

The Dichotomy of Judicial Leadership: Working with the Community to Improve Outcomes for Status Youth

By Judge Steven C. Teske and Judge J. Brian Huff

INTRODUCTION

First enacted in 1974, the federal Juvenile Justice and Delinquency Prevention Act (JJDP A)¹ creates a partnership among the federal government, states, and U.S. territories to create more effective juvenile justice systems premised on standards for the fair treatment of court-involved youth, and to reduce over-reliance on incarceration, while still holding youth accountable and keeping communities safe. Over the last 35 years, the JJDP A has fostered many systemic improvements, but a recent report by the Coalition for Juvenile Justice, *A Pivotal Moment: Sustaining the Success and Enhancing the Future of the Juvenile Justice and Delinquency Prevention Act*, underscores various unresolved issues faced by many states and territories.² One such issue is the increasing use of locked detention for youth charged with status offenses (“status youth”).

Under the JJDP A’s “Deinstitutionalization of Status Offenders” mandate, states may not place status youth in secure (that is, locked) detention. Rather, states must implement policies and programs that provide status youth with the family- and community-based services needed to address and ameliorate root causes of their behavior.

¹ 42 U.S.C. 5601.

² The report may be found at www.juvjustice.org.

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A statutory exception to this mandate is the valid court order (VCO) exception.³ Under the VCO exception, judges may order the locked detention of a status youth who has violated a direct order of the court not to commit a repeat or additional status offense, such as running away again or breaking curfew.⁴ While originally intended to be an exception used on an infrequent basis, data reveal that the VCO exception is too often overused and misused, resulting in the locked detention of thousands of status youth every day.

When we as judges do not have a clear assessment of detention alternatives, and are unaware of the harm that detention has been shown to cause, locking up status youth may become a default option. As juvenile court judges, who both preside in states where locking up status youth under the VCO exception is a legal option, we offer our perspectives and share our experiences on ways to ensure the best possible youth and community outcomes without the use of detention, and help jurisdictions comply with the spirit as well as the letter of the JJDP.

DETENTION OF STATUS OFFENDERS: PROTECTIVE OR PROBLEMATIC?

As judges, we have great discretion in deciding whether a young person who comes before us should be detained in a secure facility or diverted from detention. When making this decision, we have a responsibility to consider the short- and long-term consequences of our actions.

Advocated by judges and child professionals, and amended into the JJDP in 1980, the original purpose of the VCO exception was to provide judges with a tool to enforce their orders and protect status youth who repeatedly exposed themselves to harmful situations. The philosophy was that youth should be held accountable for disobeying the court, and some youth, particularly chronic runaways, were safer locked up than they would be on the street. Detaining youth in secure facilities, however, has proved to cause far-reaching, negative consequences. Research shows that youth who spend time in secure custody are less likely to complete high school, avoid re-arrest, find employment, and form stable families. They are also more likely to abuse drugs and alcohol.⁵ Furthermore, youth of color continue to be disproportionately impacted by the juvenile justice system, including at the detention stage.⁶

The underlying causes of status offenses are typically linked to factors associated with family dynamics, school concerns, trauma, mental health needs, and peer group

3 David J. Steinhart, *Juvenile Court: Status Offenses*, 6 THE FUTURE OF CHILDREN, Winter 1996, 90-92.

4 42 U.S.C. Sec. 223(11).

5 M. Szalavitz, *Why Juvenile Detention Makes Teens Worse*. TIME MAGAZINE. Aug. 7, 2009. Retrieved from <http://www.time.com/time/health/article/0,8599,1914837,00.html>.

6 B. Holman & J. Zidenberg (2009). *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, A JUSTICE POLICY INSTITUTE REPORT (The Justice Policy Institute, Washington, DC).

influences.⁷ Locked detention is not designed to treat or to resolve such causes. Rather, the negative outcomes that can arise from detention far outweigh any benefits of short-term confinement with no access to critical services needed to eliminate the reasons for running away in the first place. Detention can exacerbate underlying causes of the young person's behavior and simultaneously expose them to predatory behaviors of other youth charged with more serious, delinquent offenses. This exposure can increase the risk of emotional harm and escalation of delinquent behavior.⁸

For all of these reasons, detention should never be the default option. Rather, secure detention should only be used if a youth poses a serious threat to public safety, or if there is a strong, documented reason to believe that the youth will not return to court for required hearing dates. Status offenses such as running away, skipping school, violating curfew, and using tobacco and/or alcohol under age generally do not meet this threshold. In keeping with this view, the JJDPa mandates that youth charged with status offenses *not* be detained except in limited circumstances. Unfortunately, in many jurisdictions, the VCO exception has swallowed the original rule. Overuse of the VCO exception contributes to the approximately 11,900 status youth held annually in secure detention facilities.⁹

More than a dozen states have eliminated or limited the use of the VCO exception by statute or court rule, and Congress is considering its removal from the JJDPa altogether. Limiting judges' ability to order the detention of status youth is a source of contention among judges, placing judges at odds with many juvenile justice practitioners, service providers, and advocates. At times, status youth present a threat to themselves, and naturally we want to protect them. However, using detention with the intention of safeguarding youth facilitates a process that exposes status youth to greater risks and may cause their behavior to deteriorate, sometimes causing a greater threat to themselves or others. This presents a difficult paradox for juvenile court judges, believing that we must decide between the lesser of two evils: 1) do we release a status youth to his or her family or community and run the risk that s/he may be victimized or run away again? Or 2) do we detain them, knowing that detention may expose the youth to further physical and emotional harm? No matter how difficult the choice, we must guard against doing anything that will make matters worse, even when it feels contrary to our protective instincts. When we as judges fail to guard against this, we may end up contributing to juvenile delinquency and future offending, rather than preventing it.

7 National Center for School Engagement. (2009). *What is Truancy?* (NCSC, Denver, CO) at <http://www.schoolengagement.org/TruancyPreventionRegistry/Admin/Resources/Resources/40.pdf>; H. HAMMER, D. FINKELHOR, & A. J. SEDLAK, NISMART: NATIONAL INCIDENCE STUDIES OF MISSING, ABDUCTED, RUNAWAY AND THROWN AWAY CHILDREN, RUNAWAY/THROWN AWAY CHILDREN: NATIONAL ESTIMATES AND CHARACTERISTICS. (U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Washington, DC, 2002) at <http://www.ncjrs.gov/pdffiles1/ojjdp/196469.pdf>.

8 U. Gatti, R. E. Tremblay, & F. Vitaro, *Iatrogenic Effect of Juvenile Justice*, 50 JOURNAL OF CHILD PSYCHOLOGY AND PSYCHIATRY (2009); D. WEATHERBURN, THE SPECIFIC DETERRENT EFFECT OF CUSTODIAL PENALTIES ON JUVENILE REOFFENDING (Australian Institute of Criminology, Canberra, 2009).

9 CHARLES PUZZANCHERA & MELISSA SICKMUND, JUVENILE COURT STATISTICS 2005. (National Center for Juvenile Justice, Pittsburgh, PA, 2008). This number represents a 54% increase from 1995.

COMMUNITY-BASED RISK REDUCTION: IMPROVED OUTCOMES THROUGH JUDICIAL LEADERSHIP¹⁰

To address the harm from overuse of the VCO exception, and detention and confinement generally, we have developed what we call the Community-Based Risk Reduction Model (“community-based model”), which is grounded in three key suppositions.

- First, the model recognizes that juvenile courts are generally the *worst* delivery system of direct services to youth. The primary function of the court is to adjudicate youth and hold them accountable in keeping with due process. Juvenile courts are not effective treatment providers, and many courts do not possess the resources required to treat the underlying needs of youth, including status youth.
- Second, the model recognizes that the “juvenile justice system” is not only the court, but includes all public and private entities that service youth. Sadly, the negative characteristics of bureaucracies may create “silos” and barriers to communication among court service/youth service entities. Such disconnection wreaks havoc on youth and families, especially if the youth and/or family have multiple needs requiring services from two or more entities. In addition, when two or more providers work with a single youth/family without coordination to address different needs, they sometimes work at cross-purposes. Many communities, by and through various providers, are equipped to address most of the needs presented by status youth and to develop a cooperative treatment plan to meet all of the identified needs of status youth.
- Finally, the community-based model presupposes that juvenile courts are incomparable agents for change within the juvenile justice system. The juvenile court sits at the intersection of juvenile justice, youth success, and community safety, and the juvenile court judge is the traffic cop. Of all stakeholders, juvenile court judges have the greatest potential to influence and connect everyone who can help meet the needs of youth and families.

In addition to deciding cases fairly, we as juvenile court judges must play an active role in bringing together the multiple child service agencies in our communities to ensure that our collective efforts are producing the best outcomes for youth, families, and communities. Put another way, judicial leadership both *from* the bench *and off* the bench is the key to good detention practice. We have coined this “The Dichotomy of Judicial Leadership,” meaning that we should endeavor to be judges from the bench, but off the bench we should advocate for collaboration. As pointed out by former NCJFCJ President

¹⁰ The name is taken from a title of a statute in the Georgia Juvenile Code. O.C.G.A. 15-11-10 authorizes juvenile judges to engage stakeholders to develop protocols to address delinquency and status offenses. The collaborative approach, with emphasis on judicial leadership, was inspired by the Juvenile Detention Alternatives Initiative (JDAI) key strategies of the Annie E. Casey Foundation in Baltimore, Maryland. Clayton County, Georgia, and Jefferson County, Alabama, are participating sites of JDAI.

Judge Leonard P. Edwards, “This may be the most untraditional role for the juvenile court judge, but it may be the most important.”¹¹

Over the last several years, we have embraced this dichotomy to bring the courts and local stakeholders to the table to create a system designed to divert status youth away from detention and into programs that better serve them. In doing so, we have been careful to make sure that our roles are narrowly tailored to achieve the ends of collaboration: improvement of systems through candid discussions between local stakeholders including experts in education, social services, mental health, families, and service delivery.

PROTOCOLS TO MAKE EFFECTIVE SYSTEM CHANGE FOR STATUS YOUTH

To collaboratively develop detention alternatives for status youth, half the battle is getting the stakeholders together. The other half is effectively engaging stakeholders to integrate and, where necessary, change systems to ensure that needs assessments are conducted, a comprehensive continuum of care is in place, and gaps in service delivery are filled. Therefore, the role of a facilitative judge brings such stakeholders together to develop collaborative systems and reduce detention by creating and ensuring alternative treatment programs and strategies. This systemic change requires written protocols between stakeholders to support the goals of collaboration and to guarantee compliance and sustainability. Persuading and helping stakeholders to develop these protocols is an essential facilitative role of the judge.

Allow us to provide a concrete example, focusing on the point of entry for status and other at-risk youth. When serving youth and families with varying needs, the problem is not only the “disconnect” in communication between different stakeholders, but a complex system with multiple points of entry and no clear exit.¹² Needless to say, a complex, disconnected “non-system” is inefficient, and worse, mystifying to the youth and families who have to navigate it. In Clayton County, Georgia, Judge Teske facilitated frank and earnest discussions between stakeholders for eight months, which led to the creation of a permanent multidisciplinary panel to serve as a single point of entry for status youth and at-risk youth. The mission, goals, and processes of the panel were captured in a written protocol that is the County blueprint for working with youth and families.

Since its creation in 2004, the panel has developed a comprehensive system of assessment and treatment programs in the community. For instance, the panel has developed an array of evidence-based programs (EBPs) such as functional family therapy, multi-systemic therapy, cognitive behavioral programming, and wrap-around services, proven to be more cost-effective and to have a positive impact on community safety when

11 Leonard P. Edwards, *The Juvenile Court and the Role of the Juvenile Court Judge*, 43 JUVENILE AND FAMILY COURT JOURNAL, Spring 1992, at 29.

12 WALTER F. BUCKLEY, *SOCIOLOGY AND MODERN SYSTEMS THEORY* 227 (Prentice Hall, 1967).

compared with locking up youth.¹³ In addition, when these professionals come together at the same table, it prevents an “overlapping” effect of redundant services and helps each stakeholder make the most of available funding, whether Medicaid, Temporary Assistance for Needy Families (TANF), and/or private funding sources. We have also found that individual stakeholders are far less likely to refuse to give assistance to certain youth or argue that the youth—due to point of entry or other factors—are “not their responsibility.” Gone, too, are unnecessary filings of status petitions with the court, such that now in Clayton County status petitions have decreased by approximately 40%.¹⁴

REVERSING THE SCHOOL-TO-PRISON PIPELINE

Judicially facilitated dialogue among stakeholders can also produce protocols that directly benefit school-aged youth and their families. For example, the authors employ a protocol in both of our jurisdictions (Birmingham, Alabama, and Clayton County, Georgia) designed to reduce school referrals to the court.

As judges, we must guard against court filings that attempt to pass off status-type conduct as delinquent acts,¹⁵ e.g., referrals that arise out of unruly behavior that, while disruptive, does not rise to the level of a delinquent or criminal act. School systems in many jurisdictions, including our own, have become the major source of court referrals, yet most involve behavior that is typical of youth.¹⁶ A widespread “zero tolerance approach” to school discipline has been dubbed the “school-to-prison pipeline,” based on studies showing correlations between increased use of suspensions, expulsions, and court referrals with increases in drop-out rates and incarceration. Zero tolerance practices also have a grossly disproportionate negative impact on youth of color. African-American youth are six times more likely and Latino youth three times more likely to be suspended, expelled, and referred to court than white youth for the same infractions.¹⁷

In response to this unfavorable zero tolerance approach, we worked with stakeholders to create a protocol that has significantly reduced low-level referrals to the court, while simultaneously developing alternatives that have decreased suspensions. The school system utilizes the single point of entry to access services not readily available to school

13 Lee A. Underwood, Kara Sandor von Dresner, & Annie L. Phillips, *Community Treatment Programs for Juveniles: A Best-Evidence Summary*, INTERNATIONAL JOURNAL OF BEHAVIORAL CONSULTATION AND THERAPY, Summer 2006.

14 Data provided by J. Barrett, Canyon Services, using the Juvenile Court Automated Tracking System.

15 M. Klein. *Deinstitutionalization and diversion of juvenile offenders: A litany of impediments*, in CRIME AND JUSTICE 145 (N. Morris & M. Tonry eds., University of Illinois Press, Chicago, Vol. I, 1979); see also W. Krause & M. A. McShane, *Deinstitutionalization Retrospective: Relabeling the Status Offender*, 17 JOURNAL OF CRIME AND JUSTICE, 1994, 45-67. These studies indicate that systems have creatively found ways to get around the DSO requirements by arresting youth on delinquent charges.

16 In Clayton County, Georgia, the number of school referrals increased by over 1,000% after placing police on school campus. The graduation rates subsequently fell to 58%.

17 E. POE-YAMAGATA & M. JONES, AND JUSTICE FOR SOME. (Building Blocks for Youth, Washington, DC, 2000).

administrators. When educators ask, “Why is Johnny chronically disruptive?,” the panel of community professionals answers with a needs assessment and a treatment plan based on the assessment. Consequently, graduation rates have increased and juvenile felony offenses have decreased.¹⁸ Diverting status and low-risk youth to alternative programs has also decreased probation caseloads. Finally, the community is safer because status youth receive focused and needed attention from responsible and caring adults, resulting in reduced recidivism among our high-risk youth and fewer victims in the community.¹⁹

IN CONCLUSION

Now is the time for judges to do our part to ensure that our judicial actions do not put youth behind bars at unacceptably high rates, yielding serious and damaging social consequences. We applaud Congressional efforts to strengthen the JJDPA by calling for the phasing out and ultimate elimination of the VCO exception to the DSO core requirement, and with amendments that provide greater emphasis on the development and expansion of constructive detention alternatives and detention reforms.

Critical to youth, family, and community success is forward-thinking judicial leadership that rejects detention of non-violent, status, and non-offender youth as a harmful default option and, instead, works to facilitate and sustain lasting, productive community partnerships and resources for youth and families. Such judicial leadership will, in turn, afford status youth and other vulnerable, troubled young people with the opportunities all juvenile court judges seek to give them: to enjoy a stable and healthy family life, to stay in school, and to grow up to be productive adults and contributing members of their communities.

18 Graduation rates obtained from Luvenia Jackson, Special Assistant to the Superintendent, Clayton County Public School System; Juvenile felony rates obtained from data using the Juvenile Court Automated Tracking System managed by Canyon Services in Phoenix, Arizona.

19 E. Lowenkamp, E. Latessa, & A. Holsinger, *The Risk Principle in Action: What Have We Learned from 13,676 Offenders and 97 Correctional Programs?* 52 CRIME AND DELINQUENCY, 2006, 77-93.