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# **Criminals Without Crime: The Dilemma of the Status Offender**

LAWRENCE N. BLUM\*

## **I. INTRODUCTION**

If any society is to exist beyond a single generation, its youth must be prepared to adopt adult roles that are functional to that society. Beyond the primary requisites of food, shelter, and procreation, youth must be socialized<sup>1</sup> to take on the skills,

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1. Socialization is the process by which an individual acquires the skills and values, content and knowledge of the group in which the person is, or is

knowledge, values and attitudes of the prevailing social order. Youth who have difficulty with, or refuse to respond predictably to, social rules and expectations are perceived as a threat to the maintenance/perpetuation of the culture, and the safety of the community.

The term *status offender* is used to define youths whose behaviors deviate in certain specified ways from social norms. Both words in the term are important. The word *offender* defines a formal legal process, since youth are—and have traditionally been—arrested, detained, and adjudicated for conduct which, if committed by persons over 18 years of age, would not be criminal. Thus, *status* as defined by age rather than by specific behavior generates accountability under the Juvenile Court Law. Status offenses include: running away from home; habitually refusing to obey the reasonable orders of parents; truancy; and (in many states) violation of curfew laws.

Formal laws prohibiting such youthful behavior as running away and defying parents were first established in the Victorian era to protect the economic, religious, and physical survival of families and the state.<sup>2</sup> These laws operated under the concept of *parens patriae* which defines the power of the state to assist those who, because of their incapacity, are unable to assist themselves.<sup>3</sup> Prohibitions against the above offenses, however, are still emphasized today in the laws governing the behaviors of youth. Indeed, the passage of the federal Juvenile Justice and Delinquency Prevention Act of 1974 was in no small part motivated by the following facts: (1) children who are incorrigible, unruly, or beyond parental control, but who commit no criminal act have accounted for about one-third of Juvenile Court adjudications; and (2) studies of such systems as the California Youth Authority<sup>4</sup> have shown that approximately 40% of the inmates of juvenile correctional facilities were youth who had committed *no criminal offense*.<sup>5</sup>

While recent changes in juvenile law<sup>6</sup> and court policies have significantly reduced the number of status offenders in state

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about to become, a member. See generally, R. MERTON, *SOCIAL THEORY AND SOCIAL STRUCTURE* (2d ed. 1957).

2. N. KITLIE, *THE RIGHT TO BE DIFFERENT: DEFIANCE AND ENFORCED THERAPY* (1971).

3. *Id.*

4. Bough, *Unruly Child and the Law—Toward a Focus on the Family*, 23 JUV. JUST. 9 (1972).

5. Saleeby, *Hidden Costs: A Study of Detention Practices in California*, CALIFORNIA YOUTH AUTHORITY (1975).

6. Dixon, *Juvenile Justice in Transition*, 4 PEPPERDINE L. REV. 469 (1977).

correctional facilities, the juvenile justice system's authority and resources have remained the primary intervention method which attempts to deal with this type of juvenile. This article will discuss issues relevant to the juvenile court's jurisdiction over status offenders, and will describe alternative intervention strategies which have been successfully used over the last few years. Initially the article will examine justifications used to explain the formal legal processing of these juveniles, and then attempt an explanation of behavior patterns of status offenders.

## II. JUSTIFICATIONS USED FOR FORMAL LEGAL PROCESSING OF STATUS OFFENDERS

The philosophical genesis of the juvenile court in this country involved a new emphasis upon *rehabilitation* or *resocialization* of our youth, rather than *social retribution*, as had been emphasized in criminal courts. The prevailing assumptions in 1899 were that most juveniles previously handled by the criminal court system did not constitute a threat to the lives and property of others, and were thought to be more amenable to rehabilitative services than were "hardened adult offenders."<sup>7</sup> The rationale behind rehabilitation of these youthful offenders was to provide the means and stimulus to become productive and contributing members of society.

As mentioned earlier, the stability and perpetuation of any social system requires the acquisition of functional adult characteristics by "a substantial proportion of the population during the process of socialization. Thus the requisites . . . become the imperatives for any system of child socialization."<sup>8</sup> There are at least two societal requisites, referred to in the literature, which are used by the juvenile court as justification for formal-legal processing of status offenders:<sup>9</sup>

1. Effective control of disruptive forms of behavior; and
2. Adequate socialization.

In any system of child socialization (e.g. home, school, church), many informal controls are exercised over youth. A

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7. N. KITLRIE, *supra* note 2.

8. Inkeles, *Society, Social Structure, and Child Socialization*, SOCIALIZATION AND SOCIETY 79 (Clausen ed. 1968).

9. *Id.* at 83.

raised eyebrow, a stern glance, a paternal/maternal "swat" all communicate that the youth's behavior is not acceptable or appropriate. In this manner, childhood behaviors are monitored and the child is taught that one acts differently in different situations, e.g., in church, on a playground, at a basketball game. Adequate childhood socialization prepares the young to act appropriately in diverse social settings, and more importantly, ensures that society's members will control behavior which might disrupt efficient social functioning.

Informal monitoring, however, does not always provide adequate controls. When an individual fails to respond to informal monitoring, formal systems of social regulation are brought to bear. The juvenile court acts *in loco parentis* (in place of the parent) as an agent of the State, to curtail disruptive behavior and ensure that the young accept the socially defined adult roles. It should be noted, the mandate of the juvenile court extends to both the welfare of the juvenile, and the protection of society as a whole. Since behavior labeled "status offense" does not constitute imminent danger to the community, in terms of harm to person or property, we must assume that justification for juvenile court intervention into the life of the juvenile is concern for the welfare and protection of the child. If threat to the community does exist as a result of a juvenile's misbehavior, we could not accurately classify that type of conduct as a status offense. This point is crucial, since, as will be discussed, there is a great deal of controversy and mystification surrounding the status offender. In addition, regardless of the stated intent and purpose of the juvenile court, with respect to the welfare of the minor, there is only a finite set of tools which the court possesses to implement its purpose. These tools involve detention, adjudication, wardship (with varying degrees of control), supervision and counseling within the legal system. At this juncture we need to examine just what a status offense is; what problems and needs bring this kind of conduct within the purview of the court; and the services which have been developed to deal with those who are labeled as status offenders.

#### A. *What is a Status Offense?*

To provide an inclusive definition of the status offense is difficult because there exists a vast range of behavior, family problems and social situations which may be labeled status offenses. To solve this definitional problem, many states have

used terms such as P.I.N.S.<sup>10</sup> (persons in need of supervision) or M.I.N.S.<sup>11</sup> (minors in need of supervision). Still other states have attempted to specify that behavior which constitutes grounds for court intervention. California, for example, defines the jurisdiction of the juvenile court as follows:

601. (a) Any person under the age of 18 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of his parents, guardian, or custodian, or who is beyond the control of such person, *or who is under the age of 18 years when he violated any ordinance of any city or county of this state establishing a curfew based solely on age* is within the jurisdiction of the juvenile court which may adjudge such person to be a ward of the court.

(b) If a school attendance review board determines that the available public and private services are insufficient or inappropriate to correct the habitual truancy of the minor, or to correct the minor's persistent or habitual refusal to obey the reasonable and proper orders or directions of school authorities, or if the minor fails to respond to directives of a school attendance review board or to services provided, the minor is then within the jurisdiction of the juvenile court which may adjudge such person to be a ward of the court; provided, that it is the intent of the Legislature that no minor who is adjudged a ward of the court pursuant solely to this subdivision shall be removed from the custody of the parent or guardian except during school hours.<sup>12</sup>

While such a definition as Section 601 of the California Welfare and Institutions Code does provide more specific guidelines to the court than P.I.N.S. or M.I.N.S., it remains ambiguous in a number of areas. For example, what constitutes a "habitual refusal to obey the *reasonable and proper orders* or directions?" How do we know whether the family conflict precipitating a parental complaint of incorrigibility was caused by filial disobedience or parental neglect, abuse, or abandonment?<sup>13</sup> Since there is most often no empirical evidence of dynamics in the family conflict, and no requirement that a *prima facie* case be made against a status offending minor in court, the court's decisions must be primarily based on social investigations made by a probation officer *after* the alleged offense has occurred. In the case of runaway youth, for example, it is

10. Calof, *Status Offenders and Juvenile Court—A Review of the Problem*, NATIONAL COUNCIL ON CRIME AND DELINQUENCY (1975).

11. McNulty, *Right to Be Left Alone*, 11 AM. CRIM. L. REV. 141 (1976).

12. CAL. WELF. & INST. CODE § 601 (West Supp. 1977) (emphasis added).

13. California laws relating to youth offenders. CAL. WELF. & INST. CODE § 300 (West Supp. 1977).

often quite difficult to determine whether the situation at the youth's home indeed involved an offense by the youth, by the family, or both.

### III. PROFILING THE STATUS OFFENDER

#### A. *The Transition from Child to Adult: Adolescent Dysfunctioning as a Causative Factor Leading to Status Offenses*

While a full exploration of the dynamics of adolescence is beyond the scope of this paper, a number of issues are pertinent to our discussion. Writers in the field have consistently agreed about the physiological, psychological and social dilemmas faced by youth during adolescence. Physical changes at puberty, new relationships, roles, and responsibilities and new social demands all affect the youth during this period of transition. In addition, adolescence is that period during which the youth is expected to *internalize*<sup>14</sup> the values, mores, and role expectations enabling passage to adult responsibility. The important adult characteristic developed at this stage of life is the *self-initiated compliance* with social expectations. Development of this behavior pattern is essential because society cannot directly monitor the vast number of social roles necessary for its survival. It must depend upon the successful internalization of certain social values and mores.

In order for these functional adult characteristics to be internalized, or self-initiated, the social demands made on the juvenile must be intrinsically rewarding and consistent with the individual's self-image, social identity, and value system. The development of a positive, well-integrated self-image is, at best, a precarious process for an individual as he or she makes the transition from child to adult. When problems, dysfunction, or pathology develop in the family or other systems responsible for socializing the youth, the process of "growing up o.k." becomes much more difficult. It is this dysfunctioning during adolescence which is often labeled a status offense.

#### B. *Characteristics of the Status Offender*

Labeling with such terms as "runaway", "incorrigible", or "truant" tends to submerge some rather striking differences within the labelled group. It is *not* the case that "when you see one status offender, you've seen them all." Indeed, research

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<sup>14</sup> Kelman, *Compliance, Identification, and Internalization: Three Processes of Attitude Change*, 2 L. CONFLICT RESOLUTION 51-60 (1958).

involving runaways has shown that no uniform set of personality variables can effectively identify and predict who will run away.<sup>15</sup>

How then can a definitive set of characteristics for status offenders, generally, be catalogued? If we define our terms from the perspective of the juvenile, for example, we would emerge with quite a different picture of the status offender than if we used the perspective of parents, or intervening agencies such as the courts, probation department, or mental health office. Attempts at classifying types of status offenders can, however, be helpful to our discussion.

### 1. The Psychological Perspective

In a review of the literature several types of runaway are identifiable: (1) those whose conduct can be attributed to some form of psychopathology; (2) those whose behavior cannot be classified as abnormal; (3) the "rootless," characterized by pleasure seeking; (4) youth described as "anxious," acutely aware of problems in their homes; and (5) youth terrified by involvement in or threat of an incestuous relationship.<sup>16</sup> While the above classifications may define *motivations* to "stray," rather than characteristics, these distinctions become crucial when we discuss attempts to ameliorate situations precipitating "offending" behavior.

Other studies have pointed to the home environment as an important factor in status offense cases. In particular, it has been noted that homes of runaways and incorrigible youth are characterized by high levels of parent-parent and/or parent-child conflict.<sup>17</sup> In addition, a significant proportion of status offenders have been found to come from single-parent families, or families where one natural parent and one "step" parent are present.<sup>18</sup> This fact becomes more important when combined with studies showing, for example, that running away often results from a lack of effective guidance and control of the

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15. Suddick, *Runaways: A Review of the Literature*, 24 JUV. JUST. 47 (1973).

16. *Id.*

17. Justice, *Running Away: An Epidemic Problem of Adolescence*, 11 ADOLESCENCE 365 (1976).

18. LIPSEY AND BERGER, INTERIM EVALUATION REPORT FOR ORANGE COUNTY REGIONAL JUVENILE DIVERSION PROGRAM (1977).



child, concurrent with parental rejection.<sup>19</sup> Indeed, it should be noted the vast majority of youth arrested for incorrigibility are detained on the basis of *parental complaints* to police. In this manner, the legal aspects of the complaint tend to override the conflict between parent and child. To defend against the charge, the juvenile must convince legal authorities that he or she was not incorrigible (as alleged by his parents)—not an easy task as we shall see in later discussion. Instead of concentrating on the conflict, the courts tend to concentrate on credibility.

## 2. The Legal Perspective

From the perspective of a caseworker, clinical considerations are subordinate to the legal status of the youth. An example of such a perspective can be seen in a study done by the Virginia Department of Corrections, Division of Youth Services, concerning the characteristics of status offenders. These classifications were based upon youth committed to the Virginia State Board of Corrections during the fiscal years 1974 through 1975:

- (1) A child beyond parental control with no history of delinquency;
- (2) A child beyond parental control who has a minor delinquency charge;
- (3) A child beyond parental control who has previously been on probation;
- (4) A child who has been in residential care placement and is beyond the control of the social agency having custody;
- (5) A child who is beyond parental control and has previously been committed to the State Board of Corrections.

Other models tend to classify between children who have always lived in their parental home and who have had no mental health, special education, or other special services, and children who have lived in various homes and institutions and who have had multiple mental health, special education, and other special services.<sup>20</sup>

This type of profiling raises two important points. First, taking a more formalistic perspective predisposes one to view youthful offenders in terms of their legal status, to the exclusion

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19. Suddick, *supra* note 15. *See also* VIRGINIA DEPARTMENT OF CORRECTIONS—DIVISION OF YOUTH SERVICES, STATUS OFFENDERS IN THE DIRECT CARE OF THE DIVISION OF YOUTH SERVICES (1976).

20. *Id.*

of personal, familial, and sociological characteristics. Secondly, one tends to perceive status offenders as embryonic criminals, and often leads to the conclusion that the former causes the latter. This group of juvenile criminals, while *miniscule* when compared with the total number of youth arrested for status offenses, has provided proponents of juvenile court jurisdiction with a dynamic resource. For example, one writer, in disagreement with those who would remove status offenders from court jurisdiction, points to an analysis of the offense histories of a sample of youth who appeared before a juvenile court during a five-year period. He states that of those who appeared, "many juveniles charged with status offenses had previously been charged with other types of offenses."<sup>21</sup> Another writer suggests the majority of status offenders represent children who have inherent problems with authority, who can best be rehabilitated through the proper use of authority.<sup>22</sup>

### 3. Juvenile Self-Perception

For those individuals who are the subjects of our discussion, those whose "crimes" are primarily a function of their youth, status offenses take on a different perspective. One cannot easily comprehend the pain and loneliness of an adolescent who is incarcerated for running away from a situation which he or she deemed intolerable. For such youth, the substantive issues which will allow our social system to exert jurisdiction over them are secondary considerations. What is important to them is their survival. While they may not be "surviving" in a way that is acceptable to the prevailing society, they are reacting adaptively, that is, coping the best way they know how. This author, for example, has worked with several runaway youth whose crime was that they no longer cared to be sexually or emotionally molested by alcoholic or disturbed parents. Many of these youth were classified as habitual runaways, frustrating to police and probation officers alike, because they would not stay in their home environment. Nor did they find long-term foster placement an attractive alternative. When asked how they could be assisted, these youth generally desire to be independent and

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21. Thomas, *Are Status Offenders Really So Different: A Comparative and Longitudinal Analysis*, 22 CRIME & DELINQUENCY 438 (1976).

22. Gill, *Status Offenders*, 27 JUV. JUST. 3 (1976).

self sufficient. To leave these youth alone is an extremely unpleasant prospect for those of us who are familiar with the predators who can take advantage of them. At the same time, the thought of institutionalization is equally odious. Sexual and emotional molestations are also present in juvenile correctional institutions, as well as comingling with criminally sophisticated youth.

What is needed is an alternative to doing nothing versus incarcerating a noncriminal youth. The problem with doing nothing is that the majority of these youths, who can be characterized as having a strikingly low level of self-esteem and no strong sense of self, lack the skills and knowledge to seek and obtain employment, and lack the social support necessary for "independent" living. This is also the principal reason why institutionalization is *clinically* counterproductive. The fact is that most of these youth were not afforded the time, support, structure, or love to develop a positive and integrated self-image at home. To expect a correctional institution to take the place of a home environment in preparing youth to participate productively in adult society is absurd. Since the climate and characteristics of the institution are sharply different from those in the home, pre-existing values and identities held by status offenders are easily subsumed by the powerful predatory influences in the institution and hence no real effort is made to correct the problems which brought the juvenile into the court system.

To isolate and identify the entire range of characteristics of status offenders would take more space than is available to this article. Other writers, however, have catalogued the causes and extent of the problem of juvenile status offenders.<sup>23</sup> The difficulty in achieving consensus with respect to status offenders is due not only to many subpopulations within the total population, but also to the different perspectives regarding what should be done to solve the problem. Indeed, adopting any single perspective regarding status offenders will necessarily define the label attached to the youth; the presumptions of etiology; the *place* of intervention or treatment; and the specific technologies to be used in treatment.

It should be noted that problems faced by status offenders are multilateral in nature. Some of their problems involve their family, some involve school, some are psychological, and some

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23. Burkhart, *Child and the Law: Helping the Status Offender*, PUBLIC AFFAIRS COMMITTEE (N.Y. 1975).

socio-economic. Therefore, the multi-problem characteristics of the status offender will require multi-faceted solutions.

#### IV. MODELS OF REHABILITATION

##### A. *The Medical Model*

As discussed earlier, the stated purpose of procedures in juvenile court is the rehabilitation of the youthful offender. The legal category, P.I.N.S., was created in New York and California to define the noncriminal basis for juvenile court jurisdiction. Inherent in the P.I.N.S. concept is the notion, borrowed from the mental health model, that delinquent acts can be "cured," and that rehabilitation is the main reason for incarceration.<sup>24</sup> The theoretical underpinning for this philosophy is the so called medical model of rehabilitation. This model sees offenders as sick, deviant, or deficient and seeks to cure offending behavior by changing the personality through individual and group therapy. The empirical validity of this model is crucial, since the justification for juvenile court intervention with status offenders involves the court's assisting in eliminating the youth's deviancy, deficiency, and/or pathology.

For example, if a juvenile is alleged to be a P.I.N.S., use of that label necessarily implies an emotional or psychological disturbance which the court's intervention seeks to ameliorate or eliminate. By concentrating on the personality of the juvenile as the important element of the offense, the court is thereby able to differentiate treatment needed by the status offender as compared with treatment for the juvenile criminal. Thus, detention for the P.I.N.S. is not intended as social retribution, but rather to "keep the individual in one place so that the court may utilize its counseling or therapeutic resources to help the individual." It should be noted, however, the data indicates that P.I.N.S. youths have been more likely to be detained than their delinquent counterparts, have been subjected to more protracted detention than their delinquent counterparts, and, if institutionalized, have stayed for longer periods of time.<sup>25</sup>

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24. Halleck, *Giving Up the Medical Model?*, BEHAVIOR TODAY, Nov. 10, 1975, at 1.

25. Lerman, *Delinquency and Social Policy: A Historical Perspective*, 22 CRIME & DELINQUENCY 383 (1977).

### B. *The Normative Model*

Another model used by many in the juvenile justice system in the treatment of status offenders is the *normative model* of rehabilitation. Rather than seeking to re-structure the psyche of the youth, this model postulates that there are certain amounts and types of deviancy which society can tolerate. Intervention would therefore seek to bring the offending youth back into "normative boundaries" using primarily counseling and social casework within the family environment. This model, also included under the psycho-social model of deviance, is different from the medical model in that the former views the youth in relation to the normative rules of the prevailing social order.

Regardless of the conceptual model underlying the court's activities with status offenders, it must be recognized that intervention by the formal court system is limited by the finite amount of resources, procedures and structural characteristics of the court. As a result of the limited resources available to the court in assisting P.I.N.S. or status offending youth, the penalty for having family or school problems is often more severe, and less rehabilitative, than if the youth were adjudicated a criminal delinquent.

### C. *Translating Philosophical Postulates Into Workable Programs: The Reality Model*

In 1967, the President's Commission on Law Enforcement and Administration of Justice announced the results of its investigation. The Commission found that nationwide, about one-half of the youths formally reported as arrested by local police departments were not sent to court, rather these cases were informally adjusted by the police. However, approximately two-thirds of arrested youths experienced detention or lockup for an average of twelve days.<sup>26</sup> The interpretation of this data by a leading commentator is as follows: "We can reasonably infer that *short-term restraint* (social control), not rehabilitative and re-integrative service, is the actual and dominant public policy response toward youth."<sup>27</sup>

Whether social control or rehabilitation *should* be the dominant purpose of the juvenile court in dealing with status offenders is not, for this author, the important issue. Rather, the issue

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26. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: CORRECTIONS 121, 129 (Washington: Government Printing Office, 1967).

27. Lerman, *supra* note 25, at 391.

posed is what can society do to prevent status offending youths from persisting in those acts which brought them within the purview of the court? How is it possible to accomplish "reconstruction of non-offending community ties"<sup>28</sup> while placing the juvenile in a correctional setting where the *very criminal behavior that is considered so deviant in the free world is normalcy "behind the walls?"* Additionally there are a number of problems peculiar to juvenile correctional institutions which further inhibit their ability to achieve any rehabilitative purpose. First, a large number of inmates commit further crimes once they are released from the institution. Second, rather than deterring crime these institutions have been perceived as "breeding grounds" for further criminal behavior.<sup>29</sup> Third, corrections officials have expressed fear that the ever-increasing overcrowding in institutions has led to lessening of staff control, increased violence inside the institutions, and an inability to achieve correctional purposes.<sup>30</sup>

Indeed, a national comparative study of juvenile institutions found that variation in the success of institutionalization (reduction in recidivism rates) could not be accounted for by characteristics of the youth. Rather, the variance in success was accounted for by the characteristics and values of the institution or intervening agency.<sup>31</sup> This research demonstrates that the behavior and characteristics of offending youth were less important determinants of the institution's success than what was done to (or for) them, where it was done, and how it was done.

For these and other reasons, attempts to reduce the rate of detention have been made by members of the juvenile justice system. The following is an excerpt from a report prepared in

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28. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, *supra* at 45.

29. See Couch, *Diverting the Status Offender from the Juvenile Court*, 25 JUV. JUST. 18 (1974); Strachan, *Benign Neglect of Juvenile Status Crimes*, 1 L. VOLUNTEERS WITH DELINQUENTS 67 (1972). See also WISCONSIN COUNCIL ON CRIMINAL JUSTICE, JUVENILE JUSTICE STANDARDS AND GOALS, FINAL REPORT (1975); PETERS, ZIMMERMAN AND CLEMENTS, IMPACT OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT IN NEBRASKA—FINAL REPORT (1975).

30. BLUM, SOURCES OF INFLUENCE IN THE SOCIALIZATION OF CORRECTIONS WORKERS (1976).

31. STREET, VINTER AND PERROW, ORGANIZATIONS FOR TREATMENT: A COMPARATIVE STUDY OF INSTITUTIONS FOR DELINQUENCY (1966).

1967 by the Chief Judge of the Cuyahoga County (Cleveland, Ohio) Juvenile Court:

Social workers, probation officers, and police officers, who had previously for all practical purposes made the decision as to the necessity of detaining the child, reacted strenuously to our screening process . . . . The social agencies which staunchly proclaimed their nonpunitive philosophy wanted us to detain children as part of their 'treatment' (sic) process . . . .<sup>32</sup>

The Cuyahoga County study points out the difficulty in implementing reductions in, or alternatives to, detention. In essence, the vagueness and ambiguity of such terms as "P.I.N.S." or "status offenders" lend themselves to systems of juvenile control operating according to unstructured, and often arbitrary, discretion. While the author agrees that discretion is a crucial component to law enforcement and justice system personnel, the lack of *objective* criteria for dispositional alternatives is the heart of the problem.

#### V. DISPOSITIONAL ALTERNATIVES: TOO FEW SOLUTIONS FOR TOO MANY PROBLEMS

##### A. *The Problem*

In the State of California, law enforcement officers have three basic dispositional alternatives after placing a youthful offender under arrest. They can, (1) *counsel and release* the youth (case closed); (2) *make an application for petition* to the juvenile court (promise to appear); or (3) *deliver the youth in custody* to the probation officer for determination whether the youth should be held until a detention hearing by the court or until dismissal.

In theory, police decisions to release, file an application for petition, or detain the youth would be a function of the severity of the youth's current offense, the number of prior offenses, and the officer's perception of danger posed to the youth or community. In practice, however, objectivity of dispositions according to the offense behavior is very often absent. For example, the case records of a number of police departments in Southern California regarding youths detained under Welfare and Institutions Code Section 601 (status offenders) in 1976 presents a different picture. In a large number of cases where local youths were delivered in custody to the probation department, the criteria for detention most often involved parental refusal of alternative dispositions, refusals for which their child was held

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32. Whitlach, *Practical Aspects of Reducing Detention Home Population*, 24 Juv. JUST. 21 (1973).

accountable. In similar cases, the youths were detained because an arrest was made after 5 p.m., when most social service agencies are closed, and no parent or responsible adult was immediately available.

In an evaluation of a county-wide program which diverted status offenders from entry into the juvenile justice system, another interesting fact was discovered. Law enforcement officers were asked to rate those factors they used in determining dispositions in status offense cases. The two most important determinants did not involve behavioral severity or number of prior offenses. Rather, they involved the *attitude of the youth* and the *attitude of the parents*.<sup>33</sup> While a useful indicator in the hands of an experienced juvenile investigator, attitudes displayed during a family dysfunction or dispute may not provide an accurate assessment of the participants' ongoing functioning. First, a repeat offender may be sophisticated enough to "con" the investigating officer. Second, one of the most fundamental characteristics of a crisis situation involves an acute, volatile, emotional state. Thus, an officer may make a disposition for current attitude and emotional state which would be quite different if he or she made the same assessment the next morning after a "cooling off" period.

Law enforcement has traditionally been hampered by a lack of accessible alternative resources to detention. In addition, a recent phenomenon called *civil liability* has impeded law enforcement's handling of the wide range of status offender needs. Police officers are often prohibited from taking any actions which could result in a lawsuit against the department. For this reason, they would hesitate to make a direct referral to a service which was not legally mandated, or with which their department did not have a contractual relationship limiting their perceived liability. This concern with civil liability was not always the case. Twenty or twenty-five years ago, beat patrolmen had their own informal "diversion programs." While presenting some ethical concerns,<sup>34</sup> this informal handling had two fundamental and—for this author—effective methods:

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33. LIPSEY AND BERGER, INTERIM EVALUATION REPORT FOR ORANGE COUNTY, REGIONAL JUVENILE DIVERSION PROGRAM 59 (1977).

34. Scharf, *The Dilemmas of Diversion*, A paper presented to the November 4, 1976 meeting of the American Society of Criminology, p. 3.



1. A "boot" in the pants by the officer at the time of infractions; and
2. A subsequent "boot" in the pants by parents in the presence of the officer.

This informal handling, however, was rarely used for youths and families with whom the officer was not familiar. This was the officer's "beat" where he solved minor infractions and maintained order according to his skill and understanding of his community. With the increasingly more "professional" and impersonal patrol logistics used in recent times (e.g., sector car patrols, helicopter patrols), coupled with the transient nature of the population in many police jurisdictions, much more formal intervention is used, with government agencies increasingly taking over the responsibilities which once were demanded of the parents.

While the use of detention for status offenders is often screened and reduced by intake probation officers, there is still a paucity of alternative intervention techniques available to community agents. Indeed the particular intervention technique attempted is most often a function of which agency's jurisdiction the youth falls within. An act attributed to Judge Peña of the El Paso, Texas, Juvenile Court can serve as an example.<sup>35</sup>

When a boy who had been arrested several times for running away was brought to the bench, Judge Peña asked who in the room was responsible for the care of the youth. Since the parents were not present, the probation officer, who had the youth on his caseload, the mental health worker, who had seen the youth in therapy, and the social worker, who had done casework with the family, all raised their hands. The Judge is then reported to have said, "I order the three of you to report back to this Court in [a specified number of] days that you have ameliorated this problem." When the community agents reported there was nothing they could do, that status offenders were a most difficult problem for service providers, the Judge committed an unprecedented act—he cited them for contempt of court for their failure to solve the runaway problem.

The point of this anecdote is that one of the basic reasons that status offenders have been described as a difficult and frustrating population is that problems underlying status offense be-

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35. Address presented by F. Nader to the National Youth Service Workers conference in June of 1976.

havior are multiple in nature. As such, their resolution requires multi-faceted solutions, and one agency or court just cannot be expected to be all things to all people. Further, these problems are a function of the entire family unit, *not just the identified youth*. To make only the youth accountable as the offender, or to serve as the patient, is to predispose the intervention to failure.

Given the above problems inherent in the juvenile court's handling family concerns in a legal-correctional context, a number of pieces of legislation were enacted to address the issues believed to contribute to the difficulties faced by the juvenile court system. While not removing the status offense from the court's jurisdiction, they nonetheless paved the way, and provided funds for, more innovative intervention strategies.

### *B. Some Attempted Solutions*

In an effort to respond to some of the problems manifest in judicial handling of status offenders, the federal government in 1974 passed the Juvenile Justice and Delinquency Prevention Act.<sup>36</sup> This Act provided, among other things, funds to states for the purpose of "de-institutionalizing" the status offender. A state to receive block grants under the Act would have to give assurance that, within specified periods of time, no status offender would be detained in or committed to an institution intended for criminal delinquents. While a majority of the states did participate in the Act's programs, some receiving several million dollars in federal funds, it should be noted that the Act was an *enabling legislation* and did not mandate alternative handling of the status offender. The Juvenile Justice and Delinquency Prevention Act of 1974, while presenting alternative strategies, depended on the philosophy, politics, and motivation of local units of government to implement the legislative intent. One must realize, however, that since a substantial proportion of the inmates of juvenile institutions were status offenders in 1974, de-institutionalization presented a serious threat to the juvenile justice system. If status offenders were to be removed from government institutions, and placed in voluntary, commu-

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36. Juvenile Justice and Delinquency Prevention Act, Pub. L. No. 93-415, 88 Stat. 1109 (1974).

nity-based agencies, the resulting loss in revenue, staff positions, and concomitant resources could be immense.

While this article is not the place for a discussion of systems theory, one point is noteworthy. The maintenance and stability of organized social systems requires a continuous influx of clientele, just as an automobile factory requires raw materials if it is to make its product. Such a substantial loss of clientele as was suggested by the Delinquency Prevention Act met with predictable resistance by components of the Juvenile Justice System who were more concerned over budget and organizations than with individuals.<sup>37</sup>

Therefore, a number of states found it necessary to *mandate* the de-institutionalization of status offenders. The States of Massachusetts and Florida have closed juvenile institutions to status offenders. These institutions were replaced by community treatment centers, and volunteer short-term foster homes.

In the State of California, the legislature passed in 1976 Assembly Bill 3121. This bill sought to "take a hard line" with serious criminal law violators, while "taking a soft line" with status offenders. In a previous edition of this Journal, Assemblyman Julian Dixon, one of the authors of the bill, made the following statement:

The status offender is generally brought within the juvenile system merely because of his age. Therefore a program to handle status offenders should offer different treatment than that afforded criminal offenders . . . . Placing status offenders in secure facilities with criminal offenders mitigates against rehabilitation and hasn't the countervailing purpose of protecting the public from the minor's act. Further, the use of secure facilities to house status offenders is a misuse of scarce resources and the cost, in terms of that procedure's potential negative impact on the juvenile status offender, is beyond calculation.<sup>38</sup>

However, in prescience of the outcry from various components of the legal system, Assemblyman Dixon also stated that, "[I]f, for example, it is determined that many status offenders can only be rehabilitated by some new type of limited, secure attention, then legislation to provide for such will seriously be considered."<sup>39</sup>

While such determinations have not been made empirically, political pressure moved Mr. Dixon, less than five months after passage of AB 3121, to author AB 958, a bill which would permit secure detention of status offenders for 12, 24, 48 hours, or for

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37. KATZ AND KAHN, *THE SOCIAL PSYCHOLOGY OF ORGANIZATIONS* 150 (1966).

38. Dixon, *Juvenile Justice in Transition*, 4 PEPPERDINE L. REV. 469, 475 (1977).

39. *Id.* at 478.

"good cause," longer periods. This author, while recognizing the difficulty encountered by law enforcement with certain status offenders who refuse voluntary services and lack the wherewithal to cope safely in the streets, disagrees with the content of AB 958 in two ways.

First, a recent survey of law enforcement agencies in a Southern California County<sup>40</sup> brought to light the fact that the largest majority of status offenders can and are being handled through the voluntary provision of community-based services. A handful of youths seen by the police do not seem to be amenable to these voluntary services. Therefore, to create a bill which reopens the possibility of "dumping" all status offenders in a detention facility does not seem warranted. Secondly, according to law enforcement personnel the only youths who present difficulties, given the range of alternative services currently available, are (1) *out-of-region runaways* with whom the only intervention will be transportation home; (2) *youth who persistently refuse* the voluntary provision of services; and (3) *youth who continually recidivate* regardless of the attempts at rehabilitation. According to law enforcement estimates, the percentage of status offending youths in the "problem" categories account for less than five percent of the total number of status offenders. To create a bill which may be appropriate for such a small proportion of youth does not appear to warrant passage. The bill should be amended to limit the possibility of detention to these three types of problem cases.

In response to the criticism leveled at traditional methods of handling status offenders, as well as legislation authorizing change in intervention strategies, a number of alternative service systems and diversion techniques have been established. Use of the term "diversion" has caused some confusion among various components of the legal system. For our purposes, a distinction is made between *diversion* versus *reduced penetration*. Diversion denotes no juvenile justice system involvement by the youth, beyond the point of arrest. Indeed, all formalized intervention ceases at that point and the case is "closed". Reduced penetration, on the other hand, involves a decision by a

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40. This 1977 Survey includes all enforcement jurisdiction in Orange County, the second most populated county in California, 2.8 million.

legal official to stop further court processing after the youth is delivered into the hands of the probation officer. Such reduced penetration could involve formal or informal probation. Practical differences do exist between the two terms, but we await research on whether or not services defined as diversion constitute different technologies and outcomes from reduced penetration.

One important technological aspect of diversion programs involves an emphasis upon crisis intervention. For example, in Sacramento County, an experimental program was developed to see if status offenders could be handled better through short term family crisis counseling *at the time of referral* rather than through the traditional juvenile court process. It was found the number of court petitions, number of informal probations, days spent in detention, cost of handling, and recidivism rates were all less for the individuals involved in a diversion project than for control cases.<sup>41</sup> It should be noted the provision of diversion services *in no way* implies that police or probation officers are not doing their jobs or that counselors staffing diversion projects should assume the discretionary role of police officers. Rather, the addition of diversion services serves three basic functions:

- (1) To assist police officers with troubled youths and/or families;
- (2) To assist juveniles and their families in resolving problems so that the family will be able to cope with problematic life situations in more productive ways;
- (3) To coordinate a range of comprehensive services so that youths and services will be appropriately matched.

As mentioned earlier, effective diversion programs involve an orientation toward immediate crisis intervention/counseling. The fact, for example, that police officers and detention intake probation officers are on duty 24 hours a day does not necessarily mean that needed social services for youths and their families will also be "on duty." Crisis intervention reduces the need for detention by adding an additional tool of intervention short of holding the juvenile in custody. Indeed, crisis counseling has been shown to reduce the severity of many status offense situations by dealing with the immediate, acute problems which often bring juveniles in contact with the police. Finally, crisis diversion services free police officers to return to patrol.

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41. BARON AND FEENEY, JUVENILE DIVERSION THROUGH FAMILY COUNSELING—AN EXEMPLARY PROJECT (1976).

While it is clear that not all status offense cases involve acute crisis situations, it is also clear the majority of parent complaints of incorrigibility and runaway do arise from a family crisis. Detention of the juvenile, while perhaps ameliorating the immediate complaint, does no more than isolate the juvenile from the family, thus precluding *resolution* of the crisis situation and predisposing the juvenile and his or her family to further problems. Alternatives to detention, where for some reason the youth is unable or unwilling to go home, have been developed in such facilities as small, *voluntary*, temporary shelter care. Another program, such as the one used by the Florida Division of Youth Services and the Ventura County (California) Youth Service System is called emergency foster care, or "cool" homes. In this program, status offenders are placed in carefully screened and specially trained homes, where, with counseling and supportive services, the offense situation is stabilized and the juvenile and his or her family are reunited as soon as possible.

In addition to shelter facilities, counties have developed regional diversion programs where a range of services are provided. Among these services are short-term family counseling; recreational services, skill development, vocational training and placement, remedial education, and "Big Brother/Big Sister" volunteer services to youth.<sup>42</sup>

## VI. CONCLUSION

In summary, there is a need to develop a comprehensive youth services system which can provide relevant services to the several status offender sub-populations. It is noted that all 601's are *not* alike in characteristics, behaviors, or service needs. There are instances where, for the older youth, service needs would best be met by skills and procedures relevant to emancipation. There are substantive differences among service needs for youth based on age, family structure, presenting and underlying problems, and severity. Services must be organized according to the needs defined by unique youth populations, rather than continuing to subsume youth needs under the style and technology of a particular service agency.

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42. LIPSEY AND BERGER, *supra* note 34, at 13-20.

