

# STATUS OFFENDERS AND THE JUVENILE JUSTICE SYSTEM

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## EXECUTIVE SUMMARY

- **Status offenses** are noncriminal acts that are considered law violations because the offender is a minor; status offenders in the juvenile justice system are often first-time offenders and pose low-risk to society.
- **Status offenders** become involved in the justice system primarily by displaying problem behaviors that result in school personnel or law enforcement response, which may lead to a referral to the County Attorney. Once the juvenile has been referred, they may be diverted or further entrenched in the system.
- **Net widening** occurs when low-risk youth are brought under the purview of the court and juvenile system - this punishment a) is often more severe than the crime, b) does not accurately reflect the juvenile's risk for future offending, and c) may make it more difficult to get out of the system.
- **Impact of net widening and formal system involvement:** aggravation of juveniles' mental health problems, promote further criminal offending, deepen the level of system-involvement, and increase the odds of negative outcomes as an adult.
- **Recommended best practice standards for status offenders:**
  1. Non-intervention for low-risk, status offenders
  2. Limiting the restrictions placed on low-risk youth in the system, as these often raise the risk of technical violations
  3. Implementing evidence-based programs that focus on prevention

## INTRODUCTION: STATUS OFFENSES AND STATUS OFFENDERS

Status offenses are noncriminal acts that are considered law violations because the offender is a minor (Office of Juvenile Justice and Delinquency Prevention, 2015b). States vary on what age constitutes being a “minor” for a status offense, however. Nebraska is similar to a majority of states which have an upper age limit of 17. While many states have no lower limit (OJJDP, 2017), beginning July 1, 2017, Nebraska set a lower limit of age 11 (Neb. Rev. Stat. § 43-247 (3b)). Nebraska statute indicates that status offenses are acts that would not be considered a crime if committed by an adult (Neb. Rev. Stat. § 43-245 (25)).

Juveniles charged or adjudicated as status offenders are low-risk, as they violate state statutes or local ordinances related to school attendance, curfew, underage drinking or tobacco use, or uncontrollable behaviors (Neb. Rev. Stat. § 43-247 (3b)). These offenses typically fall under the following categories:

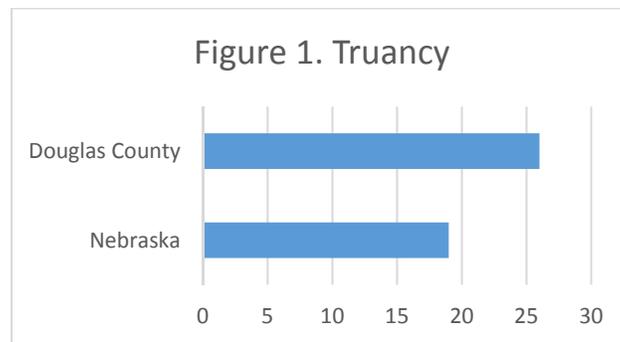
- Truancy;
- Violating curfew;
- Ungovernable behavior;
- Minor in possession; and
- Other.

Other status offenses may include traffic violations, but are less likely to result in a referral to juvenile court. In the state of Nebraska, the most recent data indicates that 25% of juvenile court referrals were for a status offense, and 30% of the referrals specifically in Douglas County were for these minor offenses (Nebraska Crime Commission, n.d.). The categories noted in Nebraska statute are consistent with OJJDP identification of status offense acts as well as the acts noted in other state statutes such as Missouri and Illinois (OJJDP, 2017; Mo. Rev. Stat. § 211.031.1 (2); 705 ILCS 405/3-3; 705 ILCS 405/3-33.5).

## MECHANISMS FOR JUVENILE JUSTICE SYSTEM INVOLVEMENT

Juveniles charged with a status offense become involved in the juvenile justice system primarily through two paths:

1. **“School to Prison Pipeline.”** This refers to youth who are identified in the school setting as a status offender and require supervision through the juvenile system to address their attendance and/or behavior problems (Mallet, 2016). The primary violation is truancy, wherein a youth’s habitual absence or tardiness (not resulting from illness, suspension, expulsion, or exclusion) significantly hinders their academic progress. Nebraska legislation places a responsibility on schools to identify and address youth who are habitually truant, resulting in numerous referrals to the juvenile system. Neb. Rev. Stat. § 79-209 (3) notes that schools may submit a referral to the County Attorney if reasonable and documented efforts by the school to address attendance were unsuccessful and the absence was more than 20 days in the school year. In Nebraska, as displayed in Figure 1, approximately 19% of reported juvenile offenses were for truancy; of the reported offenses in Douglas County, 26% were for truancy (Nebraska Crime Commission, n.d.).



Each school district is required to have one or more attendance officers with “police powers” to enforce the written attendance policy for the district (Neb. Rev. Stat. § 79-208). These officers may also be known as School Resource Officers (SRO), Truancy Officers, Attendance Officers, or Interventionists. These individuals are tasked with responding to truancy and addressing barriers for school attendance and tardiness by developing a plan to improve attendance, as outlined in Neb. Rev. Stat. § 79-209 (2b). Sometimes these plans are insufficient, due to misidentification of services or due to the youth or family efforts to commit to the plan. Unsuccessful plans may lead to referrals to the County Attorney and subsequent truancy petitions and juvenile justice system involvement.

An officer with “police powers” has a unique role within the school, as they also may address school discipline such as underage drinking or tobacco use. School administrators report concerns to these sworn officers to enforce the law,



potentially resulting in a referral to the juvenile system or detention, rather than addressing the behavior in the school without officer intervention. However, research suggests that school administrators are the individuals most likely to notice offending behaviors, and they are more apt to refer youth to the juvenile justice system than the sworn officers or law enforcement outside of the school setting (May, Barranco, Stokes, Robertson, & Haynes, 2015).

- 2. Familial Dysfunction, Mental Health Problems, and "Ungovernable" Behaviors.** A youth is regarded as "ungovernable" if they are habitually disobedient or absent from home (runaway status), a danger to themselves or others, or uncontrollable by their parent or guardian (Neb. Rev. Stat. § 43-247 (3b)). A family may request law enforcement intervention due to uncontrollable or volatile behaviors in the home wherein the parent, guardian or custodian needs assistance to maintain safety. The youth may also be classified as a "runaway" wherein their whereabouts are unknown or unclear in cases where the youth is habitually absent from the home. Law enforcement may respond by referring the youth to the juvenile justice system (i.e. County Attorney, Probation) to address the runaway behaviors, as well as underage drinking and tobacco use that may have occurred within the community while the youth was out of the home. Youth cited for underage drinking and tobacco use may volunteer to complete diversion programming to address the offending behavior, but unsuccessful completion often results in deeper juvenile justice system involvement for these status offense cases.

## OUTCOMES OF EARLY JUVENILE JUSTICE SYSTEM INVOLVEMENT

Early system involvement can have positive influences on behavior (e.g., by providing youth with needed services and support), "iatrogenic" effects (e.g., negative effects produced inadvertently by the intervention itself, such as furthering delinquency or problematic behavior), or no effect. Some of the negative or iatrogenic effects of early juvenile justice system involvement include negative behavioral, academic, mental health, and health-related outcomes, such as continued crime and delinquency, continued system-involvement, substance use, and other negative behaviors (Ryan, Williams, & Courtney, 2013; Huang, Ryan, & Herz, 2012; Dube, Felitti, Dong, Giles, & Anda, 2003). Therefore, efforts to avoid placing low-risk youth,

particularly those solely with status offenses, in the juvenile justice system are warranted. The Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974 attempted to deinstitutionalize status offenders. The JJDP Act was a response to public concern about the increase in crime and focused on controlling the number of delinquent youth, as well as creating federal mandates for the confinement of status offenders (Raley, 1995; Holden & Kapler, 1995). Under the JJDP Act of 1974, status offenders are not permitted to be placed in detention or secure confinement. The act also encourages expanded use of probation officers in an effort to keep status offenders in the home. Nebraska adheres to the JJDP Act of 1974 in refraining from secure confinement of status offenders, yet they may be placed in staff-secure detention instead of the home environment (Neb. Rev. Stat. § 43-251.01 (6)). The JJDP Act of 1974 and subsequent amendments, as well as other juvenile justice reform efforts, attempt to address the concerns that system involvement has on low-risk youth including mental health, employment, and academic progress.

### **NET WIDENING**

Involving status and low risk juvenile offenders in the juvenile justice system can "widen the net" of the system by bringing these youth under its purview. "Net widening" results from efforts to provide formal supervision to low risk juveniles that expands the oversight of the court in a fashion that can be unnecessary and potentially harmful (Blomberg, 1977; Frazier, Richards, & Potter, 1983; Petitclerc, Gatti, Vitaro, & Tremblay, 2013; Petrosino, Turpin-Petrosino, & Guckenburger, 2013). There are three main problems created by net widening. First, the youth becomes involved with the juvenile justice system as a punishment for their status offense; however, this punishment is harsher than is warranted by the severity of the youth's behavior (e.g., staff-secure detention as the punishment for truancy; court referral for running away from an abusive home environment). Punishments that do not "fit" the severity of the crime have been shown to increase, not decrease, later criminal behavior (Sherman, 1993; Nagin, 1998; Smith & Paternoster, 1990).

Second, the punishment does not adequately reflect the youth's risk for future offending. That is, more invasive interventions and punishments should be reserved for those offenders who pose a significant risk of reoffending and/or harm to society (Andrews & Bonta, 2010). This is likely not the case for status offenders who have primarily engaged in truancy, curfew

violations, disruptions at home, and/or alcohol use - all of which would be legal for an adult.

Finally, once youth are involved in the system, it becomes more difficult to get out of it. Some scholars term this phenomenon "collateral" or "unintended" consequences of system-involvement, and may include restrictions on employment, housing, and benefits as a result of criminal involvement (Cullen, Jonson, & Mears, 2016; Chesney-Lind, 2002; Western, 2006). In other words, it becomes more difficult to gain legitimate (non-criminal) opportunities after being involved in the criminal justice system. For youth, this is often referred to as "bootstrapping," and refers to when youth who are involved in the juvenile system continue to "pick up" charges and technical violations, which results in further entrenchment into the system (Javdani, Sadeh, & Verona, 2011; Feld, 2009). Most importantly, these charges are not for "new" criminal acts, but are often technical violations, missing court appearances, and so forth, which stem from the original status offense. To demonstrate, status offenders placed under formal supervision may struggle with the requirements of a court order, which in turn, can lead to deeper system-involvement such as more intensive supervision and/or staff-secure detention. Intensive supervision tends to increase the probability for technical violations, revocations, and redetainment due to the pressures of the intensive and invasive supervision (Ogle & Turanovic, 2016; Altschuler, 1999).

### **EFFECTS OF NET WIDENING**

There are several negative and potentially long-term effects of net widening (Holman & Ziedenberg, 2006):

- Poor mental health (aggravate preexisting illness, suicide);
- Difficulty obtaining or maintaining employment;
- Financial hardship;
- Increase in criminal knowledge and skills; and
- Increased odds of victimization, crime, or incarceration.

Many detained juveniles have a mental health illness upon admission. Residing in a detention facility may aggravate these conditions and increase the need for treatment in the years following detention (Grisso, 2004; Holman & Ziedenberg, 2006; Teplin et al., 2015). Research suggests that placing low-risk juveniles with high risk offenders promotes criminal offending behavior among low-risk juveniles since institutional settings such as detentions may increase criminal knowledge and skills

(Andrews & Bonta, 2010; Nguyen, Loughran, Paternoster, Fagan, & Piquero, 2016), or may result in further entrenchment into the system, as discussed above. Inadequately addressing delinquent behavior or truancy in school with suspensions may result in increased odds of arrest and negative outcomes as an adult such as being a victim of crime, engaging in crime, or incarceration (Wolf & Kupchik, 2017; Mowen & Brent, 2016).

## RECOMMENDATIONS

Cullen and colleagues (2016) suggest that community corrections in the twenty-first century needs to “do less harm to offenders and their families,” which includes nonintervention with low-risk offenders and lowering needless supervision and constraints on certain offenders. These suggestions hold especially well for juvenile offenders in the juvenile justice system. We have three specific recommendations:

1. **Nonintervention for low-risk, status offenders.** This involves simply not bringing youth who are first-time offenders, low-risk, and/or only truant into the juvenile justice system. Interventions with low-risk offenders may have no effect, primarily because these offenders pose very little risk of recidivating in the first place (Andrews & Bonta, 2010), and doing so wastes scant system resources. Punitive interventions may increase criminal behavior among low-risk offenders (Cullen & Jonson 2014) for at least two reasons. First, punitive or invasive interventions - such as placement into staff-secure detention for status offenders - may expose these youth to higher-risk, and more criminogenic people and environments, where they may learn techniques of crime and criminality (Lowenkamp, Latessa, & Holsinger, 2006; Lowenkamp & Latessa, 2005). Additionally, such interventions may “knife off” their interactions with, and relationships to positive and prosocial individuals, whose influence may be crime-reducing for these low-risk youth (Laub & Sampson, 2003). Thus, leaving these youth alone - and out of the juvenile justice system - is recommended. If system intervention is deemed necessary, the most minimal intervention is recommended, which is consistent with evidence-based practices (Andrews & Bonta, 2010). Consistent with efforts to seek minimal intervention, Texas, Pennsylvania, Illinois, and California are a few states seeking to ban or limit out-of-school

and/or in-school suspensions particularly for elementary age students in an effort to avoid the harmful consequences of invasive interventions (Tex. Educ. Code § 12.104(b) (2017); 715 Pa. HB § 1317.2 (2017); 715 Pa. HB § 1318 (2017); 105 ILCS 5/2-3.71 (2017); Cal. Educ. Code § 48900; Cal. Educ. Code § 48900.10).

2. **Reduce the Constraints Placed on Low-Risk, Status Offenders.** Constraints such as probation supervision, check-in calls, or meetings with justice officials increase the likelihood that offenders will violate these conditions. Two problems exist in this regard. First, such constraints are often mandated as punishments; however, these punishments do not comport with the severity of the behavior of low-risk, status offenders. That is, the punishment does not fit the crime. Second, technical violations are not strong predictors of future criminal behavior (Cullen, Jonson, & Mears, 2016), and instead often lead to further system-involvement due to technical violations (but not new criminal acts). Again, devoting resources to supervise these low-risk youth strains existing resources, especially in light of the fact that they are unlikely to engage in new crimes without the intervention.
3. **Conform to evidence-based practices and focus on prevention.** Identifying and consistently adhering to evidence-based or best practices are the most effective means for mitigating low-risk behaviors. We provide a list of program models here:
  - a. In an effort to limit minor in possession and ungovernable related offenses, programs such as the *Positive Action* program should be considered for implementation among elementary age youth (up to age 18) (OJJDP, 2011b).
  - b. **Teen Courts or Youth Courts** are utilized specifically for low-risk status offenders, as youth are less likely to recidivate after participating in the process (Butts, Buck, & Coggeshall, 2002).
  - c. Encouraging **family engagement** and/or providing **family support services** is a key element in resolving status offense behaviors, along with appropriate screening, assessment, and response (Coalition for Juvenile Justice, 2015). Juveniles with truancy behaviors tend to have barriers, such as familial dysfunction or mental health issues, which need addressed in order

for the youth to be successful in adulthood (Rocque, Jennings, Piquero, Ozkan, & Farrington, 2017). It is important to recognize the role of parents, guardians, and/or custodians, and to collaborate with them and the juvenile to address barriers, as well as determine if the barriers would be best overcome with additional support, such as the Department of Health and Human Services. Engaging the family through family-based prevention and intervention programs such as **Functional Family Therapy** (primarily for at-risk youth ages 11-18) can assist with improving the youth's problem behaviors as well as familial relationships (OJJDP, 2011a).

- d. Schools should develop objective assessments that identify barriers related to truancy, and guide an effective and efficient plan for overcoming them. Enhanced training for school administrators and teachers regarding the alternatives to suspensions, such as de-escalation techniques or motivational interviewing, is recommended. Additionally, regular training of school personnel regarding the role of attendance officers would aid in ensuring that their services are utilized appropriately and effectively and avoid consequences of net widening (Barnes, 2016). The **School Discipline Consensus Report** is a beneficial reference for addressing at-risk behaviors and developing alternative and risk-level appropriate interventions for the court, juvenile justice system, and school and police partnerships (Morgan, Salomon, Plotkin, & Cohen, 2014). Model prevention programs rated effective at targeting truancy and school discipline, such as **School-wide Positive Behavioral Interventions and Supports (SWPBIS)**, are important prevention programs that stakeholders can implement to reduce school suspensions and discipline referrals (OJJDP, 2015a).
- e. Prior to researching and implementing any program or practice, consideration needs to be given to the specific target behavior and available resources.

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