-02." Available at: http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/1998/pi9802.htm .

have a negative effect on the youth or family, particularly in low-risk, first time cases.[17]

- Involvement in the court system for a status offense can lead to deeper justice system involvement. Research shows that the longer youth are court-involved the greater the likelihood that they may enter and become embroiled in the justice system. Thus, system responses should prioritize diversion approaches and other responses that prevent or limit youths' court involvement.[18]
- Responses to status offense behaviors should focus on system accountability and positive outcomes for youth and their families. There are a number of tools that jurisdictions, organizations, and practitioners can use to focus on system accountability and quality service delivery for families in crisis, including annual reports of performance with statistics on cases diverted from court, cases petitioned to court and cases that re-enter the system. State and local jurisdictions should also assess additional ways to create performance-based incentives for agencies that manage and contribute to the response. Section 4 of the *National Standards* specifies that policymakers should work toward and expect positive results in status offense cases.
- Effective responses to status offense behaviors should do no harm. Given the nature and underlying causes of status offense behaviors, jurisdictions should make any and all reasonable efforts to not further traumatize youth who may already be suffering from physical, mental, and emotional injury. "Do no harm" approaches will avoid court involvement in the first instance and prevent youth from being securely confined at any point in the process.

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[17] *See*, The Center on Juvenile and Criminal Justice. (Sept. 1999) *Diversion Programs, An Overview*. Available at: https://www.ncjrs.gov/html/ojjdp/9909-3/div.html.

[18] *See, e.g.,* Petrosino, A, Turpin-Petrosino, C., and Sarah Guckenburg (January 2010). "Formal System Processing of Juveniles: Effects on Delinquency." *Campbell Systematic Reviews*, 2010:1.

1.2 Understand and apply current and emerging scientific knowledge about adolescent development, particularly as it relates to court-involved youth.

Advances in brain science and technology are helping us better understand how the adolescent brain functions. We now know that young people's brains continue to mature until their early- to mid-20s, and adolescents' brains are different from adults' both structurally and in how they are influenced by chemicals produced by the body, such as dopamine.[19] Adolescents are more likely to be influenced by peers, engage in risky and impulsive behaviors, experience mood swings, or have reactions that are stronger or weaker than a situation warrants.[20] These differences do not mean that youth behavior that is harmful to themselves or others should be ignored. Rather, it means that courts, agencies and practitioners should use this knowledge to inform and perhaps modify their practices and policies.

The U.S. Supreme Court has acknowledged the differences in youth brain development and culpability in several recent decisions that strike down extreme sentencing for court-involved youth.[21] Still, many juvenile and family courts are not entirely familiar with the relevant science and research that underlie the Court's conclusions. Consequently, these juvenile and family courts are not yet fully using available research to guide decision-making. Professionals and systems need to educate themselves about the inherently different ways youth understand and react to the world around them, and use such knowledge to inform system responses to youth in need and youth alleged to have committed status offenses. Potential changes include providing guidance and structure to youth and their families, and recognizing that adolescents will still sometimes make poor decisions and it is the adult caregiver's and system's role to help them recover from mistakes

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[19] These recommendations are adapted from Coalition for Juvenile Justice. (2006) "Applying Research to Practice Brief: What Are the Implications of Adolescent Brain Development for Juvenile Justice?" Available at http://www.juvjustice.org/sites/default/files/resource-files/resource_138_0.pdf.

[20] *Id*.

[21] *See Roper v. Simmons*, 542 U.S. 551 (2005) (regarding the juvenile death penalty) and *Graham v. Florida*, 560 U.S. 48 (2010) (regarding life without parole for juveniles).

and make better decisions. Some ways that stakeholders can achieve these goals include:[22]

- Support and participate in education and awareness raising activities. Numerous publications and resources provide more detail on adolescent development, developmental needs and differences, and connect these understandings with youth misconduct and court involvement.[23] Professionals should work to educate themselves and their colleagues about these issues, as well as help adolescents understand how their own brain functions and how it impacts their behavior and reactions.
- Ensure that courts and other decision makers who impact the lives of adolescents take into account general information about youth development and maturity, but also look at the specific circumstances of each young person's past and present life circumstances (e.g., prior offenses, past and current trauma, family relationships).
- Use available scientific knowledge to evaluate and inform decisions about competence, culpability, disposition, and defenses.
- Focus on adolescents' ability to contribute to their families and society, and work to build on their existing interests and strengths. This includes supporting healthy bonds between adults and young people, and allowing adolescents to make their own decisions and develop their own judgment in safe environments.
- Encourage and work with government and philanthropic organizations to fund promising or proven approaches that use scientific knowledge to craft and implement responses to youth alleged to have committed status offenses, as well as support the evaluation and reform of state laws on these issues.

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[22] *See* Coalition for Juvenile Justice (2006) "Emerging Concepts Brief: What Are the Implications of Adolescent Brain Development for Juvenile Justice?" (pgs. 4-8). Available at: http://www.juvjustice.org/sites/default/files/resource-files/resource_134.pdf.

[23] *Id.* (Includes a list of additional resources.)

1.3 Understand positive youth development principles and how they can be used to achieve better outcomes for court-involved youth.

Positive Youth Development (PYD) focuses on assets and skills, rather than risks and problems, and allows youth to develop decision-making abilities, work as part of a team, and help others. Research has shown that approaches that focus on youth's strengths and assets and that help youth build resiliency are more effective than approaches that only address their needs or weaknesses.[24] Experts suggest the following ways that PYD may be applied to respond to and prevent youth offenses:[25]

- Support honest discussions between adolescents and their parents that address and resolve conflict while encouraging development and recognizing strengths and accomplishments.
- Encourage youth relationships with adults other than parents who can serve as positive role models and advisors.
- Promote safe and healthy relationships with peers, based on shared interests and support.
- Encourage healthy lifestyle choices, including exercise and nutrition.
- Support positive organized activities, such as sports, the arts, or faith-based leagues or groups that give youth a sense of belonging.
- Allow youth to participate in activities that enable them to be engaged in and feel attached to their community and local events.
- Place youth in situations where they are able to make good decisions, use good judgment, come to understand the risks and consequences for their own decisions, set goals, and envision a future where their goals are achieved.

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[24] Some experts have suggested that increasing youth resiliency involves: 1) increasing *connectedness*, or relationships with one or more supportive adult(s); 2) developing *mastery* or focusing on a youth's particular skill or talent, such as painting; or soccer and 3) helping youth learn to control their own emotions (called *affect regulation*).

[25] Adapted from the suggestions of Jeffrey Butts, Ph.D. in Coalition for Juvenile Justice. (2006) "Applying Research to Practice Brief: What Are the Implications of Adolescent Brain Development for Juvenile Justice?" Available at http://www.juvjustice.org/sites/default/files/resource-files/resource_138_0.pdf.

Work or service-based alternatives to formal court involvement may also integrate aspects of PYD, especially when youth participation is based on individual interests and strengths. Numerous programs around the country have used PYD principles to help youth who have committed delinquent offenses to recognize and build on their own strengths while contributing to their communities, such as by using artistic talents to turn graffiti covered walls into murals, or using athletics (including coaching and mentoring) to build self-esteem and promote achievement.[26]

1.4 Ensure that past trauma and other experiences, which may underlie or lead to status-offending behaviors, are identified and responded to with appropriate screening, assessment, treatment, services, and supports.

Many youth alleged to have committed status offenses have been victims of child abuse or neglect and/or have witnessed family or community violence. These experiences may be traumatic and in some cases will lead to short- or long-term traumatic stress symptoms. A recent survey of children and adolescents in the general population found that half had experienced two or more types of victimization (being the target of or witnessing violence) and eight percent had experienced seven or more types of victimization.[27] Studies estimate that past traumatic experiences and Post Traumatic Stress Disorder are twice as common among juvenile justice-involved youth.[28] Children who are abused or who experience other types of violence are more likely to commit crimes (as minors or adults), have mental health and substance abuse issues, and commit suicide. Youth who witness family or community violence are also more likely to have social and academic problems, and

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[26] Butts, J. et al. (2010). "Positive Youth Justice: Framing Justice Interventions Using the Concepts of Positive Youth Development." Washington, DC: Coalition for Juvenile Justice. Available at: http://www.juvjustice.org/sites/default/files/resource-files/Positive%20Youth%20Justice.pdf.

[27] Finkelhor, D., Turner, H., Hamby, S., & Richard Ormrod. (2011). "Polyvictimization: Children's Exposure to Multiple Types of Violence, Crime, and Abuse." *Juvenile Justice Bulletin – NCJ 235504*. Washington, DC: U.S. Government Printing Office. Available at: http://www.unh.edu/ccrc/pdf/jvq/Polyvictimization%20OJJDP%20bulletin.pdf.

[28] Ford, J. D., Steinberg, K., Hawke, J., Levine, J., & Zhang, W. (2012). "Randomized Trial Comparison of Emotion Regulation and Relational Psychotherapies for PTSD with Girls Involved in Delinquency." *Journal of Clinical Child and Adolescent Psychology*, 41, 27-37; Ford, J D., J Hartman, K., Hawke, J., and John F. Chapman. (2008). "Traumatic Victimization, Posttraumatic Stress Disorder, Suicidal Ideation, and Substance Abuse Risk Among Juvenile Justice-Involved Youth" *Journal of Child & Adolescent Trauma*. 1(1).

experience anxiety, depression and/or aggression.[29] Traumatic stress can manifest as anxiety, depression, concentration issues (post-traumatic stress is frequently misdiagnosed as ADHD), impulsivity, emotional numbing, lack of affect, and conduct problems, among other issues.[30]

Juvenile justice and social service agencies and courts can take steps to recognize and respond to the impact of trauma on the children they serve:[31]

- Implement universal screening using trauma-specific instruments with proven reliability and validity, such as the UCLA PTSD index,[32] the Traumatic Events Screening Inventory,[33] or the MAYSI-2.[34]
- Provide youth with evidence-based or empirically-supported interventions to address the effects of trauma. Information about different evidence-based practices including Trauma-Focused Cognitive Behavioral Therapy and Trauma Affect Regulation: Guide

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[29] Siegfried, C.B., Ko, S.J., & Kelly, A. (2004). "Victimization and Juvenile Offending." Pg. 5, Los Angeles, CA and Durham, NC: *National Child Traumatic Stress Network*: Juvenile Justice Working Group.

[30] National Child Traumatic Stress Network Child Welfare Committee. *Child Welfare Trauma Training Toolkit* (2008). Available at: http://www.nctsn.org/products/child-welfare-trauma-training-toolkit-2008.

[31] These tips are based on efforts currently underway in jurisdictions across the country, as described in: Pilnik, L., & Kendall, J. R. (2012). "Victimization and Trauma Experienced by Children and Youth: Implications for Legal Advocates." Moving From Evidence to Action: The Safe Start Series on Children Exposed to Violence, Issue Brief #7. North Bethesda, MD: Safe Start Center, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. Available at: http://www.safestartcenter.org/publications/issue-brief-7-victimization-and-trauma-experienced-children-and-youth-implications.

[32] A self-report questionnaire to screen for exposure to traumatic events and assess PTSD symptoms in school-age children and adolescents. More information available at: http://www.nctsn.org/content/ucla-posttraumatic-stress-disorder-reaction-index-dsm-iv.

[33] A 15 to 24-item clinician-administered interview that assesses a child's experience of a variety of potential traumatic events including current and previous injuries, hospitalizations, domestic violence, community violence, disasters, accidents, physical abuse, and sexual abuse. More information available at: http://www.ptsd.va.gov/professional/pages/assessments/tesi.asp.

[34] A paper-and-pencil self-report inventory of 52 questions designed to assist juvenile justice facilities in identifying youths 12 to 17 years old who may have special mental health needs. More information available at: http://nysap.us/MAYSI2.html.

for Education and Therapy, is available from the Substance Abuse and Mental Health Services Administration.[35]

- Raise awareness among court staff, agency personnel, and the community about the impact of trauma, including multi-disciplinary training for judges, social workers, and others about how trauma impacts brain development, symptoms of traumatic stress, and other trauma-related topics.
- Provide intensive training for detention facility staff so that certain youth behaviors are recognized as symptoms of traumatic stress, rather than simple disobedience or acting out, and responded to appropriately.
- Front-load and expedite dispositions and provide court orientations to youth in order to connect them to services faster and reduce the likelihood of system-induced trauma.
- Educate attorneys on how to interview clients using trauma-informed strategies.

Youth in the court system may require screening for past trauma and should receive necessary services. Professionals working with these youth must understand how past trauma affects their system involvement and futures. Youth should also be protected from self-incrimination while being screened for trauma or other behavioral health conditions. Screening forms or assessments used at various stages may ask about potentially illegal acts, such as substance abuse or violent reactions to feelings of anxiety or stress, and disclosures may not be protected by confidentiality rules when asked in a court, rather than a clinical, context.[36] Youth should be told how information in these tools will be used and shared, and that they can skip any questions they do not wish to answer.

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[35] The Substance Abuse and Mental Health Services Administration's National Registry of Evidence-based Programs and Practices (NREPP), a "searchable online database of mental health and substance abuse interventions," is available at http://nrepp.samhsa.gov.

[36] Rosado, L.M. & Riya Shah (2007) *Protecting Youth from Self-Incrimination when Undergoing Screening, Assessment and Treatment within the Juvenile Justice System*. Available at: http://www.jlc.org/sites/default/files/publication_pdfs/protectingyouth.pdf.

System-induced trauma should be minimized by avoiding court involvement and secure confinement, minimizing out-of-home placement and placement changes, and choosing therapeutic, rather than punitive, settings if out-of-home placement is necessary. Involving and educating parents and other family members about the impact of trauma is also essential, both because this information will help them be a resource for their children and because many parents of youth in the court system have also experienced (and are still impacted by) traumatic events.[37]

Everyone reacts to exposure to violence differently, so how traumatic experiences will manifest in emotions and behavior varies from one youth to another. For this reason, professionals should consider past victimization and other types of experiences that may have led to a status offense charge, even in youth who do not seem to be suffering from traumatic stress symptoms. For example, lack of accommodation for a student who is not fluent in English, or who has a learning disability may or may not appear to be traumatic, but should certainly be addressed if a youth is involved in a truancy case. Professionals should also be aware that gender differences exist both in the types of trauma youth commonly experience (e.g., girls are more likely to be sexually abused, and/or abused in relationships, while boys are more likely to be physically assaulted and to witness death or injuries) and effects of trauma (girls are more likely to meet PTSD diagnostic criteria, and experience depression and anxiety).[38] Understanding a young person's past (possibly traumatic) experiences can help professionals better serve them in many ways, from an attorney advocating that traumatic experiences should be considered as a mitigating factor at disposition to a caseworker, probation officer, or detention staff member ensuring that an adolescent is screened and receives necessary treatment for PTSD.

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[37] National Child Traumatic Stress Network, Child Welfare Committee. (2011). "Birth Parents with Trauma Histories and the Child Welfare System: A Guide for Judges and Attorneys." Los Angeles, CA, and Durham, NC: *National Center for Child Traumatic Stress*. Available at: http://nctsn.org/sites/default/files/assets/pdfs/birth_parents_trauma_guide_judges_final.pdf.

[38] NCCD Center for Girls and Young Women. (nd) *Understanding Trauma through a Gender Lens*. Available at: http://www.nccdglobal.org/sites/default/files/publication_pdf/understanding-trauma.pdf.

1.5 Implement a status offense system framework that promotes shared leadership and responsibility by encouraging youth engagement in court, agency, and other meetings affecting their case, safety, well-being, treatment services and/or placement.

It is critically important that youth have a voice in their status offense cases, where others are making critical decisions about their lives. Youth involvement can range from gaining their input about the services in which they participate to where they may live or when and how they interact with their parents. In some instances, the petitioning party is a parent/guardian or the youth is in conflict with a parent. Here, too, ensuring the youth's voice is heard separately and apart from the parent's is essential to negotiate a successful resolution of the matter and to assure fairness. Youth engagement must begin when professional service systems first respond to an alleged status offense matter and continue throughout diversion and court processes. Youth should be given the opportunity to participate in all agency meetings, alternative dispute resolution sessions, and court hearings affecting their case. Youth engagement should also be undertaken consistent with the principles on trauma discussed in Section 1.4.

Implementing a framework that promotes youth engagement at all stages will greatly benefit youth, youth-serving agencies and courts. By being present in court and meetings, youth can offer important insights into their lives and the causes of the alleged behavior, and gain a better understanding of the agency and court processes. Empowering youth early to understand the status offense process and its repercussions can also serve as an important tool to encourage shared responsibility in resolving problems and limiting court involvement. Likewise, youth presence in court and meetings also benefits judges and professionals who will be able to make more informed decisions for youth and their families.

There is a growing body of knowledge and guidance about youth empowerment, voice, and engagement in child welfare and foster care. Although there is little guidance available about youth involvement in status offense proceedings, many of the reforms being applied in child welfare are also applicable to youth charged with non-delinquent behaviors.

Recommendations for courts to enhance youth voice and participation include:[39]

- Having a fair, impartial, and orderly system to support youth voice and involvement.
- Reaching a consensus among all stakeholders regarding youth participation in court and agency meetings.
- Requiring and facilitating youth attendance in their court hearings and agency meetings.
- Recognizing that youth gain a sense of control through involvement in their court proceedings.

There is also applicable child welfare literature on addressing logistical and other concerns when implementing a system that supports youth engagement and empowerment. Recommendations for youth-serving agencies and youth lawyers include:[40]

- To the fullest extent possible, schedule meetings and hearings before or after school hours for school-aged youth. When a youth is not able to attend in person, consider allowing him/her to participate via alternative means, such as video-conferencing or conference calls.
- Explain your role to the youth and what issues you can and cannot address.

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[39] Adapted from: Children's Bureau Express (2009). *Spotlight on Encouraging Youth Involvement in Dependency Hearings*. Washington, D.C.: U.S. Department of Health and Human Services, Vol. 10, No. 10. (referencing Pitchal, E. (Winter 2008). "Where Are All the Children? Increasing Youth Participation in Dependency Proceedings," *UC Davis Journal of Juvenile Law & Policy*, Vol. 12).

[40] Khoury, A. (2007). "With Me, not Without Me: How to Involve Children in Court." in Child Law Practice Vol. 26, No. 9; Washington D.C.: American Bar Association Center on Children and the Law. Available at http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/empowerment/withme_notwithoutme.authcheckdam.pdf; Khoury, A. (2008). "Establishing Policies for Youth in Court—Overcoming Common Concerns." Washington, D.C.: American Bar Association Center on Children and the Law. Available at: http://www.isc.idaho.gov/cp/docs/Establishing%20Policies%20for%20Youth%20in%20Court-Common%20Concerns.pdf.

- Avoid using acronyms or legal jargon that may make it difficult for the youth to understand what is happening during the meeting or hearing.
- Prepare the youth for upcoming meetings or court hearings by telling the youth who will be present, what their roles will be, what is expected to happen, and what the youth's involvement will entail.
- If the youth is expected to speak or testify, provide guidance about how to do so most effectively. Advise the youth if other participants will ask him/her questions and what the nature of those questions may be.
- Provide age-appropriate reading materials to the youth to describe the court or agency process.

1.6 Utilize alternative dispute resolution strategies to resolve youth and family conflicts outside of the court system.

Youth charged with status offenses may enter the system as a result of significant family conflict where disputes may result, for example, in a youth running away or being charged as "incorrigible." In many instances, the court system is not well suited to resolve these high conflict situations utilizing an adversarial process that may only worsen the fragile parent-child relationship. Introducing alternative dispute resolution (ADR) strategies, like mediation, before court involvement and/or before an adjudicatory hearing can empower families to resolve conflicts internally with professional guidance and may limit child and family exposure to court and deeper justice system involvement. ADR strategies seek to reach an agreement between the youth and his/her family in ways that encourage harmony, rather than punish the youth for actions that are often rooted in family dysfunction. ADR also helps to alleviate congested family or juvenile court dockets and can reduce the number of youth who are removed from their family's care.

Parent-child mediation offers the family and youth an opportunity to mutually identify and agree to resolve family problems. It is a practice that many jurisdictions have begun to use with success in status offense cases. It is incumbent upon professionals working with families to assess whether

ADR approaches are appropriate and to ensure that the youth is willing to participate. In instances where there is evidence of violence between the youth and parent, professionals should determine how ADR processes could be altered to assure youth safety and well-being, recognizing that in some circumstances, ADR approaches may not be appropriate.

1.7 Employ family engagement strategies that identify and emphasize a family's strengths, and empower families to find and implement solutions outside of the court system.

Similar to youth engagement strategies, family engagement strategies focus on the strengths the family unit can bring to the process, not just the family's deficits, and seek to access and leverage a family's willingness to solve problems with professional guidance. Similar to ADR, family engagement strategies may limit child and family exposure to court and deeper justice system involvement and also help alleviate congested family or juvenile court dockets and can reduce the number of youth who are removed from their family's care. They also provide a less formal setting for families to ask questions and better understand the status offense process, while giving professionals an opportunity to consult families in a meaningful way about what they want for their child and what the family needs to move forward.

For example, Family Group Decision Making (FGDM)[41] is an engagement strategy that recognizes the importance of involving families in making decisions about children who need assistance and care. The process can be initiated by the agency serving the alleged status offender and implemented at critical stages of the status offense case, such as before court petitioning, adjudication, or at disposition. A key aspect of FGDM is to allow the family to lead the decision-making, encouraging them to actively participate in identifying viable solutions to the problems they face.[42]

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[41] Also may be called Family Group Conferences or Family Team Meetings.

[42] Description of FGDM is adapted from American Humane. *About Family Group Decision-Making* (website). Available at: http://www.americanhumane.org/children/programs/family-group-decision-making/about-family-group-decision.html.

It is incumbent upon the professionals working with the family to assess whether FGDM is appropriate and ensure that the youth is willing to participate. In instances where there is evidence of violence between the youth and parent, professionals should determine how FGDM should be altered to assure the youth is safe and comfortable participating in the process. In limited circumstances, the approach may not be appropriate.

1.8 Eliminate racial and ethnic disparities by being culturally aware and ensuring impartial and equal access to culturally-competent prevention and intervention services and treatment for youth charged with status offenses and their families.

Disproportionate minority contact (DMC) refers to the disproportionate representation of ethnic, racial, and linguistic minority youth in the juvenile court system. The Juvenile Justice and Delinquency Prevention Act (JJDPA) was broadened in scope in 2002 to require that states[43] address "disproportionate minority *contact*" (emphasis added) instead of only being required to address the disproportionality of minority youth in confinement. Under the JJDPA, the federal government can withhold some of a state's future grant allocation for the subsequent year if they fail to address disproportionality at all stages of justice system involvement.[44]

Minority youth are overrepresented in every aspect of the justice system. African American youth represent 16 percent of the adolescents in this country, but comprise 40 percent of the youth incarcerated in local detention and state correctional facilities, and Latino youth are incarcerated in local detention and state correctional facilities nearly twice as often as white youth. Research shows that youth of color are treated more harshly than white youth when charged with the same category of offense, including status offenses.[45] In 2009, the runaway case rate for African American youth

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[43] In this context, "states" refers to all U.S. states, territories and the District of Columbia.
[44] Soler, M. and Lisa Garry. (2009) *Reducing Disproportionate Minority Contact: Preparation at the Local Level*. Washington, DC: Department of Justice, Office of Juvenile Justice and Delinquency Prevention.
[45] Although some status offense charges, such as liquor or curfew violations originate from police interaction or arrest, many referrals to the status offense system come from schools, home, or other service providers.

was more than three times the rate for white youth, and the ungovernability case rate for African American youth was more than twice the rate of white youth.[46] That same year the liquor law violation case rate for American Indian juveniles was more than three times the white rate.[47]

To alter the overrepresentation of minority youth in the system requires an understanding of and action plan to address the underlying disparities that bring minority youth in contact with the system.[48] Effective responses to youth charged with status offenses and their families must have the intent and the effect of reducing the disparate treatment of minority youth at all points along the continuum, from prevention to identification to intervention.

There are many things system professionals, from law enforcement to social service providers and courts, can do to reduce racial and ethnic disparities, including:[49]

- Collect and analyze data at all decision points so intentional strategies can be developed to reduce racial and ethnic disparities.
- Use culturally competent screening and assessment tools at appropriate points and throughout a status offense case.
- Implement family engagement and alternative dispute resolution strategies during status offense cases.

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[46] Puzzanchera, C. Adams, B., and Sarah Hockenberry. 2012. *Juvenile Court Statistics 2009*. Pittsburgh, PA: National Center for Juvenile Justice.

[47] *Id*.

[48] Chapin Hall Center for Children. (2008). *Understanding Racial and Ethnic Disparity in Child Welfare and Juvenile Justice*. Chicago: Chapin Hall Center for Children at the University of Chicago. Available at: http://cjjr.georgetown.edu/pdfs/cjjr_ch_final.pdf.

[49] For more suggestions on what local governments can do to reduce DMC, see: *Disproportionate Minority Contact Technical Assistance Manual* (2009). Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention. Available at: http://www.ojjdp.gov/compliance/dmc_ta_manual.pdf; *see also* Annie E. Casey (Website). Juvenile Detention Alternatives Initiative: http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative.aspx.

- Provide access to family-connected and community-based services in youths' home communities, especially where a community may have disproportionately high involvement in the status offense system.

Systems can also look to a variety of initiatives for guidance on how to reduce racial and ethnic disparities. For example, the Juvenile Detention Alternatives Initiative (JDAI) has developed risk assessment instruments to be used at detention admissions, created effective alternatives to detention and supported expedited case processing. By making DMC reduction a key element in detention reform, JDAI sites, among other reforms, have lowered the number of minority youth detained and provided youth better opportunities to avoid justice system involvement through community-based services.[50]

Another important way professionals can work to prevent and reduce racial and ethnic disparities in status offense cases is by implementing practices that are culturally and linguistically competent. Cultural competency refers to the ability to effectively engage and interact with individuals from other cultures. Linguistic competency refers to the ability to effectively communicate with those whose first language is not English. While the status offense system can be complicated for any young person, it is even more difficult to navigate when the youth and family hold different cultural norms and values, and when English is not the child's or the family's first language. System professionals can be more culturally competent by implementing policies and practices and delivering services in a way that take into account cultural factors and by ensuring use of cultural knowledge in training, screening and assessment, and policy administration.[51] System professionals can be more linguistically competent by ensuring that the information they convey, whether written or oral, is easily understood by a diverse audience, including those who are not fluent in English or who may

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[50] Armour, J. and Sara Hammond (2009). *Minority Youth in the Juvenile Justice System: Disproportionate Minority Contact.* Washington, D.C.: National Conference of State Legislatures; *Detention Reform Brief 3: An Effective Approach to Reduce Racial and Ethnic Disparities in Juvenile Justice* (2009). Baltimore, MD: Annie E. Casey Foundation.

[51] *A Fair Juvenile Justice System: The Importance of Linguistic and Cultural Competency (2007). Washington, D.C.: National Council of La Raza. Available at: http://www.modelsforchange.net/publications/400.*

have low or no literacy skills, as well as children and adults with disabilities. Translating key documents, reports and court orders will be essential, as well as ensuring that an interpreter is present during hearings and meetings. In addition, a significant number of lesbian, gay, bisexual, or transgender youth in the justice system are also youth of color. Programs should also be culturally fluent with regard to sexual orientation, gender identity, and gender expression.[52]

1.9 Understand the developmental, behavioral and social differences between boys and girls and how their service needs are accordingly different. Make gender-responsive choices regarding interventions, treatment, and services before, during, and following court involvement.

Research shows that boys are more likely than girls to be arrested and prosecuted in juvenile delinquency court, and that girls are more likely to be arrested for status offenses.[53] Boys represent 83 percent of arrests for violent crimes and, in general, serve longer terms in detention facilities than girls. Girls make up 61 percent of all runaway cases, and spend twice as long in detention facilities for status offenses as boys.[54] Boys and girls may be charged with status offenses for different reasons, and react differently to system involvement and related interventions because of physiological, sociological and developmental differences.

While girls and boys in the juvenile justice system come from all different family types and socioeconomic backgrounds, girls are more likely to enter the delinquency system if they:

- Are living in poverty;

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[52] *See, e.g.*, Irvine, A. (2010). "We've had Three of Them: Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Nonconforming Youths in the Juvenile Justice System." *Columbia Journal of Gender and Law*, Vol. 19:3, pgs. 675-701.

[53] U.S. Department of Health and Human Services' Office of the Assistant Secretary for Planning and Evaluation (2008). "Fact Sheet: Juvenile Delinquency" from "What Challenges Are Boys Facing, and What Opportunities Exist To Address Those Challenges?" Available at: http://aspe.hhs.gov/hsp/08/boys/FactSheets/jd/report.pdf.

[54] Coalition for Juvenile Justice. (nd) Deinstitutionalization of Status Offenders (DSO) Facts and Resources. Available at: http://www.juvjustice.org/sites/default/files/ckfinder/files/dso%20fact%20sheet.pdf.

- Have been exposed to domestic violence and/or substance abuse;
- Have a history of running away;
- Have experienced sexual, physical and/or emotional abuse;
- Feel disconnected from school or have experienced academic failure; or
- Have mental health and substance abuse issues. [55]

Factors that may make boys more likely to enter the delinquency system include child maltreatment, negative peer influences, substance abuse, dropping out of school, and living in violent communities.[56]

Research has shown that there are specific protective factors that may make girls less likely to commit offenses, including support from a caring adult, succeeding and/or feeling connected to someone in school, and religiosity.[57] School connectedness, family support, and positive social activities have been found to be protective factors for both boys and girls.[58]

There are many ways agencies and courts who work with status offenders can be gender-responsive:

- Professionals who select and administer assessment instruments, or rely on the results of these instruments, should ensure that these tools are evidence-based or empirically-supported and have been designed for and tested with girls *and* boys (or the specific gender of the client

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[55] Zahn, M, et al. (2010) "Causes and Correlates of Girls' Delinquency." *Girls Study Group*. Washington, DC: US Department of Justice, Office of Justice Programs. Available at: https://www.ncjrs.gov/pdffiles1/ojjdp/226358.pdf.

[56] U.S. Department of Health and Human Services' Office of the Assistant Secretary for Planning and Evaluation (2008). "Fact Sheet: Juvenile Delinquency" from "What Challenges Are Boys Facing, and What Opportunities Exist To Address Those Challenges?" Available at: http://aspe.hhs.gov/hsp/08/boys/FactSheets/jd/report.pdf.

[57] Hawkins S.R., et al. (2009) "Resilient Girls—Factors That Protect Against Delinquency." Girls Study Group. Available at: https://www.ncjrs.gov/pdffiles1/ojjdp/220124.pdf. (for this study "delinquent behavior" was defined to include status offenses (truancy and unruliness), gang membership, selling drugs, serious property offenses and assault).

[58] *Id*.

group).[59] Even where there is a shortage of validated instruments for girls, practitioners should endeavor to continuously research the best possible options.

- Be aware that while evaluation research on programs for girls is lagging behind the research on effective programming for boys, programs that are gender-responsive for girls rely on a theoretical framework that dictates research-based principles for effective female programming. Boys may also benefit from many of these program qualities. These include:
    - Being strength-based, trauma-informed, and relational;
    - Ensuring clients' physical, psychological, and emotional safety;
    - Employing staff who are sensitive to trauma and understand girls' socialization; and
    - Providing ongoing staff training and support.[60]
- Ensure that elements of gender-responsive practice are present throughout, from first contact with the system through service and treatment provision. To the extent gender-specific programming is offered, youth should participate according to their gender-identity rather than their biological gender, if they are not the same.
- Strive to make programs culturally-competent and family-focused, and encourage youth to partner with staff in the development of their treatment plans.

Finally, professionals working with youth should keep in mind that trends or characteristics that may be generally true for boys or girls will not apply to all youth of that gender and that all young people should be treated as individuals. For instance, when working with youth who are lesbian, gay, bisexual, transgender, or questioning, it is particularly important to make decisions on an individual basis, and to respect gender identity and

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[59] *See* Brumbaugh S., et al. (2010) "Suitability of Assessment Instruments for Delinquent Girls." Girls Study Group. Available at: https://www.ncjrs.gov/pdffiles1/ojjdp/226531.pdf.

[60] Adapted from Selvaggi, Kimberly. "Ideas for Building a Female Responsive System for Girls" (unpublished; on file with Coalition for Juvenile Justice (CJJ))

expression. (See Section 1.10 for a more detailed discussion of considerations relevant to LGBTQ youth.)

1.10 Ensure that lesbian, gay, bisexual, transgender, or questioning[61] (LGBTQ) youth who are charged with status offenses receive fair treatment, equal access to services, and respect and sensitivity from all professionals and other youth in court, agency, service, school, and placement.

LGBTQ youth are over-represented in the juvenile justice system, are more likely to be seriously maltreated by other youth in the system, and may receive excessive punishments, including secure confinement due to court biases or misguided attempts to keep these youth "safe."[62] LGBTQ youth face increased risks of being rejected by their families and bullied and harassed at school, which can lead to running away and truancy.[63]

Families should be treated as potential allies in supporting LGBTQ youth.[64] Targeted interventions can work to change the behavior of families that are not initially accepting of LGBTQ children, and research shows that even small improvements in family acceptance of LGBTQ youth can lead to better physical and mental health outcomes.[65] For this reason, it is essential that LGBTQ youth and their families are offered support services and that every effort is made to keep youth in their homes whenever it is safe to do so.

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[61] Youth may also identify themselves as intersex, two-spirit (which refers to a belief in the existence of cross-gender roles with Native American traditions, based in a teaching that some people are gifted because they carry two spirits, one male and one female) or in other ways. Although the principles in this section may still apply, the term LGBTQ is used throughout because the research discussed has focused on lesbian, gay, bisexual, and in some cases transgender or questioning youth.

[62] Minter, S. & Jeff Krehely (2011) "Families Matter: New Research Calls for a Revolution in Public Policy for LGBT Children and Youth." Washington DC: *Center for American Progress*. Available at: http://www.americanprogress.org/issues/lgbt/report/2011/02/07/9117/families-matter/; Majd, K., Marksamer, J., and Carolyn Reyes. (2009) "Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts." Available at: http://equityproject.org/pdfs/hidden_injustice.pdf.

[63] *Id*.

[64] Minter, S., & Jeff Krehely (2011) "Families Matter: New Research Calls for a Revolution in Public Policy for LGBT Children and Youth." Washington DC: *Center for American Progress*. Available at: http://www.americanprogress.org/issues/lgbt/report/2011/02/07/9117/families-matter/.

[65] *Id*.

Youth and their families must also receive necessary supports and services to avoid court involvement altogether. Detention facilities and residential placements must be made LGBTQ-affirming to reduce victimization among youth who may need to be placed out of their homes.

System professionals can ensure fair treatment of LGBTQ youth by taking the following steps:

- Identify when youth are entering the system due to alienation, exclusion, or persecution at home, in foster care or group homes, in the community or at school, due to their sexual orientation or gender identity. Ensure steps are taken to preserve youth safety and well-being, which includes protecting confidentiality, rather than forcing them back into a hostile environment, keeping in mind that youth generally do better in their own homes when safe, and that some targeted intervention strategies have been shown to increase acceptance and improve behavior of parents and guardians and support in families who initially reject their LGBTQ children.[66]
- Ensure that LGBTQ youth receive appropriate services, such as connecting youth to affirming social, recreational, and spiritual opportunities, and that confidentiality is respected.
- Ensure that LGBTQ youth have access to care consistent with best practices for these populations.[67]
- In situations where family rejection is an issue because parents/caregivers reject the youth based on their sexual orientation or gender identity, ensure that counseling and other services are offered to the whole family, that every effort is made to keep children with their families, and that alternative supportive residential arrangements are made when caregivers are unwilling to re-engage despite being offered or participating in appropriate interventions.

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[66] *Id*.

[67] For more on medical and other issues relevant to LGBT youth, see Majd, K., Marksamer, J., and Carolyn Reyes. (2009) "Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts." Available at: http://equityproject.org/pdfs/hidden_injustice.pdf.

- Review nationally available best practice standards, such as those available from Child Welfare League of America and the National Center for Lesbian Rights/Legal Services for Children[68] to ensure that your organization is doing all it can to meet LGBTQ youths' needs, ensuring that schools, homes and, if necessary, residential placements are safe environments, and that attempts to ensure safety are not isolating, stigmatizing or punitive, e.g., placing an LGBTQ youth in seclusion to "protect" him/her.
- Recognize and acknowledge that experiences at home, in placement, in school, in the community, and in the juvenile justice system may have been traumatic, and that LGBTQ youth may need support, intervention, or treatment for trauma.
- On an individual level, professionals must treat all youth, including those who identify as LGBTQ or non-gender conforming, with respect and fairness. Youth should be allowed to express their identity through choice of clothing, hairstyle, and nicknames without encountering pressure or judgment.

It is also essential to have a written nondiscrimination and anti-harassment policy.[69] These policies can address issues such as prohibiting harassment of youth or staff who are LGBTQ or gender non-conforming, requiring the use of respectful and inclusive language, and determining how gender rules (e.g., usage of "male or "female" bathrooms, gender-based room assignments) will be addressed for transgender and gender non-conforming youth. Programs should also provide clients and staff with training and helpful written materials.[70]

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[68] Available at: http://equityproject.org/pdfs/CWLA%20-%20bestpracticeslgbtyouth.pdf and http://equityproject.org/pdfs/defending_lgbt_youth.pdf.
[69] Several model policies can be found at: http://equityproject.org/resources.html.
[70] For links to resources for professionals and LGBT youth see "The Equity Project" at http://equityproject.org/resources.html.

1.11 Ensure children do not enter the status offense system because of learning, mental health, sensory, speech/language, or co-occurring disabilities. Ensure that children with disabilities who do enter the status offense system are treated fairly and given access to needed evaluations, treatments, and services.

Often the conduct that leads to status offense system involvement relates to an unknown, under-diagnosed or mistreated disability. For example, unmet special education needs can lead to truancy; untreated mental health issues can lead to conflicts at home and/or running away. In addition, research shows that youth with learning and other disabilities are more likely to enter the justice system. Some estimate that as many as 70 percent of youth who enter the justice system have a mental health, sensory or learning disability, and anywhere between 28 percent and 43 percent of detained or incarcerated youth have special education needs.[71] Minority youth may be disproportionately affected by learning disabilities, in particular, because of risk factors relating to poverty and family functioning. African American youth are 43 percent more likely to have a learning disability than youth in the general population and American Indian youth are 80 percent more likely.[72] Implementing and coordinating early screening, assessment and intervention strategies before court involvement is key to providing needed supports to children and families and limiting or avoiding unnecessary court involvement.

There are many federal laws that protect the rights of children and youth with disabilities. Section 504 of the Rehabilitation Act entitles all children who have disabilities to an educational experience that is comparable to children who do not have disabilities. The Individuals with Disabilities Education Act (IDEA) requires that children with certain learning-related disabilities have a free, appropriate public educational experience in the least

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[71] National Disability Rights Network, *Juvenile Justice* (Website), Available at: http://www.ndrn.org/en/issues/juvenile-justice.html; Mallett C. (2011). "Seven Things Juvenile Courts Should Know about Learning Disabilities." Reno, NV: *National Council of Juvenile and Family Court Judges* (citing numerous references); Quinn, M., et al. (2005). "Youth with Disabilities in Juvenile Corrections: A National Survey." *Exceptional Children, Vol. 71, No. 3. pp. 339-345.*

[72] Altarac, M. & Saroha, E. (2007). "Lifetime Prevalence of Learning Disability among U.S. Children." *Pediatrics, 119*, 577-584).

restrictive environment possible.[73] IDEA also supports the notion that juvenile court intake personnel investigate pre-court efforts to identify and address a child's special education needs and ensure that referring systems provide information on accommodations offered.[74]

Before school, mental health or other social service system professionals refer children with identified or suspected disabilities to the status offense system, they must assess whether the conduct at issue relates to or is caused by the disability. System professionals should use the resources at their disposal through IDEA, Section 504, and/or Medicaid-EPSDT[75] to identify the extent of the disability and provide relevant services to avoid status offense system involvement that may only exacerbate the problems the child and family are experiencing.

In addition to the above, there are many things law enforcement, education, mental health, and other child and family-serving systems can do to steer youth with disabilities away from the status offense court system:

- Use standardized screening tools or questionnaires that have proven reliability and validity to identify disabilities early.
- Require general staff training generally on the link between disabilities and justice system involvement and identifying disabilities early, as well as the use of these screening and assessment tools.
- Establish mandatory procedures to review the adequacy and scope of accommodations offered before any child is referred to the status offense court system.
- Educate, engage, and support families and youth in plans for services, supports, and interventions.

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[73] Tulman, J. (2010) "Using Special Education Advocacy to Avoid or Resolve Status Offense Charges" in *Representing Juvenile Status Offenders*. Washington, DC: American Bar Association Center on Children and the Law, Chapter 6. Available at: http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/RJSO_FINAL.authcheckdam.pdf.

[74] *See, e.g.*, 20 U.S.C. § 1415(k) (6).

[75] For more information on what Medicaid/EPSDT is *see* Standard III(11).

- Develop a holistic approach to addressing the child's disability both during and outside of school hours through increased involvement with mentors, coaches and youth development approaches (see Section 1.3).

When children with disabilities enter the status offense court system, it is critical that court intake officers, judges, and the child's lawyer obtain information relating to the child's disability and what services and treatments have already been offered. Children's attorneys and courts should closely assess whether the status offense referral relates to the child's disability and analyze whether the referring system made reasonable efforts to address the disability and avoid court involvement. Children's attorneys may consider requesting that the court hold a child's case in abeyance pending the delivery of appropriate services or request dismissal if pre-court accommodations were insufficient.[76]

In those limited instances where court involvement is unavoidable, courts must also assure that disabled children are given a meaningful opportunity to understand and participate in status offense proceedings. For example, the court should have an interpreter for a child who is hearing impaired or appoint a guardian *ad litem* attorney for a child whose has a diminished capacity to understand or participate in proceedings. Courts may also consider appointing special advocates for children with learning disabilities who enter the system because of truancy, or with certain mental health conditions to help them navigate the system. Having a system advocate who understands the child's disability is critical to ensuring the child understands the proceedings and what is expected of him or her. It also helps the court and parties better understand the child's disability and how it may affect his or her ability to meaningfully participate in proceedings and comply with court mandates and his or her treatment plan.

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[76] Tulman, J. (2010) "Using Special Education Advocacy to Avoid or Resolve Status Offense Charges" in *Representing Juvenile Status Offenders*. Washington, DC: American Bar Association Center on Children and the Law, Chapter 6. Available at: http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/RJSO_FINAL.authcheckdam.pdf.

1.12 Coordinate with other relevant formal and informal systems of care to better serve children and families.

Children and families often come to the status offense system with numerous needs that require the assistance of more than one agency. When many services are needed, how effective one service is may relate to the availability and effectiveness of other services required by the child or family.[77] Many benefits can be derived from developing relationships with other organizations serving the same populations of families, such as: (1) reducing duplication of services, (2) having a fuller understanding among partners of each other's funding, policy and practice issues, and (3) maximizing resources, particularly during difficult economic times or in communities that are under-resourced. In addition, using a coordinated approach early on can ultimately help families limit or avoid deeper involvement with the court and justice system by creating a complete system of community-based care upon which the family can rely. Extending that system to include community faith partners and extended family networks through engagement strategies, such as Family Group Decision-Making and alternative dispute resolution (discussed in Section 1.6 and 1.7) will increase the likelihood that the family will not re-enter a formal court processing system--status offense, juvenile justice or child welfare.

Interagency collaborations should engage public, private, and faith-based organizations working with youth charged with status offenses and their families, such as juvenile justice, child welfare, mental health, education, substance abuse, courts, tribes, and law enforcement. Working together to address the complex needs of these youth and their families not only creates important connections between systems, but will provide better services to families in a more cost-effective and efficient way.

Although each community will develop its system of care or service continuum differently, some organizational and governance structure must emerge to best coordinate partner agencies. Partners will need to agree on

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[77] *Guiding Principles of Systems of Care—Interagency Collaboration* (Website). Washington, D.C.: Child Welfare Information Gateway. Available at: http://www.childwelfare.gov/management/reform/soc/history/interagency.cfm.

common goals and values; strategic planning will help develop long term relationships that welcome diverse perspectives. Interagency collaborations will not only involve management and administrative coordination, but frontline practitioner collaboration, which can be achieved, in part, through cross-training opportunities, the development of formal agreements, communication plans, and interagency protocols for case coordination and information sharing.[78]

An important collaboration to establish for status offense system stakeholders is with their child welfare system counterparts. Often when children are referred to the status offense system, the misconduct for which they have been referred is caused by, or related to, instances of abuse or neglect. For example, a child who has run away from home may be running from a neglectful situation; a child who is labeled 'ungovernable' may have experienced abuse at home.

The first responder to the status offense allegation must conduct a thorough investigation to assess whether a referral to another system, such as child welfare, mental health or substance abuse, is appropriate in lieu of moving forward with the status offense case. Developing policies and procedures to do so between agencies will help ensure children's safety and make certain that the needs of children and families do not slip through the cracks.

Law enforcement systems also play a critical role in forming partnerships with social service, education, mental health, and other child-serving systems. Often the first responder to alleged status offenses, it is critical that police departments have strong working relationships with community service providers to ensure the youth and families that are first referred to them get the assistance they need. In fact, the International Association of Chiefs of Police directs officers to choose the least restrictive option for youth and suggests departments make "informal referrals" to community service

[78] *A Closer Look: Interagency Collaboration* (2008). Washington, D.C.: Child Welfare Information Gateway. Available at: http://www.childwelfare.gov/pubs/acloserlook/interagency/interagency.pdf.

agencies when the problems exhibited appear to be influenced by substance abuse and/or personal or family crises.[79]

[79] IACP National Law Enforcement Policy Center. (May 1994). *Juvenile Enforcement and Custody: Concepts and Issues Paper.*

SECTION 2. EFFORTS TO AVOID COURT INVOLVEMENT

This section of the *National Standards* discusses key principles and practices that shape how education, social service, community-based, child welfare, runaway and homeless youth, mental health, law enforcement, and juvenile justice systems should first respond to youth and families at risk and in need of immediate assistance. They offer guidance to professionals on how to identify the reason(s) the child and family have been referred to them and select and deliver the best early intervention services that will help the child and family avoid court involvement.

Education, social service, community-based, child welfare, runaway and homeless youth, mental health, law enforcement, and juvenile justice systems should:

2.1 Aim to resolve all status offense matters through the provision of voluntary diversion services.

Status offense behaviors are low-level "offenses" that would not be an offense but for the child's age. They are often symptomatic of larger issues the child faces in the home, school, or community and may be less a reflection of the child's risky behavior and more an indication of his or her unmet health, mental health, educational, or family needs. Youth alleged to have committed status offenses who are formally processed through the court system may be more likely to re-enter the justice system and experience other negative individual and family outcomes, such as increased tension between family members or negative educational or mental health outcomes.

Research has also shown that formal justice system processing in and of itself can have a negative impact on youth, increasing the likelihood of future justice system involvement.[80] Moreover, entering the formal court system

[80] Boutilier, A., and Marcia Cohen. (2009). *Diversion Literature Review*. Washington, DC: US Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

can have many damaging effects on a child and family that may cause them more harm and/or amplify the issues that brought them into the system. For example, in 'incorrigibility' or runaway cases, formal court processing may make the dynamic between parent and child worse and more adversarial. In any case where the parent is an adverse party, court involvement may cause the child to feel resentment towards his or her parents or to feel abandoned. If the child has entered the system because of a systemic failure in identifying, for example, a disability or abuse/neglect, being treated as an "offender" may never adequately address the child's or families' needs while pinning a stigmatizing label – one with collateral consequences – on a youth.

Studies also indicate that for low-level delinquency offenders diversion programs have a more positive effect than formal court involvement and are more cost-effective.[81] The same studies indicate that the best outcomes for public safety occur when the least restrictive interventions are offered.[82] When implemented well, voluntary diversion approaches, such as those discussed in Section 1.6 and 1.7 better help families resolve conflicts, increase services to children in need, cost less, and ultimately reduce the likelihood of re-entering the status offense or delinquency court system.

All stakeholders must recognize and commit to the premise that assessments or evaluations of youth, and statements made by youth in the course or conduct of diversionary informal proceedings, should not later be used against them in any dependency, delinquency or criminal proceedings. This is particularly important where such evaluations are conducted, or statements are made, prior to the appointment of counsel. As discussed in Section 1.2, youth may not developmentally be able to understand the concept of possible self-incrimination when answering questions posed by an

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[81] *The Truth about Consequences—Studies Point towards Sparing Use of Formal Juvenile Justice System Processing and Incarceration.* (January 2012) Washington, DC: National Juvenile Justice Network. Available at: http://www.njjn.org/uploads/digital-library/NJJN-Truth-about-Consequences_Fact-Sheet-FINAL_Jan23-2012.pdf.

[82] *Id.* (citing Petrosino, A., Turpin-Petrosino, C., and Sarah Guckenburg, "Formal System Processing of Juveniles: Effects on Delinquency." *Campbell Systematic Reviews*, 2010:1, pp. 32-38 (January 29, 2010)); *see also* Uberto Gatti et al. (2009) "Iatrogenic Effects of Juvenile Justice," 50 *Child Psychology and Psychiatry* 991, 994.

adult, or when participating in treatment, therapy, or other informal proceedings. Thus, prior to crafting alternatives to the formal justice system, there should be consensus and agreement reached on the limits of the use of such information.

2.2 Determine the proper course of action by identifying the family circumstances, unmet needs, or other factors that led to contact with the status offense system.

The status offense process is typically not the best way to serve youth and families with unmet needs. Other informal or formal systems or processes that could address the youth's issues include mental health, social service or community-based services, family court (custody), special education, child welfare, emancipation, or civil commitment proceedings.

While youth charged with status offenses become involved with the justice system because of behaviors that pose little risk to society, they often come from chaotic and even dangerous homes and communities, and may have witnessed or been victims of violence.[83] They or their families may be struggling with trauma or other mental health issues, substance abuse, or other challenges. These youth may also enter the status offense system because of the failure of other systems (e.g., schools, child welfare) to appropriately identify and address their needs. For this reason, it is essential that youth who have allegedly committed status offenses receive appropriate screening to identify physical, mental health (including trauma), and special education needs, as well as any substance abuse issues. Their physical and emotional safety should also be addressed, and steps should be taken to protect them from victimization at home, in school, or in their communities. Children's needs and strengths should be taken into account and used to develop a plan for addressing the alleged status offense, making referrals to and working with other systems, and, if necessary, providing services through the court system.

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[83] Finkelhor, D., Turner, H., Hamby, S., & Richard Ormrod (2011). "Polyvictimization: Children's Exposure to Multiple Types of Violence, Crime, and Abuse." *Juvenile Justice Bulletin – NCJ 235504*. Washington, DC: U.S. Government Printing Office. Available at: http://www.unh.edu/ccrc/pdf/jvq/Polyvictimization%20OJJDP%20bulletin.pdf.

It is imperative that juvenile justice, child welfare, and community-based services use evidence-based or empirically-supported screening tools to triage institutional responses, and assessment tools to identify areas in which a youth may need assistance.[84] The term "screening tool" usually refers to a short instrument that may identify youth who need further evaluation, and may be administered to all children entering a system. The term "assessment" is often used for a more detailed instrument which looks at more types of information (e.g., risks, needs, strengths). Assessments may require more training and education than screening tools to be administered properly.[85] These instruments should be valid and reliable[86] and should be appropriate for the population with which they are being used (e.g., designed for and tested with youth of the same age group, gender, ethnicity, etc.).

Title IV-E of the Social Security Act, also known as the Federal Foster Care Act, states that before ordering removal or accepting a recommendation that a child be removed from his or her home, courts must determine whether the agency made "reasonable efforts" to prevent removal by providing supportive services to the child and family.[87] Similarly, youth-serving systems must be accountable for making reasonable efforts to provide services and supports for children in their own homes and schools before a child is charged with a status offense. For example, in truancy cases one must consider whether the school is failing to protect the child from bullying or failing to meet special education needs. In a runaway case, it must be determined whether the child is running from an abusive parent, or being pushed out due to family conflict, because of his or her sexuality or gender identity.

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[84] Screenings and assessments commonly used in the juvenile justice and child welfare system include the UCLA PTSD index and the MAYSI-2.

[85] AOC Center for Families, Children & the Court (2011). *Screenings and Assessments Used in the Juvenile Justice System: Evaluating Risks and Needs of Youth in the Juvenile Justice System*. Available at: http://www.courts.ca.gov/documents/AOCBrief_AssessOnline.pdf. Conradi, L., Kisiel, C., & Wherry, J. (2012). "Linking Child Welfare and Mental Health Using Trauma-Informed Screening and Assessment Practices." *Child Welfare*, 90(6), 129-147.

[86] "Reliability" refers to a measure's consistency when outcomes over numerous and varied administrations are looked at and "validity" refers to an instrument's accuracy at measuring what it is intended to.

[87] Title IV-E, Section 472 (a)(2)(A)(ii) of the Social Security Act.

Due to high caseloads, probation officers often don't have the time to provide the intensive services youth and families likely need. Unfortunately, when probation officers' interventions fail to meaningfully address the child's responses to the family or school, many youth end up pushed more deeply into the justice system. When deciding whether another formal or informal system or services would be more appropriate, professionals should consider:[88]

- What circumstances at home, at school, or in the community is the youth responding or reacting to with the behavior at issue?
- Which services or systems does the youth prefer to work with?
- What resources or services does the youth need, and what course of action will most likely provide what is needed?
- What is the youth's relationship with his or her parents and how willing are the parents to work with the different systems or service providers? (e.g., does the child need to be protected through a child welfare case; would the parents be willing advocates for the child in a special education hearing?)
- What are the legal consequences of system involvement? (e.g., a juvenile court record)
- Which system or community-based provider has the ability to move the child into the best possible placement, if necessary? (e.g., if conflict with a parent is an issue, would a change of custody to a noncustodial parent or relative be more appropriate; if the child needs inpatient mental health services, could those be provided through the mental health system?)

Professionals should also remain mindful of their ongoing involvement with the youth and family. Even in situations where it initially seems there are no better alternatives to the status offense system, professionals must be careful to avoid increasing youth and family contact with the system solely or primarily for the purpose of accessing services. As they get to know the child and family better, new information may come to light that shows that another system or community-based alternative may be better able to

[88] Adapted from Benton, H. et al., *Representing Juvenile Status Offenders*.

respond to the family's or child's needs. In those cases, decision makers, like the court or social service provider, may consider conducting combined agency and family meetings to determine the best course of action and to make recommendations to the court.

To achieve the best possible outcomes, when youth are working with more than one system provider or have their case transferred from one system to another, professionals should share and use information effectively, without violating the youth's due process and privacy rights. This may be achieved by entering into Memorandums of Understanding with other relevant systems; see Section 4.12 for more information.

2.3 Train professionals who first respond to alleged status offenses about family and community dynamics and other factors that can cause status behaviors, as well as the availability and role of screenings, assessments and services.

Training is critical for first responders in the child welfare, education, juvenile justice, law enforcement,[89] social service, mental health, and runaway and homeless youth systems. Educating responders on the various home, community and school factors that contribute to or cause status behaviors will equip them to contribute to and implement a system that tailors approaches to the specific needs of each child and family. Elements of the training should give first responders the ability to recognize signs of trauma, disability, and mental health issues, as well as put behavior in the proper cultural and socioeconomic contexts. Aspects of any training curriculum should be taught by appropriate experts such as child and adolescent development experts, juvenile attorneys, and services providers. Training components may include the following:

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[89] A survey of police chiefs by the International Association of Chiefs of Police found that departments had not provided juvenile justice in-service training to officers and that half of the agencies responding did not mandate in-service juvenile justice training after the academy. International Association of Chiefs of Police (2011). *Juvenile Justice Training Needs Assessment: A Survey of Law Enforcement*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention. Available at: http://www.theiacp.org/PublicationsGuides/ContentbyTopic/tabid/216/Default.aspx?id=1603&v=1.

- What research shows about the effect court involvement may have on youth (see commentary for Section 2.1).
- What research shows about the effect detention may have on youth (see commentary for Section 3.3).
- What research shows regarding the factors associated with each type of status offense, including discussions of risk factors in the home, community, and school.
- How systemic failures may lead to status offense system involvement.
- Adolescent development (see commentary for Section 1.2).
- Being trauma-informed and understanding the effects exposure to violence and victimization can have on youth (see commentary for Section 1.4).
- Being culturally competent and sensitive to gender and LGBTQ issues (see commentary for Section 1.10).
- Accommodating and understanding issues relating to youth with disabilities (see commentary for Section 1.11).
- School system policies, including discipline practices and the role of bullying in truant behavior.

Professionals who are the first to respond to alleged status offenses should also receive ongoing training on screening and assessment instruments and services available in their communities, including information on how to access them. Training should focus on the whole child and family by ensuring first responders are aware of services in a variety of areas that often affect families who enter the status offense system. As a result, providers will be able to identify more quickly where the family or child needs help and link them to the proper assistance without involving the court system. This will decrease the likelihood of the child becoming further disengaged from home, school, and community. Training components along these lines may include topics like:

- How to use available, reliable, and valid screenings and assessments.
- Accessing housing programs and services.

- Accessing education or vocational programs and services.
- Utilizing available evidence-based or empirically-supported mental health, health or other services appropriate for different types of status offenses.

Whenever possible, cross-training of professionals from different systems and service providers should be offered. This allows professionals in different agencies to address issues in consistent and complementary ways, while reducing costs (e.g., by using each other's staff as expert presenters, and reducing the number of events that need to be planned and paid for). Types of training that could be offered on responding to truancy, for example, could include:

- Professionals from a local mental health agency educating school officials, law enforcement, and juvenile justice professionals on identifying anxiety and other psychological issues and how and where to make referrals for mental health issues before these issues result in too much missed school.
- A social service or juvenile justice agency representative educating attorneys and judges, probation and truancy officers, school personnel and others about pre-court diversion programs and the dangers of juvenile justice system involvement.
- A training given by and for law enforcement and school professionals on bullying and gang involvement and how these lead to truancy.

Law enforcement systems should:

2.4 Focus on prevention and intervention by connecting children and families to needed services in lieu of charging or detaining children alleged to have committed status offenses.

Juvenile court involvement should be the choice of *last resort* for law enforcement and used only after available alternatives have been exhausted. In recognition of the limited effectiveness of court-based intervention for youth charged with status offenses, officers should manage their arrest and

custody authority in ways that trigger court involvement only in limited cases where pre-court diversion efforts have been unsuccessful. Where safety appears to be a central issue, officers should strongly consider whether another system or community-based provider would provide better protections and services. Likewise, officers should not detain youth who have allegedly committed a status offense. (See Section 3.8 for a discussion of the dangers of detention). Pre-court detention can be avoided when officers critically assess whether the child can return home (which may include contacting another first responder, such as a social service agency, to help make this determination) or identify temporary kinship or respite care options for the child pending the implementation of services or assistance that would allow the child to safely return home.

Often, a youth's behavior is a function of their perceived options. When dealing with youth engaged in status behaviors, officers should investigate why the youth chose a particular course of action and how his or her environment—school, home or community—played a role in that choice. Officers should then contact the appropriate informal support system, community-based service provider, or formal service system to further assist the child and family. For juvenile offenders, the Commission on Accreditation of Law Enforcement Agencies requires law enforcement systems to make an effort to understand the cause of the behavior, stating: "Beyond enforcing the law with respect to juvenile offenders, agencies should make a firm commitment to implement procedures directed toward addressing the causes of the behavior and to develop programs designed to prevent juvenile delinquency."[90] Just as an officer should not arrest a person accused of committing an offense without some level of probable cause or reasonable suspicion, an officer should not refer a youth for investigation as a status offender without some level of investigation as to the institutional dynamics that may be causing the conduct in question. Using problem-solving techniques, officers should seek to understand the cause of the youth's behavior and the role of adults in the youth's choices and identify the

[90] Commission on Accreditation of Law Enforcement Agencies (2007). *Standard 44 Juvenile Treatment and Custody*.

best responders to it. This requires distinct police strategies for specific categories of status behaviors.

Most American police departments use the community policing model to problem-solve, collaborate with other government and community entities, and gather information and community input. Community policing requires recognition of "policing as a broad function, not a narrow law enforcement or crime fighting role."[91] As applied to truancy, for example, this approach would require law enforcement to first determine whether the youth is out of school because of a school decision (i.e. suspension), an action by the parent (i.e. failing to provide transportation, requiring youth to stay home for caretaking or other reasons), or another reason (i.e. bullying, school failure due to learning disability, depression). In a runaway case, it would require the officer to consider what situation the youth is running from, and the frequency of the running. Key to officers' responses in each situation is the understanding that the youth's behavior is the manifestation of situations caused by adults as well as a call for help.

Education systems should:

2.5 Implement responses to truancy that match the reasons youth are absent from school and that aim to avoid court involvement, school suspension or expulsion.

Chronic truancy has been shown to be a risk factor for drug use, delinquency, adult criminality, suicide attempts, and employment problems.[92] Contributors to truancy are found in youth's schools, families,

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[91] U.S. Department of Justice, Community Oriented Policing Services, defines the key elements of community policing as problem solving and community partnerships with government agencies, community members and groups, nonprofit service providers, and businesses. Gordner, G. *Community Policing: Principles and Elements*. National Center on Domestic and Sexual Violence. Available at: http://www.ncdsv.org/images/CommunityPolicingPrinciplesElements.pdf.

[92] Office of Juvenile Justice and Delinquency Prevention, Model Programs Guide (nd). *Truancy Prevention.* Available at: http://www.ojjdp.gov/mpg/progTypesTruancy.aspx, (citing to Chang and Romero 2008; Henry and Huizinga 2005, as reported in Heilbrunn 2007; Henry and Huizinga 2007;

and communities, as well as individual factors.[93] School factors can include poor identification of special education needs, unsafe environments, and inadequate record keeping, and attendance policies.[94] Risk factors in the family or community include child abuse or neglect, financial or medical needs that require youth to assist the family, violence near school or home, or culture-based attitudes towards education.[95] Factors specific to youth that may lead to truancy include being held back, low academic achievement, low self-esteem, and gang involvement.[96] Minority youth may be more likely to be petitioned to the court for truancy, and although there is no good national data on the prevalence of truancy, dropout rates (often used as a proxy for truancy) are clearly higher for minority youth.[97] Professionals working with truant youth need to understand these contributors to truancy to effectively identify and address the reasons a particular youth is missing school.

According to the National Center for Mental Health Promotion and Youth Violence Prevention, "research indicates that truancy can be reduced by programs and activities designed to improve the overall school environment (and its safety), attach children and their families to the school, and enable schools to respond to the different learning styles and cultures of children." Other research has looked at characteristics of successful truancy reduction programs and found that important commonalities include:

- Implementation of effective and relevant consequences for truancy.
- Motivational strategies used to bolster attendance.
- Truancy reduction services offered in the school and accessible community locations.

Kelley et al. 1997; Loeber and Farrington 2000; Seeley 2008a, Walker 2007, Dryfoos 1990; Catalano et al. 1998; Robins and Ratcliff 1978; Snyder and Sickmund 1995).

[93] Office of Juvenile Justice and Delinquency Prevention, Model Programs Guide (nd). *Truancy Prevention.* Available at: http://www.ojjdp.gov/mpg/progTypesTruancy.aspx.

[94] Office of Juvenile Justice and Delinquency Prevention Model Programs Guide (no date). *Truancy Prevention* (citing to Baker, Sigmon, and Nugent 2001; Heilbrunn 2007; Hammond, Smink, and Drew 2007; OJJDP and USED, nd.).

[95] *Id*.

[96] *Id*.

[97] Walls, Charles (2003). *New Approaches to Truancy Prevention in Urban Schools*. ERIC Clearinghouse on Urban Education, Institute for Urban and Minority Education. Available at: http://www.ericdigests.org/2004-2/truancy.html.

- Schools partnering with other social service providers and systems to implement truancy reduction initiatives.
- Families being meaningfully engaged in meetings, services, and other interventions.[98]

There are many ways school districts can address truancy following these principles while avoiding court involvement, such as providing home visits by truancy officers who can work with the families and make service referrals,[99] or the use of truancy review boards. School-based truancy or youth courts[100] may also help address truancy while avoiding court involvement, as can alternative learning environments/programs, such as independent study or night school classes.

Responding to truancy should always involve working with the youth and family to identify and address the underlying reasons for school absence. The steps that school system professionals should take when presented with truancy charges may vary by the size and resource level of the school district. In general, schools should start by contacting the family and following up with a home visit or in-school meeting with the youth and family to identify reasons why the child may be truant. Once the issues underlying the truancy are identified, the truancy officer or other school professional should make appropriate referrals or identify community or other system partners who can help address identified needs, and develop a plan with the youth and family to resolve the issues. Monitoring and follow up, including additional referrals if identified services are not helping or new issues arise, should occur as appropriate to meet the family's and child's needs. If no progress is made the family and truancy officer or school official should re-review the

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[98] Baker, S., and Nugent (2001), cited in Office of Juvenile Justice and Delinquency Prevention Model Programs Guide (nd). *Truancy Prevention.* Available at: http://www.ojjdp.gov/mpg/progTypesTruancy.aspx.

[99] Some school districts have used cost-benefit analyses using Average Daily Attendance figures and data on the relationship between attendance and standardized test scores to support hiring or retaining truancy officers.

[100] For more information *see* Office of Juvenile Justice and Delinquency Prevention, Model Programs Guide (nd). *Teen/Youth Courts.* Available at: http://www.ojjdp.gov/mpg/programTypesDescriptions.aspx?ptype=2,35.

plan and consider involving the school principal, a truancy review board, or a school-based truancy or youth court, if available.

In addition, memoranda of understanding or other types of information sharing agreements are critical for systems to be able to work together to help youth, since schools and other entities may be wary of discussing particular students without them. These types of agreements can also lay out the specifics of inter-agency partnerships, such as processes for making referrals between agencies and sharing or contribution of resources, information, space, or staff time. One example of a potentially beneficial collaboration is locating services in the schools (e.g., providing space for community mental health providers, who can provide services and bill Medicaid, rather than the school).[101] Cross-training of professionals in different systems is also essential, see Section 2.3 for more information on cross-training and specific truancy examples.

Child welfare, juvenile justice, and runaway and homeless youth systems should:

2.6 Implement responses to alleged status behaviors that aim to avoid court involvement and are tailored to the reasons the youth and family have been referred to the child welfare, juvenile justice, or runaway and homeless youth system.

One of the most important things a professional can do when first responding to an alleged status offense is make reasonable efforts to learn the cause for the youth's contact with the agency. These responders may often come into contact with youth who are alleged to have run away from home or to be out of their parent's control or "ungovernable." Using valid and reliable screening instruments and understanding the key risk factors correlated to these behaviors is critical to helping identify and respond to the behaviors appropriately.

[101] Locating services in schools also decreases missed visits and avoids stigmatization of youth.

For example, research has shown that running away from home is predicted by greater depression symptoms than peers, lack of parental support, school disengagement and heavier substance use.[102] Research on the contributing factors of ungovernable behavior has focused largely on the dynamics between a child and his or her family. Parental behavior, discipline practices and the presence of supportive, caring adults all affect whether a child may exhibit behaviors that may be deemed ungovernable. While most children exhibit some emotional or social problems as they enter adolescence, the majority of these behaviors are normal developmental milestones. In some cases, however, poor relational dynamics with parent or mental or physical health problems predict unruly behavior. Alcohol or drug use can be the cause of a child's 'out of control' behavior, as can untreated (or improperly treated) personality or other mental health disorders that often first appear in adolescence.[103]

Based on these research findings, agencies' first responses must be tailored to the reason the youth and family have been referred to them to adequately respond to the youth's and family's needs. If school disengagement, for example, is the reason the child has run away, addressing the child's academic needs is paramount to avoiding repeat running episodes. If a youth is beyond his or her parents' control because of a substance abuse problem, conducting an assessment and implementing substance abuse services will be the only way to start to resolve the problem.

How child welfare, juvenile justice, and runaway/homeless youth agencies first respond to youth will vary from community to community depending on state laws, agency policies, and available resources. However, all professionals providing an initial response to an alleged status offense should:

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[102] Tucker, Joan et al (2011) "A Longitudinal Study of Adolescent Risk Factors and Young Adult Outcomes." *Journal of Youth and Adolescence* 40 (5), p. 507-518.

[103] Development Services Group. (2009) *Ungovernable/Incorrigible Youth Literature Review*. Developed for the Department of Justice, Office of Juvenile Justice and Delinquency Prevention. Available at: http://www2.dsgonline.com/dso/Ungovernable%20Youth%20Literature%20Review.pdf .

- Seek to identify the reason the youth and family has been referred to the agency, which may include the use of valid and reliable screening or assessment tools.
- Consider whether any status offense system involvement is needed or (particularly in first-time, low risk cases) the family and youth would be better served if the system took no action and simply provided the family with a list of community resources.
- Develop a safety and service plan with the child and family that they can implement voluntarily and with which they can reasonably comply.
- Utilize the least restrictive alternatives when considering appropriate service or placement referrals, such as in-home services or limited respite care or a cooling off period, where appropriate.
- Keep in mind what the long term goal is for the youth and family when making service referrals or implementing a service or safety plan.

First responder agencies should be particularly cognizant of instances where adolescents are referred to them because of status behaviors, when in fact the youth is a victim of abuse or neglect. Utilizing intake procedures that take sufficient time to assess the reason behind the referral will help identify abuse or neglect. Too often it is difficult for older youth to access child welfare services, and some confidentiality and service delivery policies and practices are not favorable to older youth who report abuse or neglect. Incentivizing youth to participate in the intake process and providing age appropriate assessments and services will help professionals identify the adolescent's true needs and access the proper assistance without improperly labeling and treating him or her as an offender.

Court intake personnel should:

2.7 Not accept jurisdiction over any status offense case until it has been determined that the applicable statutory requirements were met and that the agency that first responded to the claim made reasonable efforts to

avoid court involvement by exhausting all available, culturally appropriate, pre-court assessments, services, entitlements, and treatments.

The juvenile justice system is based on the assumption that courts are capable of responding to youths' needs with resources. This assumption is increasingly unfounded. As the U.S. Supreme Court noted in *McKiever v. Pennsylvania*, 403 U.S. 528, 547 (1971), the "juvenile concept" holds promise but, "[s]o much depends on the availability of resources, on the interest and commitment of the public, on willingness to learn, and on understanding as to the cause and effect and cure." Overloaded case dockets and the paucity of services available argue for diverting youth away from the courts and redirecting them to other parts of social service systems' safety nets.

In light of this and recent research showing the deleterious effects court processing can have on youth and families (as discussed in Section 2.1), court systems should make every effort to avoid petitioned status offense cases. An important way for courts to do this is to critically assess what efforts first responders made to identify the reason the youth was referred to them and to implement a proper course of action that exhausts all available resources to help the child and family resolve their problems outside of court. In many instances, the courts' ideal role is to coordinate responses and warn parents of the consequences of failure to address the circumstances and causes of their children's behavior while directing cases into other appropriate systems.

Courts should develop clear protocols for intake officers to follow for each type of status offense to assure that no case is petitioned before the intake officer has determined that every reasonable effort was made to avoid court involvement. The phrase "reasonable efforts" has long been a benchmark in child welfare cases for courts to critically analyze agency efforts to preserve and reunify families. Laws in every state require the provision of services that will help families in the child welfare system remedy the conditions that brought them into the system. Generally, agency efforts must include "accessible, available, and culturally appropriate services that are designed to improve the capacity of the family to provide safe and stable homes for

their children."[104] The types of services that may be offered to comply with the reasonable efforts mandate include services like respite care, family therapy, home visiting programs, parenting classes, or parent and family support groups.

For all status offense referrals, intake officers should similarly review pre-court efforts with an emphasis on diversion services and assessments and treatments that identify the cause of the case referral, enhance the family's capacity to address its own problems, and provide a safe environment for the child. They should also ensure that the child and family were able to reap the benefits of any applicable federal or state entitlement programs that would make formal court processing unnecessary. (See Section 3.11 and commentary.)

Intake officers must also assess whether the behaviors alleged meet the statutory definition of the status offense charged and that all statutory pre-requisites to court involvement were followed. For example, many state statutes use terms like "habitual," "without good cause," or "intentional" to describe status behaviors. They may also require education or juvenile justice systems provide certain services or assistance before they can petition cases to court. Yet, petitioners often fail to show how the alleged behaviors meet these criteria, or courts fail to fully assess whether the statutory definitions or pre-requisites were met. As part of the intake officer's reasonable efforts mandate to avoid court, he or she should screen out cases that do not meet statutory criteria.[105]

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[104] Child Welfare Information Gateway. (2006) *Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children*. Washington, D.C.: Department of Health and Human Services, ACYF/Children's Bureau.

[105] For a more in depth discussion of meeting statutory criteria before petitioning a status offense case, *see* Smith, T. (2010). "Pre-adjudication Strategies for Defending Juveniles in Status Offense Proceedings" in *Representing Juvenile Status Offenders*. Washington, D.C.: American Bar Association Center on Children and the Law, 62-66. Available at: http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/RJSO_FINAL.authcheckdam.pdf.

Efforts first responders must make will vary, depending on the alleged status behavior charged, the services available in the jurisdiction, and state law or policy requirements. However, as discussed in more detail in Section 2.7 and Section 3.11, best practices suggest that intake officers should not accept jurisdiction over an alleged status case without minimally reviewing the extent of pre-court diversion efforts, whether statutory criteria for the alleged offense are met and whether other laws or entitlement preclude petitioning a status offense court case.

SECTION 3. EFFORTS TO LIMIT COURT INVOLVEMENT

This section of the *National Standards* focuses on what efforts court system stakeholders should make to limit court involvement when pre-court diversion efforts have not produced desired outcomes. The following *Standards* offer guidance to judicial, legal, and other professionals working within the court system on how they can use the court's powers to ensure the proper services are implemented while avoiding deeper court involvement. They also provide specific guidance at various stages of the case to ensure best outcomes for youth and families, highlighting key principles and practices court system stakeholders should utilize along the way.

Judicial officers should:

3.1 Dismiss or, alternatively, stay proceedings when community-based services or other formal or informal systems approaches would circumvent the need for continued court jurisdiction.

As was discussed in Section 2.1, research shows that formal court system processing, in and of itself, can have a negative impact on youth, increasing the likelihood of future justice system involvement. Diversion programs have a more positive effect for low-level delinquency offenders and youth charged with status offenses than formal court involvement and are more cost-effective. In addition, the best outcomes for public safety occur when the least restrictive interventions are offered.[106] For these reasons, at the beginning of a status offense case the judge should critically assess whether court involvement will help the child and family resolve the issues that bring them before the court. To do so, the judge must ensure first responders, pre-court service providers, and petitioning parties have made reasonable efforts

[106] *The Truth about Consequences—Studies Point towards Sparing Use of Formal Juvenile Justice System Processing and Incarceration.* (January 2012) Washington, DC: National Juvenile Justice Network (citing Petrosino, A., Turpin-Petrosino, C., and Sarah Guckenburg, "Formal System Processing of Juveniles: Effects on Delinquency." *Campbell Systematic Reviews*, 2010:1, pp. 32-38 (January 29, 2010)); *see also* Uberto Gatti et al. (2009) "Iatrogenic Effects of Juvenile Justice," 50 *Child Psychology and Psychiatry* 991, 994.

to provide services and supports to children and families before petitioning a case. This may include educating petitioners from the bench and through guides or brochures about what the court process is and what it can and cannot offer the child and family. This is particularly important in jurisdictions where parents can file status offense petitions directly, but may have little or no knowledge about the negative consequences for the child and family if court involvement is pursued.

When making a "reasonable efforts" determination, the judge should decide whether it is appropriate to continue jurisdiction, dismiss the case or stay proceedings pending the implementation of community-based assistance that may help the child and family resolve their problems outside of court involvement. The judge should not accept jurisdiction over an alleged status offender when the cause of the child's alleged behavior is rooted in abuse, neglect, victimization, or disability. He or she should also not accept jurisdiction when pre-court diversion efforts were insufficient or inappropriate to the family's needs, when state statutory criteria for assuming jurisdiction are not met or when state or federal entitlements preclude status offense jurisdiction. At minimum, judges should ask:

- What efforts were made prior to a court petition being filed to determine the cause of the alleged status behavior? This may include questioning the relevant parties about the extent to which service providers interviewed the family and child to understand the reason behind the referral. It may also include questions about the extent to which the child was screened or assessed, depending on the facts that brought the case to the court, as well as a determination of whether some systemic failure, as opposed to the child's behavior, brought the case before the court.
- What assistance was offered to the child and family to avoid formal court processing? This may include questions about whether the child and/or family were offered services, whether a treatment or service plan was developed, and how often service providers met with the child or family to assess progress and overcome barriers. It may also include a determination of whether the services offered met the child

and family's needs and whether assistance not offered or available may have been more suitable.

- Were statutory pre-requisites met to assume jurisdiction over the case? This may include a review of the facts in the petition and any other available documents to assess whether the behaviors alleged in fact meet the statutory definition of the status offense charged. It may also include an inquiry into whether statutory pre-requisites to court involvement were followed, such as whether education or justice system responders engaged in statutorily required processes before petitioning cases to court.
- Was the child entitled to certain protections under state or federal law that would circumvent the need for formal court processing? For example, the child may be eligible for certain services, assistance, and protections under Medicaid, the Indian Child Welfare Act, federal right to education laws, or the state constitution in lieu of court involvement. See Section 3.2 and 3.11 for more information.

Determining whether to dismiss or stay proceedings will require a case-by-case assessment of the facts that brought the case to the court, the level of effort made by pre-court service providers to engage the family in services, and the extent of the child's and family's needs and willingness to engage in voluntary services.

3.2 Assess early whether the Indian Child Welfare Act (ICWA) applies.

The Indian Child Welfare Act (ICWA) is a federal law that established minimum standards relating to the treatment and placement of Indian children. Congress passed ICWA after finding "that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions."[107] ICWA protects Indian children's interests by, among other things, ensuring that when an out

[107] 25 U.S.C. Section 1901.

of home placement is deemed necessary, the setting chosen reflects Indian values and culture.[108]

Although ICWA does not cover most juvenile delinquency proceedings, ICWA does apply to status offense cases.[109] There are several critical junctures during a status offense case when courts should consider ICWA and its provisions, such as at the beginning of the case, when the child is placed out of home and when the child and family are offered services. If an Indian child is petitioned to court as an alleged status offender, the court should notify the tribe of the proceedings. This will allow the tribe to help identify culturally appropriate services and assistance for the child and family. If the child is detained, ICWA's placement preference standards must apply, unless the placement qualifies as an "emergency removal," in which case the placement must end as soon as the emergency subsides.[110]

Many of ICWA's most relevant provisions for status offense cases relate to when a youth is placed out of his or her home. ICWA gives tribes exclusive jurisdiction over custody proceedings involving Indian children living within their reservation or who are wards of the tribal court. For all other covered proceedings, the state should transfer jurisdiction to the tribe at the request of a parent, the tribe, or the child's custodian absent good cause or objection by a parent or child of a certain age.[111] ICWA requires that any Indian child placed in foster care must be placed in "the least restrictive setting which most approximates a family and in which his special needs, if any, may be

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[108] 25 U.S.C. Section 1904; *see also* The Indian Child Welfare Act and Advocacy for Status Offenders. (2010). Washington, D.C.: American Bar Association Center on Children and the Law. Available at: http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/ICWA_factsheet.authcheckdam.pdf.

[109] Bureau of Indian Affairs. (1979). *Guidelines for State Courts; Indian Child Custody Proceedings*. Department of Interior, Guideline B-3. Available at: http://www.nicwa.org/administrative_regulations/icwa/ICWA_guidelines.pdf.

[110] *Indian Child Welfare Act of 1978: A Court Resource Guide. (July 2012). ICWA Special Committee, Michigan Court Administrative Office.* Available at http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Manuals/cws/ICWACResourceGuide.pdf.

[111] 25 U.S.C.A. § 1911.

met."[112] The child should be placed reasonably close to his home and the law enumerates a series of placement preferences that must be followed unless the child's tribe establishes a different order of preference. Prior to a foster care placement, the placing agency must prove that efforts were made to provide "remedial services and rehabilitative programs designed to prevent the breakup of the Indian family" and that those efforts were unsuccessful.[113] If, however, an Indian child is held in contempt of court for a probation violation, ICWA does not apply if the contempt order results in an out-of-home placement, as ICWA does not consider contempt to be part of the original status offense case.[114] Still, courts should refrain from placing Indian youth in secure confinement for a status offense. For more information on the damaging effects of detention and the need to eliminate the valid court order exception, see Section 3.8 and Section 4.10 respectively.

3.3 Ensure youth charged with status offenses have independent, qualified, and effective representation throughout status offense proceedings.

Judges must ensure that all children who appear before them because of alleged status offenses receive independent, qualified, and effective legal representation from the initial hearing to case closure. Status offense cases can have significant consequences for youth, and an attorney can help ensure they are not unnecessarily removed from their homes or held in secure detention, deprived of entitlements and services, or pushed deeper into the juvenile justice system. A qualified attorney will also help the child present evidence in his or her defense and challenge the petitioner's case. If the child is adjudicated as a status offender, he or she needs counsel to help assure the disposition plan is fair and appropriate to the child's needs.[115] Moreover, counsel will help the child understand the court process, what is expected of him or her and what the consequences are for failing to comply with court mandates.

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[112] 25 U.S.C. Section 1915.

[113] 25 U.S.C. §§ 1912 –1915; 44 Fed. Reg. 67584.

[114] *Indian Child Welfare Act of 1978: A Court Resource Guide*. (March 2011). ICWA Special Committee, Michigan Court Administrative Office. Available at: http://courts.michigan.gov/scao/resources/publications/manuals/cws/ICWACtResourceGuide.pdf.

[115] *A Call For Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2002). Washington, DC: ABA Juvenile Justice Center, Youth Law Center and the Juvenile Law Center. Available at: http://www.njdc.info/pdf/cfjfull.pdf.

The child's legal representative must be independent and qualified to ensure the child receives effective assistance of counsel. To be independent, the attorney must only represent the child's expressed interests. In some status offense cases, especially incorrigibility or runaway cases, the parents' expressed interests may conflict with the child's. In addition, abuse, neglect, or high family conflict may be significant contributing factors to the status offense charges, requiring that the child have his or her own legal representative separate from his or her parents.

Representing children in status offense cases also requires specialized training. As discussed in Section 2.3, professionals working with, and on behalf of, alleged status offenders should receive ongoing training on a variety of issues to understand the causes of status behaviors and the best ways to resolve status offense cases. To ensure legal advocates understand how to effectively represent their client's interests, they should receive training on topics such as:

- What research shows about the effect court involvement and detention may have on youth (see commentary for Section 2.1 and Section 3.8).
- What research shows regarding the factors associated with each type of status offense, including discussions of risk factors in the home, community, and school.
- How systemic failures may lead to status offense system involvement.
- Adolescent development (see commentary for Section 1.2).
- Trauma-informed advocacy, including understanding the effects exposure to violence and victimization can have on youth (see commentary for Section 1.4).
- Being culturally competent and sensitive to gender, race and LGBTQ issues (see commentary for Section 1.8-1.10).
- Accommodating and understanding issues relating to youth with disabilities (see commentary for Section 1.11).
- Available screening tools, assessments, and services that are appropriate for youth charged with status offenses, and how to protect

youth from self-incrimination when receiving screening, assessment, and services.

- State and federal entitlements and rights that may preclude the need for court involvement.

Effective assistance of counsel, in addition to training, also requires that the child have legal representation at all stages of the status offense process and preferably before the initial hearing so counsel has time to meet and prepare with his or her client. The lawyer must also have the resources to conduct a proper investigation and prepare for evidentiary and disposition hearings. Effective representation also requires that compensation for appointed counsel is fair and that caseloads are not excessively high.[116]

3.4 Not allow children in status offense cases to waive counsel or alternatively only allow waiver if: (1) the waiver is on the record, (2) the court has fully inquired into the child's understanding and capacity and (3) the waiver occurs in the presence of and in consultation with an attorney.

Children should have legal representation at all stages of status offense cases. If a child waives his or her right to counsel, he or she loses the benefit of an important advocate throughout the court process. Lawyers serve many critical functions when representing youth who have been accused of status offenses:[117]

- Lawyers help ensure that children's rights are protected and that they are treated fairly, which includes giving them an opportunity to be heard through their counsel.
- Lawyers work to limit children's exposure to the formal court system and avoid detention, making sure children are not adjudicated for offenses they did not commit.

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[116] *See Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases* (2005). Reno, NV: National Council of Juvenile and Family Court Judges, Chapter 3, pg. 78-79.
[117] Interbranch Commission on Juvenile Justice. (2010) Testimony of Robert Schwartz, Executive Director, Juvenile Law Center. Pennsylvania Models for Change.

- Lawyers help ensure children are in safe placements, and that services and treatments provided meet children's specific needs.

Despite the many benefits associated with having counsel during status offense proceedings, many youth waive this right when it is first offered, whether at the beginning of the case or later. They often do so without having consulted an attorney, without colloquy with the court, and with no assessment of their capacity to understand the rights they are waiving. For example, the Ohio Public Defender reports that two-thirds of the children who were the subject of status offense or delinquency complaints resolved in 2004 faced those proceedings without a lawyer.[118] In addition, a report from the Ohio Department of Youth Services found that 20% of children placed at correction facilities were not represented by a lawyer during their delinquency cases.[119]

Although the U.S. Supreme Court case, *In re Gault*,[120] mandated a right to counsel for children in delinquency proceeding, it did not necessarily do so for status offense cases. So, while many states appoint counsel for youth for all or most stages of a status offense case, others do not do so until the child faces the threat of incarceration.[121] Likewise, although many best practice standards call for states to pass laws that make counsel an un-waivable right, many states allow children to too easily waive the right in both delinquency and status offense cases.[122]

Research on adolescent development, however, has found that a youth's capacity to understand consequences changes and matures as he or she ages.

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[118] *See* http://www.opd.ohio.gov/Juvenile/Jv_Right_to_Counsel.htm.
[119] Ohio Office of the Public Defender. *Protecting a Juvenile's Right to be Represented by Counsel* (Website). Available at: http://www.opd.ohio.gov/Juvenile/Jv_Right_to_Counsel.htm.
[120] 387 U.S. 1 (1967).
[121] *Fact Sheet: The Right to Counsel in Status Offense Cases* (2010). Washington, D.C.: American Bar Association Center on Children and the Law. Available at: http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/right_to_counsel_factsheet.authcheckdam.pdf.
[122] See IJA-ABA Juvenile Justice Standards. *Standards Relating to Counsel for Private Parties*, Standard 2.3, which says that children should have counsel in delinquency and in need of supervision cases.

Youth are less likely to make informed decisions or consider future consequences for their present actions. (See Section 1.2 for more information on adolescent development). Hence a child's waiver of counsel should not be accepted by the court or only done so if it is done knowingly and with the fair and unbiased assistance of an attorney.

The National Juvenile Defender Center (NJDC) proposes model waiver legislation that includes numerous safeguards for children to ensure that any waiver of counsel is made knowingly and intelligently. NJDC advocates that states enact laws that do not allow children to waive counsel unless the waiver is executed (1) in the presence of, and after consultation, with a lawyer (2) on the record in open court and in writing (3) in a language regularly spoken by the child and (4) after the court fully inquires into the youth's comprehension and capacity.[123] The model legislation also advocates that standby counsel be appointed if the child waives counsel and that the court renew the offer of counsel at later court proceedings.[124]

3.5 Exercise their statutory and inherent authorities to determine, prior to adjudication, whether youth and families received, in a timely manner, appropriate interventions that could have limited their court involvement.

Although all efforts should be made to avoid court involvement for status offense behaviors, in some cases youth alleged to have committed a status offense will end up in court. Prior to adjudication, judicial officers should take deliberate steps to determine whether pre-court diversion efforts were made and, if so, why they failed to produce the desired outcome. If the court determines that pre-court diversion efforts where inadequate, judicial officers should, whenever possible, dismiss the case or stay proceedings until such interventions are pursued. (See commentary for Section 3.1 for more information on questions judicial officers should ask about the adequacy of pre-court efforts).

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[123] National Juvenile Defender Center and Center for Policy Alternatives (2006). *Child Waiver of Counsel Prohibition Act*. Available at: http://www.njdc.info/pdf/waiver_model_legislation.pdf.
[124] National Juvenile Defender Center and Center for Policy Alternatives (2006). *Child Waiver of Counsel Prohibition Act*. Available at: http://www.njdc.info/pdf/waiver_model_legislation.pdf.

3.6 Exercise their statutory and inherent authorities throughout the child and family's court involvement to ensure that service delivery systems are providing the appropriate assessments, treatments, and services to children and families in status offense cases.

Once a status offense case enters the disposition phase, the probability of the youth and his/her family being drawn deeper into the juvenile justice system increases and accelerates. To avoid this, it is imperative and beneficial that courts take on an oversight role. Judicial officers are uniquely positioned to help ensure that children and families receive timely and appropriate services and assistance that can meet the family's needs and limit the family's court involvement. As overseer, the court's role is not to evaluate the quality of any given service, but to ensure that the service-delivery system is functioning in the youth and family's best interest.

There are many ways courts can provide oversight and help ensure that service providers are adequately responding to families' needs in status offense cases. Keeping in mind that states may have different ethical, confidentiality and other jurisdictional policy or law requirements or limitations, courts can consider:[125]

- Contacting providers in writing or by phone to request a report or ongoing reports on what the providers' objectives are and how they plan to achieve them, focusing also on the timeliness and appropriateness of services.
- Subpoenaing entities responsible for providing the child or family services, assessments, treatments, or other services either by requiring their presence in court or requiring that they submit documentation to the court that shows their efforts to support the child or family.

[125] Many state laws allow courts to oversee aspects of the service delivery system used for children in the child welfare and juvenile justice system. For example, California law allows "the court, at any time after a petition has been filed, to join in a juvenile court proceeding any governmental agency, private service provider, or individual…that the court determines has failed to meet a legal obligation to provide services to a child who is the subject of a dependency proceeding…[or] delinquency proceeding." CA SB 1048 (2012). In Idaho, a judge of any court can order the Department of Health to submit appropriate mental health assessments and treatment plans for the court's approval at any stage of court proceedings. ID. Stat.§ 20-511A.

- Joining entities responsible for providing the child or family services, assessments, treatments, or other services as parties to the status offense case. In doing so, the court can fully oversee when and how assistance is offered to the child and family and the service providers will have a fuller understanding of what is happening in the court process and how it affects their work. This may be particularly useful for the court, child, and family if the entity responsible for providing services has failed to meet their legal responsibility to provide assistance.

In addition, whenever services are offered through or supervised by the court, judicial officers should ensure that they:

- Can be started immediately and without long waitlists or time-consuming prerequisites.
- Are community-based and offered in locations and at times that make it easy for youth (and their families, when appropriate) to attend.
- Are offered in the least restrictive setting possible (e.g., outpatient, in a comfortable, non-punitive setting), and incarceration is avoided.
- Are offered by qualified providers with the necessary training and experience, who frequently work with at risk or court-involved youth.
- Are evidence-based, empirically-supported, or otherwise shown to benefit youth of similar age, gender, and ethnicity and in similar circumstances to the child in question, and are provided by professionals with appropriate training, education, and/or experience.

While courts should seek to ensure the child and family receive necessary treatment and services, the court should never assume or maintain jurisdiction over a child and family solely to provide, oversee or ensure that treatment or services are offered. The court should also be mindful of the purpose for requesting the service, treatment or assessment and ensure that information gained through the providers' reports is never used to harm the child or used against him or her.

3.7 Assess alternatives to out-of-home placement or secure confinement.

Research has shown that secure confinement leads to poorer outcomes and future delinquent and criminal behavior (see Section 3.8). Similarly, out-of-home placements deprive youth of the opportunity to resolve their issues in a familiar and supportive environment. When considering a request or recommendation for out-of-home placement, judicial officers must ensure that service providers have made reasonable efforts to avoid out-of-home placements or secure confinement for youth in status offense cases. In making this assessment the court should ask:

- If the child is Indian, and if so, if the Indian Child Welfare Act's guidance regarding placements has been complied with (e.g., placement in the least restrictive setting possible and in Indian homes). See Section 3.2 for more information.
- If the agency or service provider understands and is working to overcome the cause of the status offense referral.
- Whether systemic issues or other failures to provide appropriate services have kept the case in court unnecessarily.
- If all appropriate systems that should be involved have been, e.g. child welfare, mental health, education.
- If all community-based alternatives have been explored and attempted if appropriate, and whether the child has received individualized treatment/service plans before contemplating out-of-home placement.

If all nonresidential options have been exhausted and the court is considering out-of-home placement, the judge should assess whether respite care or simply approving certain locations (e.g., the home of a relative or friend agreed to by the youth and his or her parents) as respite care options would provide the family and child resolution to the issues they face. Allowing the youth and family to take needed breaks without designating the youth as running away or violating court orders may supplant the need for a longer out-of-home placement arrangement.[126] In rare cases, youth may require

[126] Smith, T.J. "Post-Adjudication Strategies for Defending Juveniles in Status Offense Proceedings." in *Representing Juvenile Status Offenders*. Washington, D.C.: American Bar Association Center on

temporary, specialized residential treatment programs to address complex trauma, severe mental health needs, and substance use disorders. When they are needed, residential treatment programs should be short-term placements that provide gender-specific, trauma-informed services and that include the youth's family and other caregivers into their treatment, recovery, and prompt re-integration into an appropriate family-like setting.

A young person should never be placed in a residential treatment facility as a default when more appropriate placement options are not readily available. Prior to any approval of a residential placement, there should be a multi-disciplinary team meeting to consult with the young person, their family and other caregivers, as appropriate, their case workers, and any other relevant mental health or other treatment specialists. Once approved, the continuing need for residential treatment should be re-evaluated frequently and appropriate supports provided to ensure the youth's successful re-integration into family and community settings.

When a longer term out-of home placement is required, youth charged with noncriminal status offenses should be able to stay in home-like settings that ensure safety and provide appropriate services and supports to address their unique needs. Child welfare systems use many types of alternatives to congregate and group care settings that may be appropriate for youth charged with status offenses including kinship care (placement with relatives), family foster care provided by non-relatives, treatment foster care (by families with special training on youth's medical or mental health needs) or shared family care (a placement where both parent and child live with a supportive family who can provide mentoring and support).[127]

Children and the Law, 86. Available at: http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/RJSO_FINAL.authcheckdam.pdf. *Also see* Mogulescu, S. et al. (2008) *Making Court the Last Resort: A New Focus for Supporting Families in Crisis*. New York, New York: Vera Institute of Justice (discussing the use of respite care in several jurisdictions).

[127] *See* Child Welfare Information Gateway, "Types of Out-of-Home Care." Available at: https://www.childwelfare.gov/outofhome/ for more information on each of these placement options.

All measures must be taken by the court to avoid out-of home placement and particularly secure confinement in status offense cases. Even when all of the above options have been exhausted, there are still many proven alternatives to confinement for youth charged with low level or status offenses. These include reporting centers, which are nonresidential treatment facilities where youth report at set frequencies, either at night or during the day and "intensive supervision programs," which also require regular in person check ins and offer youth needed services, but have stricter monitoring.[128] Foster care placements, ideally with foster families that have specifically been recruited and trained to work with youth offenders, can also provide an alternative to secure confinement.

3.8 Not securely detain or confine youth at any point in the status offense process.

Research has shown the damaging effects detention or secure confinement can have on children, whether as a detention method pre-court or as a form of punishment after adjudication. Children who are securely detained are more likely to become more deeply involved in the juvenile or criminal justice system and are more likely to re-enter the criminal justice system than children who participate in community-based programs. Detention also has a negative and significant impact on many facets of the child's life. A child who has been securely detained has a higher likelihood of suffering from physical or mental health problems, struggling in or not completing school, and having difficulty in the labor market later in life.[129] In addition, placing a child charged with a noncriminal status offense in secure confinement with children who have been accused of serious criminal offenses may expose the child to negative influences and behaviors that could lead to re-entry into the status offense system or entry into the delinquency system.[130]

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[128] "Community-Based Alternatives to Secure Detention and Incarceration" from *OJJDP Deinstitutionalization of Status Offenders Best Practices Database*. Available at: http://www2.dsgonline.com/dso/dso_types_of_dso_strategies_direct_services_community_based_alternatives_to_secure_detention_and_incarceration.aspx.

[129] Holman, B., et al., (2007) *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*. Justice Policy Institute, Annie E. Casey Foundation.

[130] Office of Juvenile Justice and Delinquency Prevention. "Community-Based Alternatives to Secure Detention and Incarceration" in Deinstitutionalization of Status Offenders Best Practices Database.

Moreover, research on adolescent development shows that young people's brains continue to mature well into their twenties.[131] As a result, adolescents are more likely than adults to be influenced by peers, engage in risky and impulsive behaviors, experience mood swings, or have reactions that are stronger or weaker than situations warrant[132] (See Section 1.2). Courts and other stakeholders in the status offense system must acknowledge these developmental issues and recognize that adolescents sometimes make poor decisions. Using detention or secure confinement as a way to curb these behaviors not only fails to recognize what research shows about adolescent development, but carries more risks than benefits for the child, his or her family, and community.

There are many things judges can do to better assist children and families in need by utilizing alternative services and approaches to detention or secure confinement. For example, judges can:

- In cases where the child has violated an order of the court, critically assess the cause of the child's court order violation and determine whether community-based services or treatments may best help the child and family; being mindful of the roles trauma and past victimization, adolescent development, mental health disorders, or under diagnosed or under treated disabilities can play in childhood behaviors. (See Section 1.2, 1.4 and 1.11 for more information).
- As discussed in Section 3.11 determine whether other laws or entitlements may offer viable alternatives to detention or place restrictions on the use of detention. For example, the Indian Child Welfare Act applies if an Indian child is placed out of the home and requires that certain pre-requisites be met prior to placement.
- Explain to parties to the case, as well as families, the dangers of incarceration and the better successes that are born from community-

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Available at: http://www2.dsgonline.com/dso/dso_types_of_dso_strategies_direct_services_community_based_alternatives_to_secure_detention_and_incarceration.aspx.

[131] Coalition for Juvenile Justice. (2006) "Applying Research to Practice Brief: What Are the Implications of Adolescent Brain Development for Juvenile Justice?" Available at: http://www.juvjustice.org/sites/default/files/resource-files/resource_138_0.pdf.

[132] *Id*.

based service alternatives. Doing so, particularly with families unfamiliar with the justice system, can empower them to help identify the best ways to support the child and avoid deeper justice system involvement.

- Seek out respite or kinship care alternatives to detention, particularly when there is high conflict in the home that raises safety concerns for the child or if the child is running away repeatedly.[133]
- Utilize available community-based service alternatives, such as those that take a "system of care" or wraparound approach that would individualize service plans to families' needs, promote family participation and coordinate services and planning.
- Seek to adopt and replicate the principles and core strategies used through the Juvenile Detention Alternatives Initiative (JDAI), which promotes collaboration between justice system stakeholders to reduce the use of unnecessary detentions by, among other things, using accurate data, supporting new case processing forms, enhancing community-based programs, and implementing policies and programs that reduce disproportionate minority contact.[134]
- Create stakeholder work groups or advisory boards to assess how and when detention is used in status offense cases and develop strategies to identify and implement alternatives to detention and secure confinement.[135]

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[133] *See, e.g.,* Mogulescu, S. et al. (2008) *Making Court the Last Resort: A New Focus for Supporting Families in Crisis.* New York, New York: Vera Institute of Justice (discussing the use of respite care in several jurisdictions).

[134] *See* JDAI Help Desk at: http://www.jdaihelpdesk.org/default.aspx.

[135] Coalition for Juvenile Justice. (2012). *Positive Power: Exercising Judicial Leadership to Prevent Court Involvement and Incarceration of Non-Delinquent Youth*. Washington, DC. Available at: http://juvjustice.org/sites/default/files/resource-files/resource_787_0.pdf (discussing many different approaches courts have taken to end the use of detention and secure confinement of youth charged with status offenses).

Lawyers for alleged and adjudicated status offenders should:

3.9 Advocate for voluntary and community-based assistance to limit and/or avoid continued court involvement and secure confinement.

A key part of the attorney's role is to limit court involvement and avoid secure confinement. This includes educating parents and children about what the process will be and how to advocate for themselves. Parents and youth can help the attorney make the case to the court that court intervention and/or secure confinement is unnecessary because the child's needs can be met with resources available in the community and family support. Also, some parents may mistakenly believe that court involvement will benefit their child; by addressing this misconception attorneys can encourage parents to better assist in efforts to avoid deeper system involvement. Steps attorneys can take to promote voluntary service alternatives include:[136]

- Moving to dismiss the case because of a disability or unmet mental health need, or if protections or entitlements under federal law (such as the Individuals with Disabilities Education Act accommodations that might have prevented truancy) were not observed (See Section 3.11).
- Assessing whether the agency was required by statute to attempt to connect the youth to services before filing a petition and asserting that the court lacks jurisdiction if it failed to do so (See Section 2.7).
- Asking that the court stay the case or give a continuance pending assessment results and/or service delivery.
- Participating in mediation, family group conferencing, or other forms of alternative dispute resolution. (See Section 1.6 and 1.7).[137]

Other steps attorneys can take to avoid deeper justice system involvement and secure confinement include:[138]

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[136] Adapted from Stone, M. (2010). "Accessing Intervention Services for Status Offenders and Avoiding Deeper Involvement in the Court System" in *Representing Juvenile Status Offenders*. Washington, D.C.: American Bar Association Center on Children and the Law, 40-66. Available at: http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/RJSO_FINAL.authcheckdam.pdf.

[137] *See* Stone, M, supra note 136 for a discussion of factors to consider when using alternative dispute resolution in status offense cases.

- Challenging an attempt to lock up a youth based on a valid court order violation when the order violated was vague, unclear, or unreasonable.
- Requiring the state to prove every element of every statutory section potentially violated, challenging whether the alleged behavior violated bright line rules or truly met the subjective standards of the statute. For example, if a statute defines truancy as a number of unexcused absences in a school year, charges might be inappropriate if one or more of the absences counted took place in the previous school year, or was actually an excused absence. Also, subjective terms such as "habitual" or "reasonable" are often used in ungovernability and other status offense statutes, and can be the basis for a challenge—e.g., if only two examples of unruly behavior were given, an attorney can argue that two occasions do not constitute "habitual" behavior.
- Educating the court and parents about the dangerous effects of detention and court involvement (see Section 3.8).

Attorneys can also help their clients avoid deeper justice system involvement by helping them access services in their communities. Limited resources are often an issue, however; common and significant barriers to accessing diversion services include geographic disparity and long wait lists.[139] Professionals should be aware of ways to overcome these barriers, such as by understanding how and when the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) provisions of Medicaid apply. Federal law requires every state to provide EPSDT services to eligible children, which may include case management, psychiatric, community-based, or rehabilitative services.[140]

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[138] Adapted from Smith, T.J., "Preadjudication Strategies for Defending Juveniles in Status Offense Proceedings." and "Postadjudication Strategies for Defending Juveniles in Status Offense Proceedings." in *Representing Juvenile Status Offenders*. Washington, D.C.: American Bar Association Center on Children and the Law, 59-88. Available at: http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/RJSO_FINAL.authcheckdam.pdf.

[139] Stone, M. (2010). "Accessing Intervention Services for Status Offenders and Avoiding Deeper Involvement in the Court System," supra note 136.

[140] *Id*.

Medicaid also requires that programs be available statewide and may be a basis for challenging a lack of services due to geographic location.[141]

3.10 Advocate for child clients to be treated fairly throughout the court process and for their due process rights to be protected.

To effectively represent a child client in a status offense case, the lawyer must not only advocate for what the child wants, but ensure the child is treated fairly throughout the court process and that his or her rights are protected. There are many ways the lawyer can ensure fair treatment, such as:

- Ensuring the child is present at every court hearing. If the child does not want to participate in court proceedings, counseling the child on the importance of his or her participation and, if appropriate, discussing available alternative means to participation (such as videoconferencing or phone).
- Making sure that a child who is not fluent in English is provided an interpreter during all court proceedings and when the lawyer meets with him or her (if the lawyer does not speak the child's native language).
- Ensuring that information the court and attorneys convey, whether written or oral, is understood by the child, if he or she has low or no literacy skills or a disability that makes reading and/or comprehension difficult. Explaining key documents, reports, and court orders may be required.
- Advocating that any services that the court orders are appropriate for the child's needs and that he or she can realistically comply with them (which may include ensuring that the service is offered at a time and location that is convenient for the child).
- Ensuring that screening, assessment, and services are provided in such a way that privacy is protected and results are used to help youth, rather than incriminate them or cause them to become more deeply involved in the juvenile justice system.

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[141] *Id.*

- Taking into consideration gender differences, a child's disability, and culture when agreeing to court-ordered assessments, treatments, or services. (See Section 1.8-1.11 for more information)
- Taking time to meet with the child regularly to get updates on case progress, counsel the child on how to proceed, and get instructions on what the child wants the lawyer to advocate for in and out of court.

The lawyer must also ensure that the child's due process rights are protected throughout the court proceedings. This includes ensuring that the child is:[142]

- Given notice of the charges against him or her and that he or she understands those charges.
- Properly notified of court hearings and meetings.
- Able to invoke his or her Fifth Amendment right against self-incrimination.
- Given the opportunity to confront and cross examine witnesses.

To the extent the court threatens to incarcerate the child for violating a valid order of the court, additional due process protections must be afforded. The child has a right to:[143]

- Receive adequate and fair warning of the consequences of the violation at the time it was issued and the warning must be provided to the child, his or her lawyer, and his or her legal guardian.
- Have the charges against him or her in writing served in a reasonable amount of time before the hearing.
- A hearing before a court.
- An explanation of the nature and consequences of the proceeding.
- Confront witnesses and present witnesses.

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[142] *See, e.g.*, North Carolina Office of Indigent Defense Services. (2008). *Rights and Protections Afforded to Juveniles*. Juvenile Defender Manual, Chapter 2.

[143] 28 CFR § 31.303(f)(2) (listing numerous conditions that must be met before a child can be found to have violated a valid order of the court).

- Have a transcript or record of the proceedings.
- Appeal to an appropriate court.
- Have the judge determine whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate.

3.11 Ensure that child clients' rights and entitlements under relevant federal and state laws are protected.

Various federal and state laws give youth rights that can help them avoid justice system involvement or secure confinement. In some cases attorneys can argue for a case to be dismissed or stayed, if social service, juvenile justice, or education systems fail to comply with certain protections or entitlements. A case may also be transferred to another system if child protection, domestic relations or other laws are implicated. Attorneys representing alleged status offenders must be familiar with these laws to ensure youth's rights are protected and that they achieve the best possible outcomes for their clients.

Examples of laws and entitlements that may be applicable in status offense cases, include:

- The Juvenile Justice and Delinquency Prevention Act sets out certain core requirements states must comply with to receive federal grants to address juvenile delinquency, including prohibiting secure confinement for status offenders (with certain exceptions, such as violation of a valid court order, for a limited time early in the case or for out-of-state runaway youth).[144]
- Medicaid and its Early and Periodic Screening, Diagnosis and Treatment provisions offer various physical and mental health services,

[144] Bilchik, S. & Erika Pinheiro "What the JJDPA Means for Lawyers Representing Juvenile Status Offenders" in *Representing Juvenile Status Offenders*. (citing 42 U.S.C. § 5633(a)(11) (2006)) Washington, D.C.: American Bar Association Center on Children and the Law, 4-11. Available at: http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/RJSO_FINAL.authcheckdam.pdf; *See also*, 42 U.S.C. 5633(a), which includes an exemption to the deinstitutionalization of status offenders requirement, permitting the detention of young people held in accordance with the Interstate Compact on Juveniles.

including case-management and preventative and rehabilitative care, to eligible youth.[145] The Health Insurance Portability and Accountability Act (HIPAA), federal drug and alcohol regulations, and state confidentiality laws also provide some privacy protections which may be applicable to status offenders.[146]

- Various education and special education laws are relevant to alleged status offenders. The Individuals with Disabilities Education Act entitles youth with qualifying disabilities to a "Free and Appropriate Education," which generally includes an "Individualized Education Program," which specifies the instruction and other services the child will receive, tailored to his or her needs.[147] The Americans with Disabilities Act and Section 504 of the Rehabilitation Act also protect youth from discrimination on the basis of their disabilities.[148] The Bilingual Education Act can provide some services to youth who are non-native English speakers, and the McKinney-Vento Homeless Assistance Act provides protections to homeless youth such as the right to stay in their local or most recent school.[149]
- The Adoption and Safe Families Act and other child welfare laws provide many service entitlements and other protections for youth who are in a qualified placement through their local child welfare agency. Under ASFA the child welfare agency must make reasonable efforts to avoid removing children from their home and, after removal, provide a case plan, both of which involve providing numerous resources and services to meet the child's needs and reunify the family.[150]

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[145] Stone M., supra note 136 at 53-54 (citing 42 U.S.C. § 1396a-d).
[146] Rosado, L.M. & Riya Shah (2007). *Protecting Youth from Self-Incrimination when Undergoing Screening, Assessment and Treatment within the Juvenile Justice System*. Available at: http://www.jlc.org/sites/default/files/publication_pdfs/protectingyouth.pdf.
[147] Tulman, J. "Using Special Education Advocacy to Avoid or Resolve Status Offense Charges" (citing 20 U.S.C. §§1400-1490, 34 C.F.R. pt 300) in *Representing Juvenile Status Offenders*. Washington, D.C.: American Bar Association Center on Children and the Law, 92-96. Available at: http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/RJSO_FINAL.authcheckdam.pdf
[148] *Id.* At 111-112.
[149] Stone, M. (2010). "Accessing Intervention Services for Status Offenders and Avoiding Deeper Involvement in the Court System," supra note 136 at 46.
[150] Stone, M. (2010). "Accessing Intervention Services for Status Offenders and Avoiding Deeper Involvement in the Court System," supra note 136 at 48 (citing 42 U.S.C. §§ 620-679).

- The Indian Child Welfare Act applies to status offense cases and includes provisions for the treatment and placement of Indian children, requiring, for example, that out of home placements reflect Indian values and culture, are reasonably near home, and represent "the least restrictive setting which most approximates a family and in which his special needs, if any, may be met."[151] ICWA also requires that services be provided to try to avoid breaking up Indian families. See Section 3, Standard 2.
- Emancipation laws available in some jurisdictions, which allow youth to petition under state law to be considered adults in the eyes of the law, or family court proceedings which can give custody of a young person to a non-custodial parent or other adult, may help avoid deeper juvenile court involvement for some youth, particularly where conflict with, or abuse/neglect by, a parent underlies the status offense case.[152]
- Relevant federal immigration laws and regulations, such as those regarding Special Immigrant Juvenile Status[153] may also provide immigrant youth some protections.
- The federal constitution and state laws grant youth certain due process rights and attorneys should be particularly aware of youth's constitutional and other rights to avoid self-incrimination, both in the

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[151] 25 U.S.C. §1915, *also see* 25 U.S.C. §§ 1901 –1915 and The Indian Child Welfare Act and Advocacy for Status Offenders. (2010). Washington, D.C.: American Bar Association Center on Children and the Law. Available at: http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/ICWA_factsheet.authcheckdam.pdf.

[152] Heyd J. and Casey Trupin "How Status Offenses Intersect with Other Civil and Criminal Proceedings" in *Representing Juvenile Status Offenders*. Washington, D.C.: American Bar Association Center on Children and the Law, 132-136. Available at: http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/RJSO_FINAL.authcheckdam.pdf.

[153] U.S. Citizenship and Immigration Service. "Special Immigrant Juveniles (SIJ) Status." Available at: http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=3d8008d1c67e0310VgnVCM100000082ca60aRCRD&vgnextchannel=3d8008d1c67e0310VgnVCM100000082ca60aRCRD.

courtroom and while receiving assessments and services. See Section 3.10.[154]

- State constitutional rights and state statutes, such as those relating to education or defining when youth are entitled to counsel in status offense cases, may provide additional rights and entitlements to youth in status offense cases.

Judicial officers and entities providing case management services should:

3.12 Effectively manage and close court and agency cases in a timely manner.

Judges and agencies providing direct services to children and families in status offense cases must strike a balance between over-evaluating case progress and letting cases languish without any oversight. Over-evaluating case progress can take a toll on the child and family, adding an extra layer of burden and scrutiny. Too frequent court reviews or agency meetings may disengage families who are often struggling with a myriad of other issues at home, school and work; making it difficult for them to participate in too many meetings and court appearances. This added pressure may ultimately work contrary to case goals, making it more difficult for the family to help identify and implement solutions that will successfully resolve the case. Importantly, overly frequent reviews may not allow corrective measures to take hold or allow the child to develop new connections to school or home that require time to stabilize and develop.

Conversely, courts and service agencies must also be cognizant of not letting cases languish with little or no oversight. Failing to assess how the child and family is being served and what progress they, as well as the service providers, are making increases the likelihood that the cause behind the court referral will not be adequately addressed. The child then may be more

[154] *See, e.g.*, Rosado, L.M. & Riya Shah (2007). *Protecting Youth from Self-Incrimination When Undergoing Screening, Assessment and Treatment within the Juvenile Justice System*, available at http://www.jlc.org/sites/default/files/publication_pdfs/protectingyouth.pdf.

at risk for remaining in the status offense system unnecessarily or entering another system, such as juvenile justice, mental health, or child welfare.

Therefore, courts and direct service providers must manage and close each status offense case based on the individual needs of the child and family. Conducting early screening and assessments can help the agency and court understand the child and family's needs and develop a case management plan, which includes timeframes and the provision of appropriate services and interventions. In implementing an effective case management plan, professionals should be realistic about the family's capacity and needs and be flexible when those needs change or new information comes to light. How frequently case progress should be assessed and ultimately when a case should close should be determined based on what the child (and possibly family) wants, and what the child and family need to successfully transition out of the status offense system.

To better prepare children and families for successful case closure, courts and service providers should link families to community-based, educational, or other transitional support services, such as special education services through the child's school, mental health services through community mental health programs, or employment/career support services. Service providers should also meet with the family several times leading up to case closure to develop a transitional case plan that is realistic to complete and provides the family and child needed support as they leave the status offense system.

SECTION 4. RECOMMENDATIONS FOR POLICY AND LEGISLATIVE IMPLEMENTATION

This section includes recommendations for policymakers to institute legislative, policy, administrative, and budgetary changes that align with and support the implementation of the previous sections of the *National Standards*. This list of state and federal law and policy recommendations should be used by federal, state, and local policymakers to help effect meaningful changes to status offense laws and policies. These changes can promote early intervention, diversion, and increased and coordinated services and support for youth and their families. This section can also be used by policy advocates to support their organizational efforts to change state and federal laws, policies, and budgetary schemes to support better outcomes for young people in or at risk of entering the status offense system. In some instances the policy recommendations below repeat the themes and principles outlined in the previous sections of these *Standards*, but with a specific focus on guiding law and policy changes.

State and Local Policymakers and Advocates

State policymakers should develop and implement the following recommended law and policy changes to help divert youth who engage in behaviors labeled status offenses and their families away from the courts. These changes can also help avoid deeper justice system involvement, which research shows is detrimental not only to the young person, but also increases the likelihood of recidivism. State policymakers can also incentivize and monitor uniform application of these principles and policies across that state's various agencies and jurisdictions to ensure fair and equal treatment and opportunities for all youth and families.

Local and municipal policymakers also play a critical role in addressing the below policy priority areas, as they can actively work with their respective state governments to develop and uniformly implement the below recommendations. In addition, where state-wide action may be slow to take

hold, local authorities can take steps in advance of state action to ensure the best outcomes for youth and their families in their communities.

State and local policymakers and advocates should:

4.1 Eliminate juvenile court penalties and sanctions for behaviors labeled status offenses and ensure that systems are accurately responding to behaviors as either episodes of normal adolescent behavior, or critical unmet youth and family needs that are best resolved through non-judicial interventions and supports.

In the last decade, adolescent brain science has confirmed that adolescence is a period of gradual maturation, where youth toggle between the immaturity of childhood and the accountability of adulthood.[155] During this time, young people are not fully developed in their judgment, problem-solving and decision-making capabilities.[156] As a result, they are prone to make poor decisions that can negatively impact themselves and others. Adolescence is also a time of exploration when young people figure out who they are and how they want to contribute to society.[157] As they become more engaged with their surroundings, they are prone to test boundaries, take risks and try new things.[158] Skipping school, experimenting with alcohol, challenging parental and adult authority and staying out past curfew are behaviors that fall well within the realm of normal adolescent behavior. Accordingly, these behaviors do not automatically or necessarily warrant court intervention.

As is also discussed in the companion standard to this policy recommendation (Section 2.6), at times a child's behavior is not a byproduct of adolescence, but a manifestation of a critical unmet need personal to the child or within the family.

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[155] *Applying Research to Practice: What Are the Implications of Adolescent Brain Development on Juvenile Justice?* (2006). Coalition for Juvenile Justice: Washington, D.C. Available at http://www.juvjustice.org/sites/default/files/resource-files/resource_138_0.pdf

[156] *Id.*

[157] I*d.*

[158] *Id.*

Youth who are chronically absent from school may struggle with homelessness, neglect and abuse, poor relationships with teachers and peers, and inappropriate academic placements or support.[159] Youth who run away from home or who stay out past curfew may be avoiding turmoil at home that includes domestic violence, physical abuse, sexual abuse, and/or neglect.[160] Youth who have defiant relationships with their parents and family members often struggle with mental, developmental, emotional, social, and interpersonal issues that are compounded when a parent does not possess the ability to deal with the misbehavior in a healthy fashion.[161] While all of these behaviors warrant a response, the response should not include sanctions and penalties that do nothing to address the underlying source of the behavior.

Rather, state and local authorities should take the position that juvenile court intervention should be avoided or limited in those instances where the young person is alleged to have committed a status offense. Policies in support of this position will eliminate the ability of a family member, school or other stakeholder to petition status behaviors to the juvenile court. Alternatively, state and local policymakers should establish a continuum of care, akin to the system described in Section 4.2, that is separate and apart from the courts and the juvenile justice system and that relies on non-judicial interventions to respond to status behaviors.

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[159] Heilbrunn, J. (2007). Puzzanchera, C., et al. (2011) *Juvenile Court Statistics 2008*. Pittsburgh: National Center for Juvenile Justice and Office of Juvenile Justice and Delinquency Prevention. p. 77. *Pieces of the Truancy Jigsaw: A Literature Review*. Denver, CO: National Center for School Engagement. 3-6; *Parents' Guide to Truancy*. (2008). Office of Juvenile Justice and Delinquency Prevention, p. 3. Available at: https://www.ncjrs.gov/pdffiles1/ojjdp/grants/226229.pdf; Kendall, J. (2007) *Juvenile Status Offenses: Treatment and Early Intervention.* Chicago: American Bar Association. Available at: http://www.americanbar.org/content/dam/aba/migrated/publiced/tab29.authcheckdam.pdf.

[160] Kendall, J. (2007) *Juvenile Status Offenses: Treatment and Early Intervention*. Chicago: American Bar Association. Available at: http://www.americanbar.org/content/dam/aba/migrated/publiced/tab29.authcheckdam.pdf; Molino, A. (2007). *Characteristics of Help-Seeking Street Youth and Non-Street Youth*. Available at:: http://aspe.hhs.gov/hsp/homelessness/symposium07/molino/.

[161] Developmental Services Group. (2009). *Ungovernable/Incorrigible Youth Literature Review*. Bethesda, MD., p. 3.

4.2 Support an infrastructure of community-based and child and family serving programs and systems to ensure direct youth and family access to a seamless, comprehensive, and non-judicial continuum of care that is empowered and resourced to respond to behaviors that might otherwise be labeled as status offenses.

When youth present with behaviors currently labeled as status offenses, state authorities should not mandate, empower, or expect the courts to step into the parent's place, reign in the child, and/or meet the needs of the family. Judicial intervention in these instances can disempower the parent, confuse roles and responsibilities, and delay access to needed services. Moreover, judicial intervention subjects both child and family to court orders and interventions that can trigger fines, detention orders, and other inappropriate and potentially progressive punitive sanctions.

State policymakers should develop and implement laws and policies that provide direct links between youth and families and experts in the child and family welfare, mental health, and educational systems - without judicial intervention. These laws and policies should support community-based services and programs that have proven successful and empower families to safely self-identify themselves to child- and family-serving systems and access needed services without fear of judgment or reprisal. These laws and policies should also empower child- and family-serving systems to quickly identify families in need, respectfully assess areas of strength and need, and connect families to appropriate services, including services that affirm and strengthen the parents' capabilities and expand the parents' access to supports that help them effectively fulfill their parental roles.

4.3 In those limited circumstances where court involvement is necessary, ensure court mechanisms are in place that allow the appropriate court division to effectively serve the needs of the youth and family without inappropriate use or risk of more punitive outcomes for the child and family.

As is discussed in Section 2.7 and Section 3.1, court officials should ensure all reasonable efforts have been made to avoid or limit court involvement prior

to when a case is petitioned to court. And in those limited circumstances where court involvement is unavoidable, mechanisms should be in place for the court to petition the case into the proper system of care, so that the family and child receive the assistance and services they need. In some instances, the underlying status offense behaviors may relate to high conflict between family members or abuse or neglect that would warrant child welfare system rather than status offense system involvement. Courts should have the ability, when this information comes to light, to provide the most relevant services and assistance through the appropriate court channels.

In addition, state and local policymakers should promote laws and policies that do not treat status offense cases as if they were delinquency matters; instead they should avoid using the same dispositional and sanction options, and co-mingling status offense and delinquency dockets and hearing schedules. Adjudicating status offense cases at the same time as delinquency cases sends the wrong signal to youth and families with status offense cases and may result in the court viewing the status offense case through a punitive lens. Thus, the delineation between delinquency cases and status offense cases should focus on ensuring that youth who are the subjects of status offense petitions are not subject to the punitive sanctions triggered by a delinquency petition. These distinctions should not prohibit the appropriate sharing of confidential and relevant information when a child has a case in both courts or on both dockets.

4.4 Prohibit schools from referring youth who engage in status offense behaviors to court unless and until the school has made all reasonable efforts to avoid court involvement.

Of the 142,300 status offense cases formally adjudicated in U.S. juvenile courts in 2009, 37 percent were for truancy.[162] Limiting schools' ability to refer status offense behaviors to the court, especially truancy, will dramatically reduce juvenile court caseloads and the likelihood that non-offenders become subject to juvenile court sanctions.

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[162] Puzzanchera, C., Adams, B., & Sarah Hockenberry (2012). *Juvenile Court Statistics 2009*. Pittsburgh, PA: National Center for Juvenile Justice.

Increasingly, states are requiring schools to demonstrate that they have tried various interventions prior to filing a truancy petition, but what is required varies by state. In Section 2.5 there is a discussion of policies and processes schools can implement to help identify child and family needs and better address truancy problems within the school system rather than referring children and families to court. Such school approaches may include:

- Assessing the child to identify the underlying causes of the behavior.
- Meeting with the child and family to identify challenges and make appropriate service or community-based referrals.
- Creating an individualized plan with the child and family, which includes non-punitive measures and meaningful family engagement.
- Monitoring and following up with the child and family to assure needed services are being implemented.

4.5 Prohibit parents/caregivers from referring youth who engage in status offense behaviors to the juvenile court until the family has first sought and meaningfully engaged non-judicial interventions.

Parents/caregivers are a significant referral source for status offense cases. In 2009, family members initiated 42 percent of cases petitioned to the court for ungovernability/incorrigibility/beyond the control of one's parents.[163] Juvenile and family court judges often cite parental demands and expectations as reasons why the court feels pressured to quickly intervene when youth engage in status offenses. The solution to troubled youth behavior, however, does not lie in the courts taking the place of the parent to control the child's behavior. As a rule, courts tend to have more sanctions that punish the behavior than they have services designed to resolve it. The solution lies in empowering parents and family members with the skills and supports they need to effectively communicate with their children, set and enforce boundaries, access economic, education, and health-related resources and resolve intra-family conflict without judicial intervention. This may include, but is not limited to, ensuring youth and families can access community-based counseling services, parenting skills development, and

[163] Puzzanchera, C., Adams, B., and Sarah Hockenberry. 2012. *Juvenile Court Statistics 2009*. Pittsburgh, PA: National Center for Juvenile Justice.

other family strengthening and alternative dispute resolution processes (See Section 1.5-1.7).

4.6 Promote coordinated, blended, or braided public funding streams that create a seamless, comprehensive community-based continuum of care for youth and families.

Financing a comprehensive continuum of care requires that states and local policymakers make effective use of all available resources. No single child- or family-serving system or agency can pay for and provide the array of services needed to effectively meet the often complex needs of youth and families who struggle with behaviors labeled status offenses, and this may be particularly true in rural or under-resourced areas. Further, youth and families in crisis need immediate responses, and are put at greater risk when they are forced to navigate multiple intake points, multiple eligibility requirements, and multiple case plans and managers. When, however, systems and agencies pool their financial and human capital, they can facilitate measurable outcomes for youth and families well beyond the scope of what any single system or agency can hope to achieve on its own.[164]

It is imperative that state and local policymakers work diligently to break down silos between systems, agencies, and funding streams to ensure that youth and families have unfettered access to needed programs and services without falling through the cracks and without having to become court-involved. The breaking down of silos is facilitated by mapping all current and available funding sources and then coordinating, blending, or braiding distinct federal, state, and local funding streams that are designed to meet one or more needs of any given youth and family.[165] Once the mapping is complete, the chosen collaborative funding strategy can be implemented

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[164] National Governor's Association, Center for Best Practices. (May 2004). *Early Lessons from States to Promote Youth Development*. Washington, DC: National Governor's Association Social, Economic and Workforce Programs.

[165] For more information, *see* Flynn-Khan, M., Ferber, T., Gaines, E., & Pittman, K. (2006). *Adding it up: A Guide for Mapping Public Resources for Children, Youth and Families*. Washington, DC: The Forum for Youth Investment & The Finance Project.

through an intermediary organization[166] that receives and directs use of the funding, or via a memorandum of agreement between systems and agencies that clearly spells out implementation, reporting, accountability, and success measures.

4.7 Enact laws that ensure the right to counsel for youth who come into contact with the juvenile court for a status offense by not allowing youth to waive their right to counsel or only allowing waiver if: (1) it is on the record, (2) the court has fully inquired into the child's understanding and capacity, and (3) the waiver occurs in the presence of and in consultation with an attorney.

Each year, thousands of youth who come into contact with the courts waive their constitutional right to counsel without understanding the immediate and long-term ramifications. In some jurisdictions, more than half of court-involved youth appear without any legal representation.[167] Without the protection of counsel, court-involved youth are more likely to be placed in a locked facility pre- and post-adjudication, where they are more vulnerable to assault, suicide and sexual abuse, and are more likely to commit additional offenses after their release.[168] Also, as noted by the *Report of the Attorney General's National Task Force on Children Exposes to Violence*, defense attorneys are the only parties in the proceedings required by law to represent the expressed interest of the child:[169]

> Defense attorneys also have a vital role in protecting youth from abuse and other forms of violence that are often found within the justice system. In the earliest stages of the process, it is the role of

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[166] For more information on the potential roles of intermediary organizations, *see* "Blending and Braiding Funds and Resources: The Intermediary as Facilitator." (January 2006). Washington, D.C.: National Collaborative on Workforce and Disability. Available at: http://www.ncwd-youth.info/sites/default/files/infobrief_issue18.pdf.

[167] U.S. Department of Justice. (2012). *Report of the Attorney General's National Task Force on Children Exposes to Violence*. Washington, D.C.; *see also* Office of the Ohio Public Defender. *Protecting a Juvenile's Right to be Represented by Counsel* (website). Available at: http://www.opd.ohio.gov/Juvenile/Jv_Right_to_Counsel.htm.

[168] *Juvenile Waiver of Counsel*. (2005). Policy Summary. Center for Policy Alternatives. Available at: http://www.njdc.info/pdf/CPAWaiver.pdf.

[169] U.S. Department of Justice. (2012). *Report of the Attorney General's National Task Force on Children Exposes to Violence*. Washington, D.C.

> the defense attorney to ensure that the underlying facts are investigated and that children who are wrongly accused are able to challenge the case against them. Defense attorneys also ensure that children with legal defenses and mitigating circumstances are not coerced into admissions without advice about their legal options. Protecting the due process rights of youth at trial is integral to ensuring that children are not further traumatized.[170]

For more information about waiver, see Section 3.4.

4.8 Prohibit the use of locked confinement for youth petitioned to court for a status offense.

Since 1974, the Deinstitutionalization of Status Offenders (DSO) core requirement of the federal Juvenile Justice and Delinquency Prevention Act (JJDPA) has provided that youth adjudicated for a status offense may not be placed in locked confinement.[171] In 1984, the JJDPA was amended to provide an exception to the DSO core requirement that allows judges to securely confine youth adjudicated for a status offense if the child violated a "valid" order of the court (known as the VCO exception)[172]

As discussed in Section 3.8, research reveals that locked confinement is not an evidence-based best practice for court-involved youth, especially status offenders. Institutionalization's many harms begin with removing youth from their families and communities, which prohibits youth from developing the strong social network and support system necessary to transition successfully from adolescence to adulthood.[173] Further, for youth who have committed status offenses, detention is ill-equipped to address the underlying causes of the initial status offense, and fails to act as a deterrent to

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[170] *Id.*

[171] Office of Juvenile Justice and Delinquency Prevention. (Fall/Winter 1995). "Deinstitutionalizing Status Offenders: A Record of Progress." Juvenile Justice, II (2). Washington, DC: U.S. Department of Justice.

[172] *Id.*

[173] Nelson, D. W. (2008). *A Road Map for Juvenile Justice Reform*. Baltimore, MD: Annie E. Casey Foundation, p. 9.

subsequent status-offending behavior.[174] In addition, placing youth who commit status offenses in locked detention facilities jeopardizes their safety and well-being, and may actually increase their likelihood of committing unlawful acts.[175] Often, detained youth are held in overcrowded, understaffed facilities—environments that can breed violence and exacerbate unmet needs.[176]

In light of recent research and findings about the detrimental effects confinement can have on youth, a critical mass of states have already prohibited the secure confinement of status offenders under any circumstances and have bolstered their pre- and early court infrastructures to offer families better and more community-based and early intervention services. In many other jurisdictions, even though the law allows for confinement under the VCO exception, these states have chosen to defund detention beds for status offenders or have instituted policies that restrict the use of those beds for status offense cases.[177]

4.9 Mandate meaningful efforts to engage youth and families in all aspects of case planning, service delivery, court proceedings, and disposition strategies.

When child and family-serving systems step into the place of parents and exert control over youth who present with status offense behaviors, youth may receive needed attention and parents and caregivers may get a reprieve, but only in the short term. Often a categorical array of services are offered or mandated that do not meet the youth and family's individualized needs.[178] Treatment plans for youth and families can become prescriptive and

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[174] *Id*. at 5.

[175] *Id*.; Holman, B., and Jason Ziedenberg. (2006). *The Dangers of Detention*. Washington, DC: Justice Policy Institute, p. 4.

[176] Holman, B. and Jason Ziedenberg, (2006). *The Dangers of Detention*. Washington, DC: Justice Policy Institute, p. 5.

[177] *See* Szymanski, L. (2011). *What is the Valid Court Order Exception to Secure Detention for Status Offenders?* NCJJ Snapshot, 16(5). Pittsburgh, PA: National Center for Juvenile Justice.

[178] *Handbook for Family Team Conferencing: Promoting Safe and Stable Families in Community Partnerships for Child Protection*. 2001. The Child Welfare Policy and Practice Group. Available at: http://www.cssp.org/publications/child-welfare/community-partnerships-for-the-protection-of-children/family_team_conferencing_handbook-promoting-safe-and-stable-families.pdf.

coercive, with no real buy-in from the child or family.[179] As a result, many youth and families initially resist the intervention and ultimately comply in appearance only.[180] The imposition of services without real child and family buy-in disempowers families and can create situations where they cycle in and out of systems for years, with poor outcomes.[181] As discussed in Section 1.7, using a family teaming approach, system players can more fully engage youth and families by allowing them to show and use their expertise regarding their own needs and resources.

Family teaming approaches go by several different names: Family Group Decision-Making, Family Team Conferencing, Family Group Conferencing and Family Unity Meetings. While approaches may differ in terms of form, they share several common and critical elements:

- Intervention begins with the belief that all families have strengths.
- Families are encouraged and supported to make decisions and plans.
- Outcomes improve when families are involved in the decision-making process.
- The "family team" is defined as broadly and inclusively as possible and the selection of the team includes input by family members.
- Coordination and facilitation of meetings by competent and trained individuals is vital.[182]

Given the nature of behaviors labeled status offenses, and the underlying reasons for the behaviors, the family team approach is a perfect fit for status offense interventions and cases. Furthermore, 45 states currently use some type of family teaming approach for families involved in, or at risk of, entering the child welfare system, so most state and local jurisdictions

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[179] *Id.*

[180] *Id.*

[181] *Id.*

[182] *Bringing Families to the Table: A Comparative Guide to Family Meetings in Child Welfare* (March 2002). Center for the Study of Social Policy. Available at: http://www.cssp.org/publications/child-welfare/child-welfare-misc/bringing-families-to-the-table-a-comparative-guide-to-family-meetings-in-child-welfare.pdf.

already have the infrastructure needed to apply this approach to status offense interventions and cases.[183]

Federal Policymakers and Advocates

Federal policymakers should support federal programs that promote and incentivize state and local reforms that increase services to families and youth in need, reduce recidivism, and prevent at-risk young people from crossing over into the delinquency system. Appropriate funding and the provision of training and technical assistance will help states adopt best practices. Federal legislative and administrative policies that align with the principles and policies proposed by the *National Standards* will help achieve these goals.

Federal policymakers and advocates should:

4.10 Amend the JJDPA to prohibit the use of the valid court order (VCO) exception to securely confine youth adjudicated for status offenses.

As discussed in Section 4.8, in 1984, the JJDPA was amended to allow judges to issue detention orders in status offense cases if youth violated a valid court order. Since that time, a critical minority of states have outlawed use of the VCO in statute, and many more use it infrequently.[184] More than half the U.S. states and territories, however, use the VCO exception to securely confine youth petitioned for status offenses, with a handful of states using the exception more than a thousand times a year.[185]

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[183] *Family Teaming: Comparing Approaches*. (2009). The Annie E. Casey Foundation/Casey Family Services. Available at: http://www.caseyfamilyservices.org/userfiles/pdf/teaming-comparing-approaches-2009.pdf.

[184] Szymanski, L. (2011). *What is the Valid Court Order Exception to Secure Detention for Status Offenders?* NCJJ Snapshot, 16(5). Pittsburgh, PA: National Center for Juvenile Justice; Gannon Hornberger, N. (2010). "Improving Outcomes for Status Offenders in the JJDPA Reauthorization." *Juvenile and Family Justice Today*. p. 16.

[185] Gannon Hornberger, N. (2010). "Improving Outcomes for Status Offenders in the JJDPA Reauthorization." *Juvenile and Family Justice Today*. p. 16.

Since its enactment in 1974, the wisdom underlying the original DSO core requirement has been confirmed. Studies show that locked confinement does not address the underlying causes of status-offending behavior and may even exacerbate those causes.[186] Given these findings, and the increasing capacity of states to address status behaviors without locked confinement or even court intervention, the time has come to amend the JJDPA to eliminate use of the VCO exception and return to the JJDPA DSO core requirement to its original intent.

In 2009, S. 678, legislation to reauthorize the JJDPA, was approved with bi-partisan support by the U.S. Senate Committee on the Judiciary.[187] Among other things, S. 678 would eliminate use of the VCO exception and provide states with the supports needed to come into compliance with the new law within three years of its enactment date. Elimination of the VCO is supported by several leading youth and juvenile justice organizations, among them the National Council of Juvenile and Family Court Judges – the same organization which initially advocated for inclusion of the VCO almost 30 years ago.[188]

4.11 Strengthen relevant federal agencies to provide research, training, and technical assistance to state and local authorities to better assist state status offense system reform efforts.

Since 1974, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) within the Office of Justice Programs at the U.S. Department of Justice has provided federal leadership to states on juvenile justice reforms. Under the JJDPA, OJJDP is mandated to provide training and technical assistance to JJDPA-participating states to help them achieve a sustainable level of compliance with the core requirements of the JJDPA, including the DSO core requirement.[189] OJJDP is also authorized to engage in research and

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[186] Holman, B., and Jason Ziedenberg. (2006). *The Dangers of Detention*. Washington, DC: Justice Policy Institute. p. 4.

[187] S. 678 Committee Report. Available at http://www.gpo.gov/fdsys/pkg/CRPT-111srpt280/pdf/CRPT-111srpt280.pdf

[188] National Council of Juvenile and Family Court Judges. *Resolution Supporting Reauthorization of JJDP Act and Elimination of the VCO* (March 2010) (on file with the Coalition for Juvenile Justice).

[189] Juvenile Justice and Delinquency Prevention Act § 221(b).

evaluation of prevention, intervention, and juvenile justice administration policies and practices in order to identify best practices and policies, disseminate those findings, and work with states to replicate those practices and policies across the nation.[190]

Over the last decade, appropriations to OJJDP to carry out these and other functions has declined precipitously, hindering the agency's ability to identify, uplift, and promote replication of status offense systems reforms that are proving effective and cost-efficient. With increased funding and strong federal support and leadership, OJJDP is poised to meaningfully engage states in significant efforts to help create better systems for families and youth at risk.

In addition to OJJDP, the federal government should also ensure financial and legislative support for the other agencies whose missions and programs intersect with youth who engage in behaviors labeled as status offenses, including but not limited to the U.S. Department of Education, the Administration for Children and Families, and the Substance Abuse and Mental Health Services Administration at the U.S. Department of Health and Human Services.

4.12 Create coordinated approaches between federal government agencies and programs that serve youth and families that will help states coordinate, blend, or braid federal funding streams to create a seamless, comprehensive and, to the greatest extent possible, non-judicial continuum of care for youth and families.

As state and local authorities break down silos between systems, agencies, and funding streams to ensure unfettered access to needed programs and services, it is critical that federal authorities facilitate and support these efforts by providing the flexibility states and local authorities need – especially as federal supports become more limited. In some cases the federal government has already amended certain statutes and regulations to

[190] Juvenile Justice and Delinquency Prevention Act § 204(b)(3).

permit states to coordinate, blend, or braid certain federal funding streams. For example, the last three reauthorizations of the Elementary and Secondary Education Act (ESEA) have encouraged states to blend funding from four distinct ESEA programs.[191]

Federal policymakers should expand on ESEA and examine other ways state and local authorities should be permitted to blend and braid funding streams, not only within agencies but across programs and agencies. This examination should look closely at where and how arcane silos, restrictions, and prohibitions are hindering youth and families from accessing the full array of services critical to their individual needs and desired outcomes.

[191] *Braiding and Blending of Federal Funding*. Fact Sheet produced by the West Virginia Department of Education. Available at http://wvde.state.wv.us/titlei/documents/Blendingandbraidingoffunds-3-07.doc.

SECTION 5. DEFINITIONS

This section defines key terms used throughout the *National Standards*. Because so much of status offense and juvenile justice policy and practice is local, not all acronyms or terms used in certain localities are listed below.

Adolescent brain science – a field of scientific study focusing on the development of the human brain from the onset of adolescence (approximately age 10) to the time when the brain has fully developed (approximately age 25), as well as its implications for social, education, child welfare, and justice policy.[192]

Adoption and Safe Families Act (AFSA) – a federal statute enacted in 1997 to promote the adoption of children in foster care.[193] Provides programs and standards that support a "safety, permanency, and well-being" framework built around four primary goals: moving children promptly to permanent families, ensuring that safety is a paramount concern, elevating well-being as a major focus of child welfare system efforts, and improving innovation and accountability throughout the child welfare system.[194]

Alternative dispute resolution (ADR) - processes that offer youth, family members, and other relevant parties the opportunity to meet, often in a confidential setting and usually with trained professionals, in an attempt to resolve familial, social, and legal issues without formal legal proceedings. Such processes include but are not limited to mediation, peer or teen courts and family conferencing.[195]

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[192] Coalition for Juvenile Justice.(2006). *What Are the Implications of Adolescent Brain Development for Juvenile Justice*. Available at: http://www.njjn.org/uploads/digital-library/resource_462.pdf.
[193] P.L. 105-89.
[194] Center for the Study of Social Policy and Urban Institute (2009.) *Intentions and Results: A Look Back at the Adoption and Safe Families Act*.
[195] Edwards, Leonard P. (1996). "The Future of the Juvenile Court: Promising New Directions. "*The Future of Children: The Juvenile Court*, Vol. 6, No. 3. Available at: http://futureofchildren.org/futureofchildren/publications/docs/06_03_10.pdf.

Assessment – an evaluation or appraisal performed selectively with those youth identified by a valid screening instrument as requiring further inquiry, and designed to gather a more comprehensive and individualized profile of a youth and his/her family's suitability for placement in a specific treatment modality/setting. In mental health, an assessment refers to comprehensive information required for the diagnosis of a mental health disorder. An assessment differs from a screening, which is used to determine if an assessment is needed. (Also see definition of Screening.)[196]

Best practices – policies, programs, services, and other strategies demonstrated through research and evaluation to be effective at preventing, reducing, and eliminating certain behaviors.[197]

Blending or blended funds – a funding or resource strategy that pools dollars from multiple funding streams into one single funding stream. After funds have been blended, the once separate funding streams are indistinguishable from one another.[198]

Braiding or braided funding – a funding and resource strategy that aligns and coordinates multiple funding streams, usually to provide programs and services to youth and families along a continuum of care. Braided funding differs from blended funding in that each of the braided funding streams

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[196] Adapted from the US Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP's), Deinstitutionalization of Status Offenders Best Practice Database. Available at: http://www.ojjdp.gov/dso/dsoGlossary.aspx, and Vincent, G. M. (2011). *Screening and Assessment in Juvenile Justice Systems: Identifying Mental Health Needs and Risk of Reoffending*. Washington, DC: Technical
Assistance Partnership for Child and Family Mental Health. Available at: http://www.tapartnership.org/docs/jjResource_screeningAssessment.pdf.

[197] Adapted from OJJDP's Deinstitutionalization of Status Offenders Best Practice Database. Available at: http://www.ojjdp.gov/dso/dsoGlossary.aspx.

[198] *Blending and Braiding Funds and Resources: The Intermediary as Facilitator*. (January 2006). Washington, D.C.: National Collaborative on Workforce and Disability. Available at: http://www.ncwd-youth.info/sites/default/files/infobrief_issue18.pdf.

remains intact so that resources can be tracked more closely for the purpose of accounting to state and federal administrators.[199]

Community – a distinct and identifiable collection of individuals who despite diverse backgrounds share one or more characteristics such as geographic location, race or ethnicity, gender, age, or religion.[200]

Community-based – a program, service, or other strategy conducted within and by members of a particular community. The program, service or strategy can be implemented independently or in conjunction with an outside group, e.g., a government agency or nonprofit organization.[201]

Continuum of care – an array of programs, services, and other strategies that engage youth and families at the point of prevention and moves them to early interventions and more significant system involvement only as needed. Incorporated into the continuum are: the fundamental elements of valid screening and assessment instruments; the matching of identified needs to the appropriate programs and services; and ensuring that the programs and services provided are effective at improving outcomes for youth and their families.[202]

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[199] *Id*.

[200] Adapted from "The Guide to Community Preventive Services," an electronic resource developed by the Community Preventive Services Task Force, an independent, nonfederal, uncompensated body of public health and prevention experts whose members are appointed by the Director of the U.S. Centers for Disease Control and Prevention. Available at: http://www.thecommunityguide.org/about/glossary.html.

[201] *Id*.

[202] Adapted from Lipsey, Mark. W., et al. (2010). *Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practices*. Washington, D.C.: Georgetown University, Georgetown Public Policy Institute, Center for Juvenile Justice Reform. Available at: http://cjjr.georgetown.edu/pdfs/ebp/ebppaper.pdf.

Culturally competent – the extent to which a policy, program, service or other strategy is respectful of and compatible with the cultural strengths and needs of any given youth, family, and community.[203]

Curfew violation – a status offense characterized as a youth who violates an ordinance prohibiting persons below a certain age from being in certain public places during set hours.[204]

Deinstitutionalization of Status Offenders (DSO) – one of four core requirements set forth by the JJDPA. Provides that youth charged with status offenses, and abused and neglected youth involved in the child welfare system, may not be placed in secure detention or locked confinement.[205]

Detention – the locked confinement of youth whose alleged conduct is subject to court jurisdiction and for whom a restrictive, out-of-home placement has been deemed necessary for their own safety and/or for the safety of the community while court proceedings are pending.[206]

Disproportionate Minority Contact (DMC) – the disproportionately high rate of contact that minority youth have with the child welfare or juvenile justice system in proportion to the general population and as compared with white youth. Minority youth populations include American Indian and

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[203] Adapted from OJJDP's Deinstitutionalization of Status Offenders Best Practice Database. Available at: http://www.ojjdp.gov/dso/dsoGlossary.aspx, and the Child Welfare Information Gateway, an electronic resource of the Administration for Children and Families at the U.S. Department of Health and Human Services. Available at: http://www.childwelfare.gov/supporting/cultural.cfm.
[204] Adapted from OJJDP's Deinstitutionalization of Status Offenders Best Practice Database. Available at: http://www.ojjdp.gov/dso/dsoGlossary.aspx.
[205] 42 U.S.C. § 5633(a)(11) 2012.
[206] Adapted from the National Juvenile Detention Association's "Definition of Juvenile Detention." Available at: http://npjs.org/detention/.

Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or other Pacific Islander, and persons of mixed race/ethnicity.[207]

Diversion – the process of responding to the needs and behaviors of youth and families without formal court processing in the juvenile justice or child welfare system.[208]

Empirically-supported - a program, service, practice, or other strategy that is demonstrated to be effective; is based on a clearly articulated and empirically supported theory; and has measurable outcomes.

Evidence-based – a program, service, practice, or other strategy that is demonstrated to be effective; is based on a clearly articulated and empirically supported theory; has measurable outcomes; has been scientifically tested, optimally through randomized control studies or comparison group studies; and has been replicated with similar measurable outcomes.[209]

Gender-responsive – the intentional creation and implementation of policies, programs, practices, services, and other strategies that comprehensively reflect and address the needs of a targeted gender group. Gender-responsive approaches: (1) incorporate the differences between male and female development; (2) acknowledge the different pathways boys and girls take into the child welfare, status offense, and juvenile justice systems; and (3) take a gender-specific and strengths-based approach to prevention and intervention.[210]

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[207] Coalition for Juvenile Justice (2010). *Disproportionate Minority Contact: Facts and Resources*. Available at: http://www.juvjustice.org/sites/default/files/ckfinder/files/DMC%20factsheet%20draft%20--%20Final%20for%20Print.pdf.

[208] Adapted from OJJDP's Deinstitutionalization of Status Offenders Best Practice Database. Available at: http://www.ojjdp.gov/dso/dsoGlossary.aspx.

[209] Adapted from S. 678, the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2009. Available at: http://www.gpo.gov/fdsys/pkg/BILLS-111s678rs/pdf/BILLS-111s678rs.pdf.

[210] Adapted from the "Gender-Responsive Definitions?" of the *National Girls Institute*, http://www.nationalgirlsinstitute.org/i-work-with-girls/resources-best-practices/gender-responsive-definitions/, and Sydney, L. (October 2005). *Supervision of Women Defendants and Offenders in the*

Family engagement – the process of intentional and meaningful involvement of families, on both the personal and organizational levels, in the decision-making, policy development, and reform efforts to improve outcomes of any system in which they are a part.[211]

Family group decision-making – an approach in which family members are brought together with key stakeholders and a trained facilitator or coordinator to make decisions about how to care for children and youth and develop a plan of service. Different names used for this type of intervention include family team conferencing, family team meetings, family group conferencing, family team decision-making, family unity meetings, and team decision-making.[212]

Indian Child Welfare Act – a federal statute enacted in 1978 that governs the removal and out-of-home placement of American Indian children, establishes standards for the placement of Indian children in foster and adoptive homes, and enables Tribes and families to be involved in child welfare and status offense cases.[213]

Intervention – a program, service, or other strategy designed to respond to a particular behavior or event and prevent children, youth, and families from penetrating further into a given system.[214]

Community. Gender-Responsive Strategies for Women Offenders. Washington, D.C.: National Institute of Correction, U.S. Department of Justice.

[211] Adapted from Aracelis, G. and Cheryl D. Hayes. (2008.) *Understanding the State of Knowledge of Youth Engagement Financing and Sustainability*. The Finance Project. Washington. D.C.

[212] Adapted from the Child Welfare Information Gateway, an electronic resource of the Administration for Children and Families at the U.S. Department of Health and Human Services. Available at: http://www.childwelfare.gov/famcentered/overview/approaches/family_group.cfm. For a comparison of approaches, see Annie. E. Casey Foundation. Family Teaming: Comparing Approaches (2009). Available at: http://www.caseyfamilyservices.org/userfiles/pdf/teaming-comparing-approaches-2009.pdf.

[213] Adapted from Adapted from the Child Welfare Information Gateway, an electronic resource of the Administration for Children and Families at the U.S. Department of Health and Human Services. Available at: http://www.childwelfare.gov/systemwide/courts/icwa.cfm.

[214] Adapted from OJJDP's Deinstitutionalization of Status Offenders Best Practice Database. Available at: http://www.ojjdp.gov/dso/dsoGlossary.aspx.

Juvenile Detention Alternatives Initiative (JDAI) – a national strategy of the Annie E. Casey Foundation designed to demonstrate that state and local juvenile justice systems can dramatically reduce their reliance on detention without sacrificing public safety. Launched in 1992, JDAI has been replicated in over 150 jurisdictions in 32 states and the District of Columbia.[215]

Juvenile Justice and Delinquency Prevention Act (JJDPA) – a federal statute enacted in 1974 that provides a set of uniform standards of care and custody for court-involved children and youth across the U.S. states, territories, and the District of Columbia.[216] The JJDPA sets forth four core requirements, or protections, with which states must comply to be eligible for federal juvenile justice funding under the statute.[217] States who voluntarily choose to comply with the JJDPA also receive training and technical assistance from the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP).[218] In addition, OJJDP is charged with monitoring state compliance with the JJDPA and providing guidance to the states on how best to prevent delinquency and improve their juvenile justice systems.[219]

LGBTQ – an inclusive acronym that refers to children and youth who identify as lesbian, gay, bisexual, and transgender, as well as children and youth who question or are still exploring their sexual identity.[220]

Positive Youth Development – an intentional, pro-social approach that engages youth and families in a manner that is productive and constructive; recognizes, utilizes, and enhances youths' strengths; and promotes positive outcomes for young people by providing opportunities, fostering positive

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[215] For more information, visit their website at: www.jdaihelpdesk.org.
[216] *cf.* 42. U.S.C. § 5602.
[217] 42 U.S.C. § 5633(a)(11- 13), (22) 2012.
[218] 42 U.S.C. § 5633(f) 2012.
[219] 42 U.S.C. § 5614(b) 2012.
[220] National Center for Lesbian Rights. *LGBTQ Youth in the Foster Care System*. Available at:http://www.nclrights.org/wp-content/uploads/2013/07/LGBTQ_Youth_Juvenile_Justice_Factsheet.pdf.

relationships, and furnishing the support needed to build on their leadership strengths.[221]

Post-Traumatic Stress Disorder (PTSD) - a type of anxiety disorder triggered by exposure to a traumatic event such as physical or sexual assault or exposure to violence, disasters, and accidents. A common characteristic of PTSD is that the individual continues to have an extreme, often debilitating emotional response to the event even when the event has ceased and s/he is no longer in danger.[222]

Runaway – a status offense characterized as a youth leaving the home, custody or supervision of parents or caregivers without permission and failing to return within a reasonable length of time.[223]

Screening – a process designed to identify the needs of children, youth and families, particularly any mental health needs, who come into contact with a system, and to determine if further intervention, including court processing, is warranted. This is contrasted with an assessment, which would occur only if a valid screening instrument indicated the need for a more in-depth inquiry. (Also see definition of Assessment.)[224]

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[221] Taken from FindYouthInfo.gov, an on-line resource created by the Interagency Working Group on Youth Programs (IWGYP) comprising representatives from 12 federal departments and five federal agencies that support programs and services focusing on youth. Available at: http://www.findyouthinfo.gov/youth-topics/positive-youth-development.

[222] Hetrick SE, Purcell R, Garner B, Parslow R. "Combined Pharmacotherapy and Psychological Therapies for Post Traumatic Stress Disorder (PTSD)."*Cochrane Database of Systematic Reviews* 2010, Issue 7. Art. No.: CD007316. DOI: 10.1002/14651858.CD007316.pub2. Abstract available at: http://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0014403/; "Post-Traumatic Stress Disorder (PTSD)." Washington, D.C: National Institute of Mental Health, National Institute of Health, U.S. Department of Health and Human Services. Available at: http://www.nimh.nih.gov/health/publications/post-traumatic-stress-disorder-ptsd/nimh_ptsd_booklet.pdf.

[223] Adapted from OJJDP's Deinstitutionalization of Status Offenders Best Practice Database. Available at: http://www.ojjdp.gov/dso/dsoGlossary.aspx.

[224] Adapted from OJJDP's Deinstitutionalization of Status Offenders Best Practice Database. Available at: http://www.ojjdp.gov/dso/dsoGlossary.aspx, and Vincent, G. M. (2011). "Screening and Assessment in Juvenile Justice Systems: Identifying Mental Health Needs and Risk of Reoffending."

Status offender – a child or youth who commits a status offense.

Status offense – conduct that would not be unlawful if committed by an adult but is unlawful only because of a child's or youth's legal minor status. Common status offenses include running away, truancy/chronic absenteeism, curfew violation, ungovernability/incorrigibility/beyond the control of one's parents and minor in possession of alcohol or tobacco products.[225]

Truancy – a status offense characterized as a youth being absent from school without a valid excuse from a parent, caregiver, or school official.[226] The number of unexcused absences required to trigger a charge of truancy varies from state-to-state.

Ungovernability – a status offense characterized as a youth's failure to comply with reasonable requests of a parent or approved caregiver to the point that the youth is deemed to be beyond the control of the parent or caregiver. Also referred to as "incorrigibility" or "beyond the control of one's parents."

Valid court order (VCO) – a statutory exception to the DSO core requirement, amended into the JJDPA in 1980. Provides that a judge may order a youth adjudicated for a status offense into locked confinement if the youth violates a valid court order.[227]

Youth engagement – the process of intentional and meaningful involvement of youth and families, on both the personal and organizational levels, in the

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Washington, DC: *Technical Assistance Partnership for Child and Family Mental Health*. Available at: http://www.tapartnership.org/docs/jjResource_screeningAssessment.pdf.

[225] 28 C.F.R. § 31.304(h) (2008).

[226] National Center for School Engagement. (August 2006.) *Guidelines for a National Definition of Truancy and Calculating Rates.*

[227] PL 96-509, 1980 S 2441, 94 Stat. 2755 (December 1980).

decision-making, policy development, and reform efforts to improve system outcomes.[228]

[228] Adapted from Aracelis, G. and Cheryl D. Hayes. (2008.) *Understanding the State of Knowledge of Youth Engagement Financing and Sustainability*. The Finance Project. Washington. D.C.

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