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ISSUE BRIEF SERIES

The Blueprint for Kentucky's Children is a unified policy agenda for child advocates across the Commonwealth.

Our goal is to make Kentucky the best place to be young.



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Reducing the Use of Incarceration for Status Offenses in Kentucky

This issue brief series serves as a tool to share the latest statistics, research, best practices, and the group's recommendations for action. This brief focuses on reducing the use of secure detention for status offenses.

Background

Every child needs quality learning opportunities and support in making a successful transition to adulthood in order to become a productive citizen of our Commonwealth. Adolescence can be a vulnerable and risky time for youth as they attempt to define themselves and become more independent. While some adolescents will engage in troubling behavior, appropriate and consistently-applied discipline is needed to ensure youth have opportunities to learn from mistakes and become successful contributing adults.¹

Status offenses are acts defined as illegal if committed by people who are under 18 years of age, but not if committed by adults. Status offenses are misconduct by a child that is not criminal. In Kentucky, status offenses include:

▶ **HABITUAL TRUANCY** – being reported as a truant two or more times during a one-year period. A child is considered a truant if they are absent or tardy for school without valid excuse 3 or more times during a school year.

- ▶ **BEYOND THE CONTROL OF PARENTS** – repeatedly failing to follow the reasonable directives of parents or guardians when the behavior places the child or others at risk.
- ▶ **BEYOND THE CONTROL OF SCHOOL** – repeatedly violating the lawful regulations set forth by the school.
- ▶ **HABITUAL RUNAWAY** – being absent from the lawful place of residence without the permission of custodian for at least three days during a one-year period.
- ▶ **TOBACCO OFFENSE** – Purchasing, attempting to purchase, receiving, or attempting to receive a tobacco product, or using false identification for that purpose.
- ▶ **ALCOHOL OFFENSE** – Possessing or purchasing (or attempting to purchase) an alcoholic beverage, misrepresenting age or using false identification for that purpose, having another person purchase an alcoholic beverage for the person under 18, or entering premises licensed for the sale of alcohol for the purpose of purchasing or receiving alcohol.²



REDUCING THE USE OF INCARCERATION FOR STATUS OFFENSES IN KENTUCKY

In 1974 Congress passed the Juvenile Justice and Delinquency Prevention Act (JJDPA), which mandated the deinstitutionalization of status offenders as one of its core protections. The 1980 reauthorization of the JJDPA included an exception that allowed secure detention of youth found guilty of a status offense and violating a valid court order.³ The emphasis on deinstitutionalization of status offenders in the JJDPA is premised on the understanding that youth who misbehave but have not committed a criminal offense or violated the law are better served by social service programs in nonsecure (unlocked) environments than through the use of secure detention.⁴

Not only is detention the most expensive approach, but it is also the least effective, as youth who are detained face greater risk of poor education, work, and health outcomes, as well as future incarceration.⁵

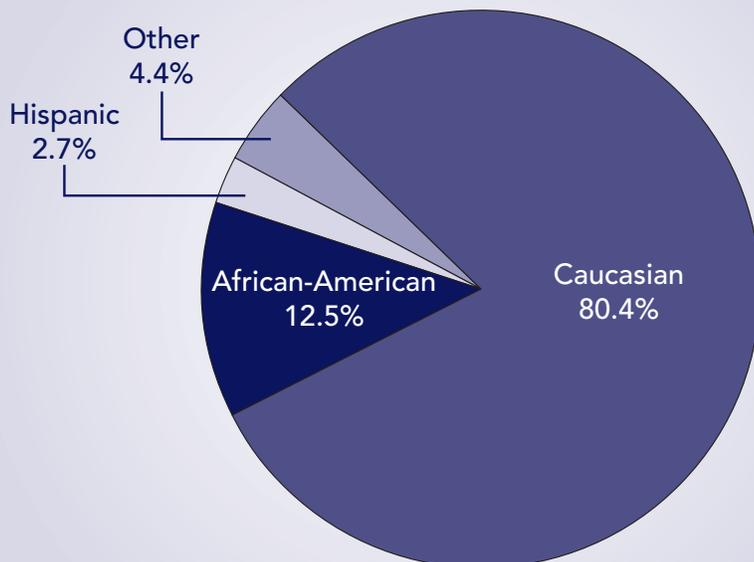
Youth Charged with Status Offenses in Kentucky

In 2009, the number of Kentucky youth charged with status offenses was 9,696, a rate of 172 per 10,000 youth ages 10-19.⁶ In that same year, habitual truancy and beyond control were the most common status offense charges (87 percent) and accounted for 20 percent of all juvenile charges, which includes public offenses or offenses that would be a crime if committed by an adult.⁷ Youth charged with status offenses include children as young as 6 years old.⁸ More males than females are charged with status offenses in Kentucky, although females are more likely to be charged with habitual runaway.⁹ Research shows African-American youth are often over-represented in the juvenile justice system, despite having no more likelihood of committing crimes. African-American youth accounted for 12.5 percent of all status offense charges in 2009, yet represented only 9.8 percent of youth ages 10 to 19.¹⁰

Youth charged with status offenses in Kentucky are detained at the second highest rate in the nation.¹¹ In 2009, 1,746 youth in Kentucky were held in detention for status offenses, which accounted for nearly 20 percent of all youth detained (for status and public offenses combined).¹² Youth charged with status offenses are most often detained for contempt of court due to violating a valid court order. Kentucky, Texas, and Washington State alone account for approximately 60 percent of all detentions of youth charged with status offenses due to violating a valid court order.¹³ During sentencing it is not uncommon for judges to issue a court order that mandates compliance with specified rules. Oftentimes, these court orders simply mandate the youth to cease engaging in the offending behavior immediately and throughout the rest of their juvenile years. If a youth charged with a status offense violates any part of that court order they can be given an additional charge of contempt of court, and can be sentenced to secure detention for the contempt charge. Youth may also be detained for a brief period without a contempt of court charge, most often for habitual runaway charges.

According to Kentucky law, a youth who is alleged to be a status offender or accused of being in contempt of court for an underlying status offense charge may be detained in a secure juvenile detention facility for up to 24 hours pending a detention hearing. If further detention is ordered at the detention hearing an alleged status offender may be detained in a secure juvenile detention facility for up to an additional 24 hours, and a youth accused of being in contempt of court may be held in secure detention for up to an additional 48 hours pending the child's next court appearance.¹⁴ The average length of

Youth Charged with Status Offenses by Race, 2009



Source: Administrative Office of the Courts, Court Designated Worker Database.



stay for status offenders in a Kentucky Department of Juvenile Justice detention facility is 5-6 days.¹⁵ Youth without a contempt of court charge are typically only detained for 1 to 2 days, while

youth detained for being in contempt of court often have longer stays. Judges may detain a youth for up to 90 days on a contempt of court charge due to violation of a valid court order.¹⁶

Detention: An Ineffective and Expensive Approach

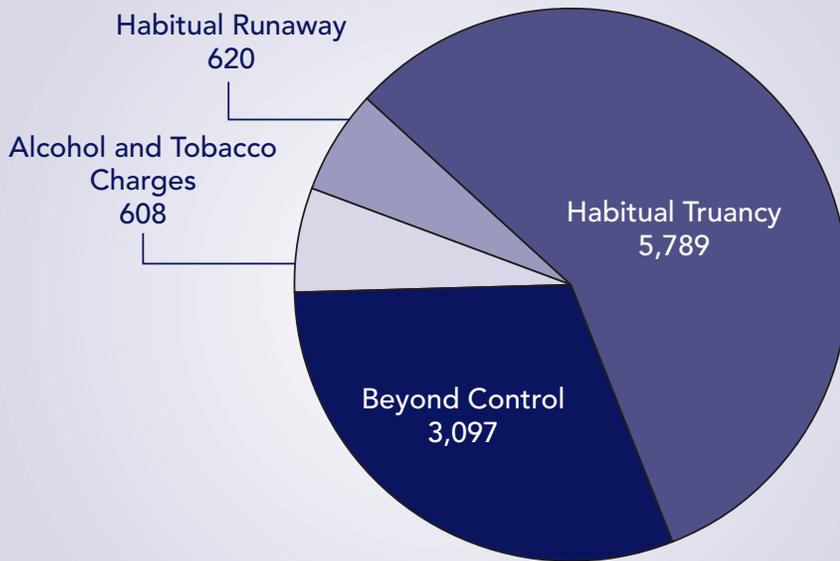
Secure detention, though appropriate for some offenses, has not proved effective in addressing status offenses. Using detention fails to address factors that contribute to the inappropriate behavior. Further, the costs of detention significantly outweigh other placement options that can address underlying problems.

DETENTION IS MORE EXPENSIVE THAN ALTERNATIVES TO DETENTION.

In Kentucky, the county in which a youth resides is responsible for paying the cost of detention and/or out-of-home placement for a youth who has committed a status offense. The cost to a county is \$94 per day for secure detention compared to \$92.50 per day for emergency shelter care and \$78 per day for a supervised foster care placement.¹⁷ For secure detention, the total cost (estimated at \$152 per day) exceeds what counties are charged, and the state covers the remainder of the cost of detention.¹⁸ Kentucky uses another alternative to detention called home detention or “tracking,” which the state pays for using federal funds. Home detention only costs \$23 per youth per day, which includes an electronic monitoring bracelet used to monitor the youth’s location and a case management service that checks in with youth by phone and in person on a regular basis.¹⁹

The sheriff’s office in many counties also incurs costs when status offenders are detained. Sheriffs’ offices spend a considerable amount of time and money transporting youth charged with a status offense back and forth between the nearest regional state-run juvenile detention center and their county courthouse. Locking up youth who are not a threat to the community detracts from the resources needed to detain

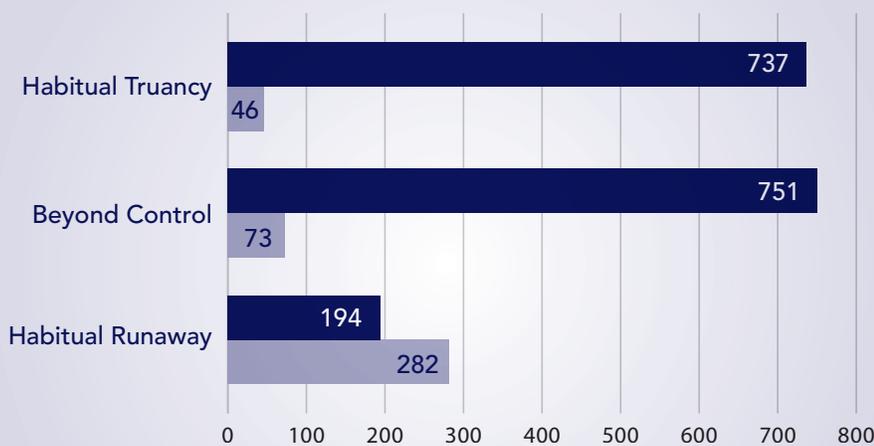
Youth Charged with Status Offenses by Type of Charge, 2009



Data Note: Youth may be counted in more than one offense category if they were charged with multiple status offenses.

Source: Administrative Office of the Courts, Court Designated Worker Database.

Youth Detained for Most Common Status Offenses, 2008



■ Number of youth detained for contempt of court
 ■ Number of youth detained without a contempt of court charge

Source: Department of Juvenile Justice.



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youth for whom secure detention is an appropriate placement.

DETENTION DOES NOT PROVIDE AN OPPORTUNITY TO REHABILITATE STATUS OFFENDERS.

Detaining youth charged with a status offense fails to address the causes of the troubling behavior that brought him or her to the attention of the courts. Until the underlying causes of a youth's behavior are effectively addressed the behavior will probably continue.

A prime example of detention's failure to rehabilitate is regarding youth charged with habitual truancy. Youth who habitually miss school often have underlying factors that contribute to their poor attendance, such as parents who are disengaged from their education or lack the supervision and discipline skills they need to effectively parent. Detaining youth who are truant without investigating the underlying factors that lead youth to miss school does nothing to mitigate those contributing factors nor help the child become more connected to school in the long-term. For youth charged with habitual truancy, detention just extends the amount of time a youth is disconnected from their school. Youth who feel connected to their school are less likely to engage in criminal behaviors, whereas a low level of school attachment is a long-term risk factor for juvenile violence.²⁰ Feeling disconnected from school also increases a youth's risk for dropping out. Youth who leave detention and do not return to school may face higher unemployment, poorer health (and a shorter life), and receive less earnings than youth who do return and complete school.²¹ Additionally, dropouts are 3.5 times more likely than high school graduates to be arrested.²²

Detention also puts youth rehabilitation at risk by separating youth from their families and communities. Developing

a strong social network and support system is a critical step in youth making a successful transition from adolescence to adulthood.²³ The individuals and institutions that constitute a young person's support system have the greatest influence on youth and should be included in attempts to end negative behaviors.

DETENTION CAN INCREASE RECIDIVISM AND THE CHANCE OF CRIMINAL ACTIVITY IN THE FUTURE.

Researchers have found not only a high rate of recidivism (the tendency to repeat the offending behavior) for youth who have been incarcerated, but that incarceration itself is the most significant factor in increasing the odds a youth will recidivate.²⁴ Several studies show that incarcerated youth are more likely to recidivate than youth placed under supervision in a community-based setting, or not detained at all.²⁵ Youth incarcerated for status offenses are locked up with youth who have committed serious criminal offenses, and research has shown that status offenders held in detention centers with youth who have committed actual crimes are more likely to engage in criminal activity after released from detention.²⁶

Effective Approaches in Kentucky

Kentucky has utilized a number of effective approaches in addressing status offenses while reducing recidivism. These efforts range from working preventatively to address problems before they must be referred to the juvenile justice system to helping youth already charged with offenses address underlying problems at home or at school.

USING COMMUNITY-BASED

APPROACHES FIRST: Kentucky can decrease the use of secure detention by encouraging schools and courts to make

every effort to use school-based and community services first in an attempt to treat misbehavior, before reverting to judicial intervention. The most effective community programs focus on the youth's family and provide skills to the parents or guardians responsible for supervising the child.²⁷ Judicial intervention should be used as a last resort when all other interventions have been tried but were ineffective.

The Truancy Diversion Program

- ▶ Through the Administrative Office of the Courts
- ▶ In existence since October 2005
- ▶ Operated in 149 schools in 61 KY counties in fiscal year 2010
- ▶ Served 7,441 youth who were at risk of being charged with habitual truancy in fiscal year 2010
- ▶ Successful outcomes for 91% of those youth

Source: Personal correspondence with Administrative Office of the Courts, September 2010.

SUCCESSFUL DIVERSION

PROGRAMS: When someone brings a complaint of an offense against a youth, Kentucky's Court Designated Worker program works with youth first to evaluate the appropriateness of diversion. With the approval of the county attorney, the youth may avoid court by entering into a voluntary diversion program. Diversion gives youth an opportunity to make up for their offense without court action. When a youth successfully completes diversion no formal court record is created.



EXISTING ALTERNATIVES TO

DETENTION: Status offenses are non-violent and non-criminal, and therefore are appropriate for being addressed with strategies other than secure detention because they pose no risk of harm to the community. Alternatives to detention can more effectively address the possible reasons for detaining youth during the court process, which include the youth being a harm to him/herself or the community, the youth being at-risk for missing court appearances, or the courts being unable to locate the youth's parents or guardians. If a youth is a danger to him/herself due to mental instability, a mental health treatment provider offers a more appropriate setting. For those youth who need additional supervision in order to ensure court appearances are kept, home detention with tracking can be used. For those youth whose home is not safe enough to return to or whose parents can not be located, supervised foster care or emergency shelter care can be utilized.

The alternatives to detention that Kentucky currently employ provide a good foundation to work from in increasing the use of effective programming in holding youth accountable for status offenses while keeping them on track to become contributing citizens of Kentucky. It is critical to ensure that alternatives to detention are available in all counties and that courts are aware of the options available in the area. Additionally, Kentucky can review the promising practices being used in other states to address juvenile justice.

Model Programs to Consider

There is a growing body of cost-effective, evidence-based programs that address problematic behavior in youth while holding them responsible for their actions. The federal Office of Juvenile Justice and Delinquency Prevention's Model Programs Guide lists several programs specifically designed to reduce the detention of status offenders either through targeting those at risk of becoming involved with the juvenile justice system or by providing interventions that are based in the home, community, or nonsecure settings.²⁸

The Center for the Study and Prevention of Violence has rigorously examined hundreds of strategies around youth violence and has designated three approaches targeting youth already engaged with the juvenile justice system as

“blueprint models”, meaning repeated studies have provided evidence of significant positive results.²⁹ These programs, Functional Family Therapy, Multi-Systemic Therapy, and Multidimensional Treatment Foster Care, all work intensively with youth and their families addressing the root problems behind the troubling behaviors.³⁰ On average these programs have reduced recidivism by 16 percent, 11 percent, and 22 percent respectively, and they provide from \$10.69 - \$13.36 in benefits for each dollar spent on the service.³¹ Other promising strategies within juvenile justice include providing wraparound services (coordinated interagency efforts to meet children's and families' needs), using day and evening reporting centers, and adopting restorative justice practices such as peer juries.³²

Conclusions and Recommendations

Status offenses are non-violent, non-criminal offenses committed by youth under the age of 18. While status offenses denote troublesome behavior, they do not pose a threat to public safety. Secure detention is the most expensive of the options currently available in Kentucky and research has shown detention to be the least effective approach to correcting youth misbehavior and preventing future offenses.

The Kentucky Department of Juvenile Justice acknowledges that alternatives to detention are most appropriate for non-violent, low-level juvenile offenders, but over the years budget cuts have resulted in the elimination and capping of certain alternatives to detention.³³ Kentucky can reduce the use of secure detention for status offenses and reinvest funds that have gone toward detention into effective alternatives. This option is even more important in these tough budgetary times.

Snapshot of Successful Alternatives to Detention

The following data shows outcomes from 2005- 2009 for two alternatives to detention programs at one of the many private agencies with whom the state contracts.

- ▶ Of the 670 discharges from supervised foster care, 69% were the result of successful completion of the program, and only 13% resulted in the youth being sent to secure detention
- ▶ Of the 836 discharges from home detention services, 87% were the result of successful completion of program requirements, and only 8% resulted in the youth being sent to secure detention

Source: NECCO, *Alternatives to Secure Detention Outcome Report*, November 2010.

Data notes: Youth served by these programs include youth charged with status offenses and public offenses. The remaining discharges were due to youth being transferred to another service and youth leaving the program without permission.



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Not only would the day-to-day costs of detaining youth charged with status offenses decrease, but long-term savings would also be realized due to decreased recidivism, fewer juveniles entering into the adult criminal justice system, and fewer juveniles at risk of the poor educational and employment outcomes associated with detention.

There are a multitude of ways Kentucky can decrease its use of secure detention for youth who commit status offenses, while still holding youth accountable and ensuring public safety.

- ▶ Expand the availability of successful diversion programs so that all counties are served, and increase the utilization of such programs in counties where they are already available.

- ▶ Increase the use of currently available alternatives to detention during court processing, and in the sentencing of youth who have violated a valid court order.
- ▶ Expand available community-based interventions to include evidence-based practices that have proven to be effective at decreasing negative behaviors. Kentucky is in dire need of an appropriate and effective alternative to detention for youth who have run away. The courts are justifiably concerned that during the judicial process these youth will run away again, putting themselves in danger on the street. Currently, the only secure (locked) option available for the courts to place these youth in is secure detention.

- ▶ Amend Kentucky's laws on status offenses in ways that could significantly reduce the use of secure detention, specifically:
 - Enact time limits on valid court orders for status offenses, with the option to reissue orders when deemed appropriate. This would prevent youth from having to continue to comply with rules that may no longer be relevant to their situation, and would free up law enforcement from picking up youth on years old warrants pertaining to status offenses.
 - Establish safeguards, whereby the courts must verify that sufficient efforts have been made to use community services before judicial intervention.

Endnotes

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