

**Summit on Equitable School Discipline and Decriminalization of Children
October 7-8, 2014**

**CPLI Decriminalization of Youth Workgroup
Summary of Issues and Recommendations**

Recommendation 1: Eliminate from Indiana law the “VCO exception” (i.e., the violation of a valid court order exception) to detaining status offenders.

Status offenses include acts that are subject to sanctions by juvenile courts only when committed by minors. Running away from home, truancy, incorrigibility, and underage drinking are examples of charges faced by children and teens, though they are not categorized as criminal acts if committed by adults.¹ The legal distinction between status and delinquent/criminal offenses acknowledges that status offenses have much less potential to harm society. Therefore, they require different and less severe remedies under the law. Indeed, status offenders in many jurisdictions are referred to as CHINS/JINS (children/juveniles in need of services),² suggesting that they require the rehabilitative or protective services of the state rather than punishment. Legal precedent for keeping status offenders from being detained is longstanding; Congress, under one of only four core provisions of the Juvenile Justice and Delinquency Prevention Act (JJDP) of 1974 (renewed in 2002), stated that status offenders should be prohibited from placement in secure facilities.

Despite the legal protections intended for status offenders, legal exceptions completely subvert the goal of preventing these youth from being detained. In Indiana, as in many other states, the “VCO exception” (i.e., violation of a Valid Court Order) permits placing some status offenders in a juvenile detention facility or under the care of the Indiana Department of Correction/Division of Youth Services. National studies show that on any given day, 10-30% of all youth in juvenile detention centers or secure residential facilities are detained on probation violations (i.e., violation of a VCO) associated with an original status offense.³ Further, a recent study of youth in residential placement found that almost 20% 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; 25% are placed in units

¹ Puzzanchera, C., et al. (2013) *Juvenile Court Statistics 2010*. Pittsburgh: National Center for Juvenile Justice and Office of Juvenile Justice and Delinquency Prevention.

² Kendall, J.R. & C. Hawke (2007) *Juvenile Status Offenses: Treatment and Early Intervention. Technical Assistance Bulletin No. 29: Division for Public Education*, American Bar Association.

³ See, for example: Austin, J. et al. (Sept. 2005) *Alternatives to the Secure Detention and Confinement of Juvenile Offenders, Juvenile Justice Bulletin*. Washington DC: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention; Sickmund, M. et al. (2008) *Office of Juvenile Justice and Delinquency Prevention, Census of Juveniles in Residential Placement Databook*, available at <http://www.ojjdp.ncjrs.org/ojstatbb/cjrp>; Sickmund, M. et al. (2013) *Easy Access to the Census of Juveniles in Residential Placement*, available at: <http://www.ojjdp.gov/ojstatbb/ezacjrp/>

with felony sex offenders.⁴ In other words, many youth who have not been found to pose a danger to society are being treated as delinquents.

Research supports prohibiting status offenders, and other children requiring care under the law (see CPLI's second recommendation below), from being placed in secure facilities. Evidence suggests that detaining youth is both ineffective at deterring future delinquent or criminal behavior and can be harmful to a child's wellbeing, further highlighting the injustice of exposing status offenders to these secure environments.⁵ Studies of juvenile recidivism consistently show that 50-70% percent of youth released from correctional facilities are rearrested within a few years of release.⁶ Further, detention facilities are not equipped to address the behavioral health needs of youth, which are often related to their involvement in the justice system. Not only are correctional facilities understaffed and overcrowded, which can alone exacerbate existing physical and behavioral health conditions, detention personnel are rarely trained educators or mental healthcare providers.⁷ It is not surprising that detained youth continue to show deficits in multiple life domains several years after their release.⁸ Again, these findings call into the question the practice of allowing status offenders to be placed in detention.

In conclusion, if Indiana's VCO exception statutes were eliminated, status offenders would be treated as youth who need care, treatment, and rehabilitation. Such reform reflects the positions of groups such as the American Bar Association, the National Coalition of Family and Juvenile Court Judges, and the Office of Juvenile Justice and Delinquency Prevention that status offenders should not be held in locked institutions.⁹

CPLI recommends that the following Indiana VCO exceptions be repealed in their entirety:

IC 31-37-22-5

⁴ 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.

⁵ Holman, B. & Ziedenberg, J. (2006). *The Dangers of Detention*. Washington, DC: Justice Policy Institute, available at: <http://www.justicepolicy.org/research/1978>

⁶ See, for example: Benda B.B., et al. (2001) Recidivism among adolescent serious offenders: Prediction of entry into the correctional system for adults. *Criminal Justice and Behavior*, 28:588–613. Heilbrun, K., et al. (2000) Risk factors for juvenile criminal recidivism: The postrelease community adjustment of juvenile offenders. *Criminal Justice and Behavior*, 27:275–91.

⁷ Shufelt, J. & J. Cocozza (2006) Youth with mental health disorders in the juvenile justice system: Results from a multi-state prevalence study. National Center for Mental Health and Juvenile Justice, available at: [http://www.unicef.org/tdad/usmentalhealthprevalence06\(3\).pdf](http://www.unicef.org/tdad/usmentalhealthprevalence06(3).pdf); Young, DW et al. (2007) A national survey of substance abuse treatment for juvenile offenders. *Journal of Substance Abuse Treatment* ,32(3):255–266; Pajer KA, et al. (2007) Psychiatric and medical health care policies in juvenile detention facilities. *Journal of the American Academy of Child and Adolescent Psychiatry*. 46(12):1660–1667.

⁸ Abram, K.M. (2009) Functional Impairment in Youth Three Years after Detention. *Journal of Adolescent Health*, 44, 528-535.

⁹ National Council of Juvenile and Family Court Judges. (March 2010) Resolution Supporting Reauthorization of JJDP Act and Elimination of the VCO, available at: <http://www.ncjfcj.org/about/resolutions-and-policy-statements>; Kendall, J.R. & C. Hawke (2007) Juvenile Status Offenses: Treatment and Early Intervention. Technical Assistance Bulletin No. 29: Division for Public Education, American Bar Association.

Placement of child in public or private facility for children

Sec. 5. If:

(1) a child is placed in a shelter care facility or other place of residence as part of a court order with respect to a delinquent act under IC 31-37-2-2;

(2) the child received a written warning of the consequences of a violation of the placement at the hearing during which the placement was ordered;

(3) the issuance of the warning was reflected in the records of the hearing;

(4) the child is not held in a juvenile detention facility for more than twenty-four (24) hours, excluding Saturdays, Sundays, and legal holidays, before the hearing at which it is determined that the child violated that part of the order concerning the child's placement in a shelter care facility or other place of residence; and

(5) the child's mental and physical condition may be endangered if the child is not placed in a secure facility;

the juvenile court may modify its disposition order with respect to the delinquent act and place the child in a public or private facility for children under section 7 of this chapter.

As added by P.L.1-1997, SEC.20. Amended by P.L.146-2008, SEC.661.

IC 31-37-22-6 Placement of child for noncompliance concerning compulsory school attendance

Sec. 6. If:

(1) a child fails to comply with IC 20-33-2 concerning compulsory school attendance as part of a court order with respect to a delinquent act under IC 31-37-2-3 (or IC 31-6-4-1(a)(3) before its repeal);

(2) the child received a written warning of the consequences of a violation of the court order;

(3) the issuance of the warning was reflected in the records of the hearing;

(4) the child is not held in a juvenile detention facility for more than twenty-four (24) hours, excluding Saturdays, Sundays, and legal holidays, before the hearing at which it is determined that the child violated that part of the order concerning the child's school attendance; and

(5) the child's mental and physical condition may be endangered if the child is not placed in a secure facility;

the juvenile court may modify its disposition order with respect to the delinquent act and place the child in a public or private facility for children under section 7 of this chapter.

As added by P.L.1-1997, SEC.20. Amended by P.L.1-2005, SEC.214.

IC 31-37-22-7 provides, in pertinent part:

(a) If the juvenile court modifies its disposition order under the above sections, the court may order the child placed under one (a) of the following alternatives:

(1) *In a nonlocal secure private facility licensed under the laws of any state.*
(2) *In a local secure private facility licensed under Indiana law.*
(3) *In a local secure public facility.*
(4) *In a local alternative facility approved by the juvenile court.*
(5) *As a ward of the DOC for housing in any correctional facility for children. . . .*
However, without a determination of unavailable housing by the DOC, a child found to be subject to section 5 or 6 of this chapter (above) and placed in a secure facility of the department of correction may not be housed with any child found to be delinquent under any other provision of this article.

(b) *If the juvenile court places a child in a local secure public facility or local alternative facility approved by the juvenile court:*

(1) *the length of the placement may not exceed thirty (30) days; and*
(2) *the juvenile court shall order specific treatment of the child designated to eliminate the child's disobedience of the court's order of placement.*

(c) *The juvenile court shall retain jurisdiction over any placement under this section and shall review each placement every three (3) months to determine whether placement in a secure facility remains appropriate.*

Recommendation 2: In Indiana, prohibit placement of youth under the age of twelve (12) in a secure detention facility.

Currently, Indiana law states no minimum allowable age for youth offenders to be held in a juvenile detention facility. Rather, because children in Indiana as young as seven (7) or eight (8) years old can be arrested, they can also be held in a detention center with older youth charged with any crime, including violent offenses and crimes that would be felonies if committed by an adult. This practice runs counter to statutory limits on placing youth in the care of the Indiana Department of Correction before the age of twelve (12).

As outlined above in our first recommendation, youth requiring the protective and rehabilitative efforts of the juvenile justice system (as opposed to punishment), are not served by placement in secure facilities. Very young children, like status offenders, are an especially vulnerable group within the justice system. Young children (i.e., those who have not begun puberty) clearly differ from older adolescents in both their physical and cognitive abilities. Research in child and adolescent development confirms that 1) the reasons for a young children's involvement in the system, 2) their propensity to be rehabilitated, and 3) their associated needs, often differ dramatically from those of typical teenage offenders.¹⁰ It follows

¹⁰ See, for example: Scott, E. & L. Steinberg (2008) Adolescent Development and the Regulation of Youth Crime. *The Future of Children*, 15: 20; Moffitt, T. & Caspi, A. (2001) Childhood predictors differentiate life-course persistent and adolescent-limited antisocial pathways among males and females. *Developmental Psychopathology*, 2: 355-375; see also the work of The MacArthur Foundation Research Network on Adolescent Development & Juvenile Justice, available at: <http://www.macfound.org/networks/research-network-on-adolescent-development-juvenile/>

that young children should be receive different consideration under the law for their delinquent acts and should be specifically excluded from juvenile detention centers.

If Indiana adopted a minimum allowable age for placement in juvenile detention centers, such a reform would align with both the requirements governing the Indiana Department of Corrections and other national standards, including those of the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI). The foundation's published standards for detention facility assessments prevent placement of young children in detention centers and set the minimum allowable age of detention at twelve (12) years old.¹¹

CPLI recommends adding the following provision to the Indiana Code:

IC 31-37-7-5

Age of child eligible for detention

(a) A court may not place a child in a juvenile detention facility if the child is less than twelve (12) years of age, except as provided by subsection (b).

(b) A child may be placed in a juvenile detention facility if the child:

(1) is ten (10) or eleven (11) years of age; and

(2) is alleged to have committed an act that would be murder if committed by an adult.

¹¹ Annie E. Casey Foundation (May 2014) *Juvenile Detention Facility Assessment*, available at: <http://www.macfound.org/networks/research-network-on-adolescent-development-juvenil/>