**Status Offenses and the Juvenile Justice and Delinquency Prevention Act: The Exception that Swallowed the Rule**

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**INTRODUCTION**

During 2004, more than four hundred thousand youth were arrested or held in custody in the United States for noncriminal behavior called a status offense.\(^3\) A status offense is defined as conduct that is unlawful only because the offender is a minor.\(^4\) Common status offenses include running away, skipping school, and breaking curfew, as well as ungovernability, underage drinking, and disorderly conduct.\(^5\)

Adolescents who engage in status offense behaviors often come from broken homes, have suffered childhood trauma, and have unmet mental health and/or education needs.\(^6\) These troubled children are still growing into maturity, are prone to impulsivity, and are more vulnerable than adults to negative peer pressure.\(^7\) They need care, treatment, and services—not confinement—to address the underlying causes of their troubling behavior and to prevent deeper and more costly entanglement in the juvenile or criminal justice systems.

In 1974, Congress passed the Juvenile Justice and Delinquency Prevention Act (JJDPA) prohibiting the placement of status offenders in secure confinement. Unfortunately, this prohibition has been significantly undermined by a 1980 amendment to the act that allows the detention of status offenders for violations of a valid court order (VCO). A VCO might be an order entered by a judge in a dependency or status offense proceeding commanding a juvenile to desist specified noncriminal behavior. For example, a foster youth may be ordered at a dependency review hearing to stop running away from placement, or a truant may be ordered to stop
skipping school. If the juvenile continues the prohibited behavior, he or she may be incarcerated for violating the court’s order.

Not surprisingly, the VCO exception to the JJDPA has increased the harmful use of detention for juveniles throughout the United States and should be repealed as part of the act’s reauthorization process.

I. THE USE OF DETENTION FOR STATUS OFFENDERS

Far too many youth who are arrested in the United States for a status offense end up in secure detention where their behavior is more likely to get worse than better. In thirty-three states, including Washington, D.C., state law explicitly allows status offenders to be placed in secure detention. It is estimated that about one-third of all youth in secure detention facilities are confined, not for delinquent or criminal conduct, but for mere technical probation violations or status offenses.

On a single day in 2006, 4,717 youth were held in a juvenile residential placement in the United States for committing a status offense. Of these, 1,917 were detained for incorrigibility, 894 were held for running away, and 863 were held for truancy.

According to recent national juvenile court statistics, 55 percent of runaways who come into contact with law enforcement end up in court; the same is true for 14 percent of truants and 30 percent of young people labeled as ungovernable or unruly. As more status offenders are subjected to court process and placed under court supervision, more are likely to be subjected to harmful detention for violating a court’s order.

In most states, juvenile courts are permitted to impose a detention sanction on youth who violate a valid court order prohibiting them from engaging in noncriminal conduct. For example, youth may be confined as a sanction for running away from home, skipping school, or breaking curfew if ordered by a court in a juvenile court proceeding to refrain from such conduct.
States vary in the confinement period allowed as a sanction for a status offender’s violation of a court order. Some states limit the number of days a youth may be confined for violating a juvenile court order. For example, the Washington State legislature has limited the amount of imprisonment time that may be imposed for violations of child-in-need-of-supervision orders to seven days. But even when statutory limitations are imposed on the duration of confinement, courts can and do incarcerate youth for longer, indeterminate periods for violating protective child-in-need-of-supervision or dependency orders pursuant to the court’s inherent authority or criminal contempt powers.

Several states limit the detention of status offenders for violating court orders to certain types of status offenses. For example, Kentucky exempts violators of curfew laws from secure detention, and Indiana allows the detention of only truants and runaways for violations of court orders.

Only a few states explicitly prohibit the secure confinement of status offenders in all circumstances, including violations of a valid court order. In Connecticut, the legislature has eliminated use of the valid court order exception entirely. New York also does not allow secure detention for violations of valid court orders entered for person-in-need-of-supervision proceedings. The Alabama legislature, responding to data indicating that 40 percent of all youth in state custody were serving time for probation violations and status offenses, recently prohibited the commitment of status offenders to the state’s juvenile justice agency.

II. THE INCARCERATION OF STATUS OFFENDERS IS HARMFUL AND COUNTERPRODUCTIVE

For several decades, research and best practices in the field have shown that placing troubled teens in detention for committing a status offense does not provide the help and support they so desperately need. In fact, detaining status offenders is likely to exacerbate the problems that cause a court to intervene. Punitive programs that remove youth from their homes and
their communities make it harder to address the problems that led to the out-of-home placement in the first place.26

Children are exposed to negative behavior models in detention, causing a greater likelihood of future delinquency.27 Detention also removes them from treatment opportunities, school, and community ties and supports.28 Numerous studies have shown that incarceration “has a profoundly negative impact on young people’s mental and physical well-being, their education,” and future prospects.29

The effect of incarceration on mentally ill youth is particularly harmful. Incarceration disconnects them from sorely needed community mental health services30 and has been shown “to generate higher rates of depression and suicide ideation.”31

Girls are also especially at risk for physical and sexual abuse in custody,32 and are disproportionately detained for status offenses. One recent study shows that 61 percent of all petitioned runaway status-offender cases are girls and that girls serve twice the amount of detention time for status offenses compared to boys.33 It is especially common for girls who engage in status offense behaviors to have a history of victimization, family turmoil, mental health disorders, and poor school performance.34 The problems that cause youth to run away, skip school, or otherwise act out, therefore, are particularly acute for adolescent girls. Girls are also more frequently viewed as needing protection from harm than boys. Unfortunately, detention is far too often the only way to connect troubled girls with needed services due to the lack of positive support and treatment alternatives for girls in the community.

A. A Failed Federal Response to the Criminalization of Status Offenders

More than thirty years ago, Congress recognized the dangers of confining status offenders when it enacted the deinstitutionalization of status-offender provisions of the Juvenile Justice and Delinquency Prevention Act (JJDPA).35
The JJDPA authorizes federal formula grants to states complying with the four core mandates of the act: (1) deinstitutionalization of status offenders, (2) separation of juvenile and adult offenders, (3) removal of juveniles from adult jails, and (4) reduction of disproportionate minority contact.36

A basic premise underlying the JJDPA, last reauthorized in 2002, is that confinement is neither appropriate nor necessary to address the troubled behaviors of youth who commit status offenses.37 To be eligible for federal funding, states are required to remove status offenders from detention facilities and instead offer prevention, diversion, and treatment alternatives in the community.38

Prior to the enactment of the JJDPA, minors who engaged in acts that would not be unlawful if committed by an adult could be, and often were, incarcerated for noncriminal behaviors by juvenile and family court judges exercising protective supervision over the child.39 However, with the passage of the JJDPA in 1974, Congress sought to encourage states to “decriminalize” status offenses.40

Originally, the act prohibited the detention of status offenders, including children who were found in contempt of court orders entered in dependency or other nondelinquency proceedings.41 In 1980, however, in response to family and juvenile court judges’ frustration with their inability to enforce orders perceived to be in a child’s best interest, the JJDPA was amended to allow states to incarcerate status offenders for violations of a valid court order (VCO).42

The VCO exception allows states to incarcerate certain status offenders without jeopardizing federal funding. Under the VCO exception, states can incarcerate status offenders for violations of court orders entered in dependency or other nondelinquency proceedings that prohibit the child from engaging in specified noncriminal behaviors, such as running away from home or a foster-care placement.43
The prosecutors’ and juvenile-court judges’ rationale for creating a VCO exception to the act’s original prohibition against incarcerating status offenders in secure detention falls into two main categories: protection and deterrence. Prosecutors and judges were concerned about the dangers that status offenders face, particularly runaways. In jurisdictions with insufficient alternative social supports and community-based treatment options, judges were especially anxious to incarcerate repeat status offenders when the alternative was homelessness or living on the streets. For other prosecutors and juvenile judges, the VCO exception was viewed as an important tool to ensure that juveniles respect the court’s authority and are deterred from committing further offenses by the threat of having to spend time in jail.

The tension between the act’s prohibition on the incarceration of status offenders and the real world problem courts faced trying to address the needs of “chronic and habitual status offenders [who] . . . regularly come before these courts and are regularly released to repeat the very same offense” was thus resolved by Congress in 1980 with the enactment of the VCO exception.

B. The Exception That Swallowed the Rule

Instead of promoting safety and deterrence, however, the use of the VCO exception has, over time, substantially undermined the act’s original goal of eliminating the use of confinement to address status-offender behavior. In fact, the VCO may have encouraged greater court involvement in status-offender matters: between 1985 and 2004, the number of court-petitioned juvenile status offense cases more than doubled nationwide. Most definitely, the VCO exception has resulted in the continued use of confinement as a response to status-offender behaviors, contrary to the original goal of the act.

As allowed under the VCO exception, states continue to use locked facilities for status offenses, causing harmful exposure to detention. Table 1
below provides a snapshot of the number of juveniles in residential
placement (by locked and unlocked facilities) in each state on a single day
in 2006. This data shows that all but one state, Rhode Island, had at least
one status offender in locked facilities on the day the census was taken;
New York had 606 juveniles in locked facilities, the most of any state.51
Table 1. Snapshot of number of juveniles in residential placement

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<thead>
<tr>
<th>State</th>
<th>Locked</th>
<th>Unlocked</th>
<th>Total</th>
</tr>
</thead>
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<tr>
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<td><strong>Total</strong></td>
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<td>1056</td>
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The JJDPA requires each state to assemble a State Advisory Group (SAG) to administer JJDPA funds and provide compliance reports to the federal government. According to the most recent national report on states’ compliance with the JJDPA’s status-offender requirement, only four jurisdictions had zero violations on a snapshot date in 2005, even allowing for the VCO exception to the rule.\textsuperscript{52} Forty-eight other jurisdictions were in compliance only by virtue of not having exceeded the de minimis exceptions level of violations.\textsuperscript{53} Three states were not in compliance at all.\textsuperscript{54}

A review of the individual SAG websites for more recent data indicates that eighteen states have posted either their three-year plan or an annual report on JJDPA compliance.\textsuperscript{55} Of those eighteen states, only four (Indiana, Iowa, Massachusetts, and Maine) reported that they were in compliance with the act’s status-offender requirement in their most recent reports.\textsuperscript{56} Fourteen states reported a specific number of violations of the act’s requirement, ranging from three to 748 violations on a given day.\textsuperscript{57} This means that these states are in violation of the act’s requirement, even allowing for the VCO exception. During the period from 2004 to 2007, three states (Washington, Wisconsin, and Wyoming) reported being found totally out of compliance with this requirement.\textsuperscript{58}

Unfortunately, JJDPA’s goal of eliminating the use of detention to address status-offender misbehavior has been unrealized. In practice, the VCO exception to the prohibition on the use of detention to punish adolescents for noncriminal conduct appears to have swallowed one of the main public policy rules of the act. Stronger federal guidance is needed to finally end the harmful practice of incarcerating status offenders.

C. Alternatives to Incarceration

Equally as important as the admonition against the use of detention for status offenders is the JJDPA’s emphasis on the development of more effective interventions and community-based alternatives to confinement
The number of states that are out of compliance with the act’s status-offender requirement is undoubtedly a by-product of the unavailability of alternative noncustodial interventions. Many types of services have been proven effective in reducing rates of incarceration and status-offense misbehavior. For example, studies have found that therapeutic foster care reduces the likelihood that adolescents will run away or be incarcerated. Research also suggests that status offenders and their families are best served by both individual and family counseling. Respite care and temporary crisis shelters offered on an emergency basis provide families the break they need to consider more permanent interventions such as counseling and case management. Children receiving “wraparound” services have been proven to display fewer externalizing noncriminal misbehaviors.

There have been a variety of other innovative service models developed to address different types of status-offender behaviors and to reduce reliance on confinement. Some of the more effective programs are described below.

Project STRIVE, a family intervention program developed by researchers at UCLA, is designed to address unresolved family conflict that may lead youth to run away and stay away from home. The program focuses on recognizing family strengths, problem solving, conflict resolution, and emotion management. It has been shown to reduce the chances of teens becoming chronic runaways.

Families and Schools Together (FAST) was developed by researchers at the Wisconsin Center for Education Research to strengthen relations between parents and children and their connection to school. The program is delivered in elementary schools and communities. It works to build a sense of accountability and individual responsibility in children, and it helps parents to understand their role in their child’s education. FAST participants are often children who have been identified by their teachers as high risk; however, upon completing the program, these students have lower rates of
substance abuse and other factors that would have contributed to violence and delinquency.\textsuperscript{69}

In recent years, several states have also revised their approach to status offenses in an effort to reduce the use of confinement. The following state reforms are models for other states seeking to reduce the use of confinement to address status-offense misbehaviors.

1. Connecticut

In response to concerns about the number of girls who ended up in detention for being habitual runaways, Connecticut, in 2005, became one of the few states to specifically remove the valid court order as an option for detaining status offenders.\textsuperscript{70} This amounted to a shift from “court involvement to a community-based approach for serving children and families in FWSN [Families With Service Needs] cases.”\textsuperscript{71} In 2007, the legislature funded four family support centers, which provide voluntary services for children and families, including crisis counseling, therapy, and respite care; district courts are required to refer FWSNs to these centers.\textsuperscript{72} In 2008, the Connecticut legislature considered funding for an additional six family support centers. The FWSN Advisory Group recommended the funding and stated that it was essential to fulfilling the mandate of Connecticut Public Act No. 05-250.\textsuperscript{73}

2. New York

In its Family Court Act, New York State requires all counties to refer most status offenders (with the exception of runaways who have been arrested pursuant to a warrant) to diversion services and to exhaust those services prior to issuing a petition with the family court.\textsuperscript{74} As noted in the statute, the diversion services are intended to “provide an immediate response to families in crisis, to identify and utilize appropriate alternatives to detention, and to divert youth from being the subject of a petition in
family court.75 The required diversion services include both respite care and crisis intervention services.76

The Vera Institute of Justice has highlighted several counties in New York that have successfully implemented the mandate of the Family Services Act.77 For example, New York’s Orange County created a new cross-agency department, Family Keys, to receive referrals from the probation department of Families in Need of Services.78 Family Keys provides prompt assessment and assistance to families in crisis. In the first few years of the program, the probation department noted a substantial drop in the number of persons-in-need-of-supervision intakes, from 762 in 2000 to 426 in 2003.79 Albany County elected to work with juvenile court judges to develop alternatives to pretrial detention.80 Through the Juvenile Release Under Supervision program, juveniles are given a risk and needs assessment to determine whether they can be placed in the community.81 Those juveniles who are able to remain in the community are connected to social services and monitored on a daily basis. In the first ten months of the program, only forty-six of 338 cases were referred to detention; of those that remain in the community, 82 percent completed the program without being remanded to detention.82

3. New Mexico

In New Mexico, systemic change to status-offender policy was accomplished by transferring primary jurisdiction for status offenders from the juvenile justice system to the Children Youth and Families Department.83 As was the case in New York, this change was designed to ensure that all diversion options were exhausted before petitioning the court. Likewise, the New Mexico law excluded a particular population, in this case truants, whose cases can still be referred directly to the juvenile probation office.84

The magnitude of the impact of these state reforms is not made clear by simply reviewing data from the Census of Juveniles in Residential
Placement before and after these reforms, as illustrated in Tables 2 and 3 below. In two of these states, New York and Connecticut, other changes to state law—namely the increase in the maximum age of young people who could be considered status offenders (from sixteen to seventeen in Connecticut85 and from fifteen to seventeen in New York86)—contributed to the increase in the number of young people that may be detained for status offenses. Therefore, the fact that New York was able to reduce its total number of status offenders in residential placement from 2001 to 2006, despite the passage of legislation in 2001 which brought sixteen- and seventeen-year-olds into the system, is an additional accomplishment.
Table 2. Juveniles in locked and unlocked facilities on one day

<table>
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<tr>
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<td>Conn.</td>
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<td>3</td>
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</tr>
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<td>New York</td>
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<td>672</td>
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Table 3. Total juveniles in facilities on one day

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<th>State</th>
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<th>2001</th>
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<tr>
<td>New Mexico</td>
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</tr>
<tr>
<td>New York</td>
<td>732</td>
<td>966</td>
<td>819</td>
</tr>
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</table>


As these states and programs have shown, through greater use of effective noncustodial interventions it is possible to reduce reliance on confinement in response to the problems of status offenders and their
families. Therefore, greater federal guidance and support are needed to assist states in developing these alternatives.

II. JJDPA REAUTHORIZATION

The JJDPA is up for reauthorization in the 111th Congress as Senate Bill 678. The VCO exception must be eliminated through the reauthorization process to ensure that status offenders are no longer subject to the harms of detention. In its current form, Senate Bill 678 proposes the elimination of the VCO exception to the DSO core requirement over a three-year phase-out period. If passed, this would be an important step towards ending the use of secure detention for status offenders.

The Office of Juvenile Justice and Delinquency Prevention should also more aggressively monitor states’ compliance with the status offender confinement prohibition of the act and more meaningfully support states in the development and funding of alternatives to detention. The key to finally eliminating the use of confinement to address status offense behavior—behavior that is more likely a cry for help than a cause for punishment—is the enhancement of noncustodial alternatives that address the underlying problems and needs of youth in trouble.

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4 David J. Steinhart, Status Offenses: The Future of Child., 6 JUV. CT. 86, 86–89 (1996); see also 28 C.F.R. § 31.304(h) (defining status offender as a “juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.”).

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7 NAT’L INST. OF MENTAL HEALTH, TEENAGE BRAIN: A WORK IN PROGRESS 2 (2008); see also Roper v. Simmons, 543 U.S. 551, 569–70 (2005) (recognizing that adolescents are developmentally different than adults, are more prone toward impulsivity, are vulnerable to peer pressure, and have a greater capacity to change).

8 A status offender can also be called a child-in-need-of-supervision or person-in-need-of-supervision.

9 See BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INST, THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES (2006); see also NAT’L INST. OF HEALTH, STATE-OF-THE-SCIENCE CONFERENCE STATEMENT: PREVENTING VIOLENCE AND RELATED HEALTH-RISKING SOCIAL BEHAVIORS IN ADOLESCENTS 13 (2004) (noting that the incarceration of juveniles raises “the hazard of ‘contagion’” because “[w]hen young people with delinquent proclivities are brought together, the more sophisticated can instruct the more naïve in precisely the behaviors that the intervener wishes to prevent.”).


13 Id.
16 See Steinhart, supra note 4, at 91.
17 FLA. STAT. § 984.09 & 984.226; GA. CODE ANN. § 15-11-39(A); HAW. REV. STAT. § 571-32; LA. CHILD. CODE ANN. art. 1509.1; MO. ANN. STAT. § 211.063; MISS. CODE ANN. § 43-21-301(6)(a); N.C. GEN. STAT. § 7B-2505; N.D. CENT. CODE § 27-20-17; NEB. REV. STAT. § 43-250(3)(I); R.I. GEN. LAWS § 14-1-11(c); TENN. CODE. ANN. § 37-1-114 (b) & (c)(6); TEX. REV. FAM. STAT. ANN. § 54.011.
19 See, e.g., In re A.K., 162 Wash. 2d 632, 174 P.3d 11 (2007) (imposing thirty- to sixty-day detention sentence on girls who repeatedly ran away from foster placements, pursuant to the inherent contempt powers of the court, even though the Washington legislature limited the remedial sanction for contempt to seven days); see also Maggie Hughey, Holding a Child in Contempt, 46 DUKE L.J. 353 (1996).
22 “No child whose family has been adjudicated as a family with service needs in accordance with section 46b-149 may be processed or held in a juvenile detention center as a delinquent child, or be convicted as a delinquent, solely for the violation of a valid order that regulates future conduct of the child that was issued by the court following such an adjudication.” CONN. GEN. STAT. § 46b-148 (2008).
25 In re Dependency of A.K, 162 Wash.2d 632, 655, 174, P.3d 11 (2007) (“numerous studies indicat[e] detention does not have an ameliorative effect on runaway behavior, and, in fact, exacerbates the problem.”).
27 See generally Humphrey, supra note 6.
28 SEXTON & ALEXANDER, supra note 26 at 7.
29 See, e.g., HOLMAN & ZIEDENBERG, supra note 9 (linking incarceration to decreased participation in the labor market); NAT’L INST. OF HEALTH, STATE-OF-THE-SCIENCE CONFERENCE STATEMENT: PREVENTING VIOLENCE AND RELATED HEALTH-RISKING SOCIAL BEHAVIORS IN ADOLESCENTS (2004).
31 HOLMAN & ZIEDENBERG, supra note 9, at 8.
32 Humphrey, supra note 6, at 7; see also Am. Bar Assoc. & the Nat’l Bar Ass’n, Justice by Gender: The Lack of Appropriate Prevention, Diversion and Treatment Alternatives for Girls in the Justice System: A Report Jointly Issued by the American Bar Ass’n and the

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Nat’l Bar Ass’n, 9 WM. & MARY J. WOMEN & L. 73, 6-7 (2002) [hereinafter Justice by Gender].
34 Justice by Gender, supra note 32.
36 Id.
43 Id.
45 Id.
46 Id.
47 Id.
48 Id.
52 American Samoa, Delaware, Montana, and New Mexico were in full compliance by having zero violations. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, OJJDP ANNUAL REPORT 2005 (2005), http://www.ncjrs.gov/pdffiles1/ojjdp/215560.pdf.
53 The de minimis exception has three criteria. Criterion A considers the extent to which noncompliance is insignificant in terms of the total juvenile population in the state. States that institutionalize fewer than 5.8 status offenders per one hundred thousand juveniles qualify for the de minimis exception without having to meet any additional criteria. States that have a higher institutionalization rate must address Criterion B, which measures the extent to which noncompliant detentions are in violation of state law or policy or, in other words, are aberrations. These states must also address Criterion C, which measures the
extent to which the state has an acceptable plan for eliminating noncompliant incidents that were part of a pattern or practice consistent with the existing state law or policy. 46 Fed. Reg. 2566 (Jan. 9, 1981), available at, www.ojp.usdoj.gov/about/pdfs/deminimis_exceptions_guidelines.pdf. Those 48 jurisdictions that were in full compliance by not exceeding the de minimis exceptions level include Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wisconsin.


58 Pittman, supra note 50, at 405 (stating that in Washington State, after the legislature passed the Becca Bill permitting the detention of status offenders in secure and semisecure facilities, the number of youth placed in detention for status offenses increased by 835 percent); see also GOVERNOR’S JUV. JUST. COMM’N, 2007 REPORT TO THE GOVERNOR AND LEGISLATURE 6 (2008), http://oja.wi.gov/docview.asp?docid=13016&locid=97 (“In the fall of 2006, OJJDP informed Wisconsin that it was out of compliance on the deinstitutionalization of status offenders requirement. That meant Wisconsin lost 20 percent of its federal juvenile justice funds and was required to spend 50 percent of the remaining funds to address DSO.”); WYO. STATE JUV. JUST. ADVISORY COUNCIL, ANNUAL REPORT TO THE GOVERNOR (2008), http://www.wyyouvenilejustice.co

HOMELESS YOUTH AND THE LAW
Wyoming is the only state in the United States that is not a participant in the JJDPA. Rather than comply with the JJDPA requirements, Wyoming process many status offenders in adult courts.

See 42 U.S.C. § 5633(a)(9)(A)and(B).


Wrap-around providers engage the child, family, and multiagency teams to marshal community and natural supports for children, offering an array of individualized therapeutic interventions, which may include crisis planning and intervention, parent coaching, medications monitoring, and counseling. Katie A. v. Bonta, 433 F. Supp. 2d 1065, 1071–72 (C.D. Cal. 2006).


Id.


Id.


Id.

Id.

See CONN. S.B. 342.


Id.

N.Y. FAM. CT. ACT § 712 (2005)


Id.
79 Id.
80 Id.
81 Id.
82 Id.
84 N.M. STAT. § 22-12-7 (2006).
85 2005 CONN. ACTS 07–04.