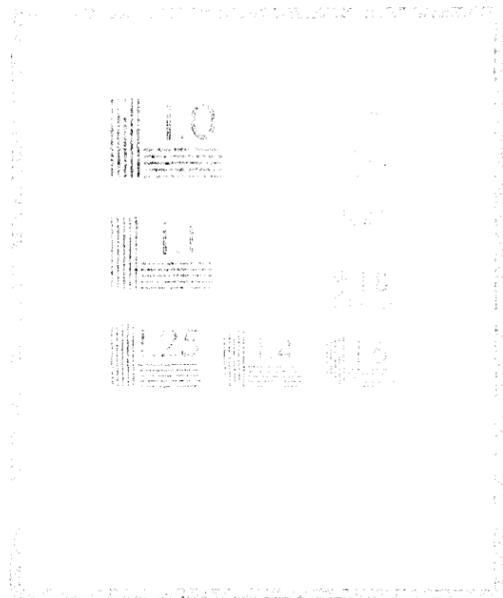


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A COMPARATIVE ANALYSIS OF STANDARDS AND STATE PRACTICES

JURISDICTION-- STATUS OFFENSES

VOLUME V OF IX

National Institute for Juvenile Justice and Delinquency Prevention
Office of Juvenile Justice and Delinquency Prevention
Law Enforcement Assistance Administration
U.S. Department of Justice

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VOLUME V OF IX

NCJRS

MAY 16 1977

Working Papers of the National Task Force
to Develop Standards and Goals for Juvenile
Justice and Delinquency Prevention

ACQUISITIONS

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National Institute for Juvenile Justice and
Delinquency Prevention
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PREFACE TO WORKING PAPERS

Task Force Origin and Mission

The National Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention was initiated as part of Phase II of the standards and goals effort undertaken by the Law Enforcement Assistance Administration (LEAA) of the U.S. Department of Justice.

The original portion of this effort (Phase I) led to the establishment of the National Advisory Commission on Criminal Justice Standards and Goals in October of 1971. To support the work of the National Advisory Commission, special purpose Task Forces were created, each concentrating on a separate area of concern in criminal justice. The efforts of the Task Forces resulted in the completion of five reports: Courts; Police; Corrections; Criminal Justice System; and Community Crime Prevention. In addition, the National Advisory Commission itself produced an overview volume entitled A National Strategy to Reduce Crime. Following the completion of these works in 1973, the National Advisory Commission was disbanded.

In the Spring of 1975, LEAA established five more Task Forces coordinated by a newly created National Advisory Committee to carry out the work of Phase II. The five Task Forces were Private Security; Organized Crime; Civil Disorders and Terrorism; Research and Development; and, of course, the Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention.

From the beginning there was a recognition that the work of the Juvenile Justice and Delinquency Prevention Task Force was much broader than the other four groups. The charge of the Juvenile Justice Task Force was to supplement virtually all of the work of the Phase I National Advisory Commission with a "juvenile" version of the original adult-oriented standards and goals statements.

In all, the Task Force met ten times, for two or three days each time, in public meetings in various parts of the nation. At these meetings the Task Force was able to solidify its group philosophy, analyze the issues of importance in juvenile justice and delinquency prevention, direct the writing of standards and commentaries, review and modify draft material, and react to National Advisory Committee recommendations. The final results of the Task Force's efforts are set forth in the forthcoming volume on Juvenile Justice and Delinquency Prevention, soon to be published by LEAA.

Throughout its work process, the Task Force had the benefit of staff assistance. The American Justice Institute (AJI) of Sacramento, California, received a grant from LEAA to support the work of the Task Force.

Task Force Working Procedures and Use of Comparative Analyses

The time and resources provided to accomplish the challenging task of producing the standards volume did not allow the Task Force to conduct new research in juvenile justice and delinquency prevention. However, the Task Force did utilize a methodology which assured the incorporation of the best scholarship and state-of-the-art knowledge currently available.

This methodology involved identifying the major issues or questions which needed to be resolved before the Task Force could promulgate standards. Comparative Analyses were then constructed around each of these issues. Each Comparative Analysis begins with a comparison of the positions taken on the issue by other standard-setting organizations--previous Task Forces, Commissions, etc. The Comparative Analyses also consider the current practice of each state with regard to the issue in question.

These background materials were designed not only to make Task Force members aware of the various positions that had been taken with regard to a particular issue, but also to provide the Task Force with a complete analysis of the arguments for and against the full range of options presented.

Using the Comparative Analyses as a basis for its discussion and deliberation, the Task Force then directed the staff and consultants to prepare standards and commentaries in line with the positions which it took in each of these areas. This process proved to be very productive for the Task Force members. It allowed informed consideration of the pertinent issues prior to the adoption of any particular standard.

Compilation of Working Papers

Following completion of the Task Force's work, it was clear to members of the AJI staff and officials at LEAA that the Comparative Analyses prepared to assist the Task Force in its preparation of the standards volume could be useful to other groups. In particular, it was recognized that states and localities which plan to formulate standards or guidelines for juvenile justice and delinquency prevention will need to traverse much of the same territory and address many of these same questions. As a result, LEAA's National Institute for Juvenile Justice and Delinquency Prevention provided the AJI staff with a grant to compile the materials in their present form.

The Comparative Analyses have been organized in a series of nine volumes of Working Papers, each devoted to a particular aspect of juvenile justice and delinquency prevention. (A complete table of contents of each of the volumes is set forth in the appendix.) Some subjects have been analyzed in considerable detail; others, because of limited time or consultant resources, have been given abbreviated treatment. Thus, while it is recognized that these Working Papers do not present a comprehensive examination of all of the important issues in juvenile justice--or even of all of the issues considered by the Task Force--they do represent a useful survey of a wide range of subjects, with a wealth of data on many of the particulars. Using these materials as groundwork, other groups with interests in individual facets of the juvenile system may wish to expand the research as they see fit.

Although the Comparative Analyses should not be taken to represent the Task Force's views--they were prepared by project consultants or research staff and were not formally approved by the Task Force or reviewed by the National Advisory Committee--it was decided that it would be helpful to outline the position taken by the Task Force on each of the issues. Therefore, the AJI staff reviewed each of the Comparative Analyses and added a concluding section on "Task Force Standards and Rationale" which did not appear in the materials when they were considered by the Task Force.

A more thorough exposition of the Task Force's views can be found in the forthcoming volume on Juvenile Justice and Delinquency Prevention, which should, of course, be consulted by those considering these Working Papers.

The efforts of the many consultants and research assistants who prepared the drafts of these materials is gratefully acknowledged. Any errors or omissions are the responsibility of the American Justice Institute, which reviewed the materials and assembled them in their present form.

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FOREWORD

Over the past ten years, a number of national efforts have developed regarding juvenile justice and delinquency prevention standards and model legislation. After the enactment of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93-415) and in conjunction with LEAA's Standards and Goals Program, many States started formulating their own standards or revising their juvenile codes.

The review of existing recommendations and practices is an important element of standards and legislative development. The National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) has supported the compilation of the comparative analyses prepared as working papers for the Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention in order to facilitate this review. Over one hundred issues, questions, and theories pertaining to the organization, operation, and underlying assumptions of juvenile justice and delinquency prevention are covered in the analyses. These are divided into nine volumes: Preventing Delinquency; Police-Juvenile Operations; Court Structure; Judicial and Non-Judicial Personnel and Juvenile Records; Jurisdiction-Delinquency; Jurisdiction-Status Offenses; Abuse and Neglect; Pre-Adjudication and Adjudication Processes; Prosecution and Defense; and Juvenile Dispositions and Corrections.

The materials discussed in these reports reflect a variety of views on and approaches to major questions in the juvenile justice field. It should be clearly recognized in reviewing these volumes that the conclusions contained in the comparative analyses are those of the Task Force and/or its consultants and staff. The conclusions are not necessarily those of the Department of Justice, LEAA, or NIJJDP. Neither are the conclusions necessarily consistent with the recommendations of the Advisory Committee on Standards that was established by the Act, although the Committee carefully considered the comparative analyses and endorsed many of the positions adopted by the Task Force.

Juvenile justice policies and practices have experienced significant changes since the creation of the first juvenile court in 1899. The perspective provided by these working papers can contribute significantly to current efforts to strengthen and improve juvenile justice throughout the United States.

James C. Howell
Director
National Institute for Juvenile Justice
and Delinquency Prevention
January, 1977

INTRODUCTION

Volume V: Jurisdiction--Status Offenses

The appropriate scope of juvenile or family court jurisdiction over conduct by juveniles which would not constitute a crime if committed by an adult has been the subject of substantial debate. The Task Force devoted considerable attention to this subject and found it to be one of the most difficult in the entire field of juvenile justice.

This volume contains a series of six Comparative Analyses which formed the basis for the Task Force's deliberations on this issue. The first explains at some length the various arguments advanced for and against the outright abolition of "status offenses" as a component of the court's jurisdiction.

The remaining materials in the volume focus on particular types of misbehavior which might be viewed as appropriate grounds for judicial intervention if a decision is made to retain "status offense" jurisdiction in some form. These Comparative Analyses examine the pros and cons of authorizing jurisdiction on the following bases: truancy or other school-related misbehavior; disobedience to parents; running away; conduct dangerous to self or other; and, conduct which imperils a juvenile's morals.

These working papers were prepared for the Task Force by Kristine Mackin McCarthy, Esq., of the American Justice Institute staff. The sections on "Task Force Standards and Rationale" were subsequently inserted by other personnel at AJI.

1. Issue Title: Jurisdiction Over Status Offenses--Should the family court have jurisdiction over status offenses?

2. Issue Description:

Broadly stated, the question here is whether or not the juvenile court should have jurisdiction over certain non-criminal juvenile misbehavior commonly referred to as status offenses. These are such things as running away from home, truancy, being disobedient to parents or other authorities, sexual misbehavior, etc. In recent years, a great many commentators and standards groups have advocated abolishing the status offense jurisdictional base entirely. However, every state in the United States exercises jurisdiction over one or more of the "status offense" behaviors and children thus brought into the juvenile justice system may account for up to one-half of the entire juvenile court workload. The great disparity between the recommendations of commentators and standards groups and the current state practice suggests that this issue is far from being resolved and is vital to any consideration of children involved with the juvenile justice system.

3. Summary of Major Positions:

There are, in the final analysis, only two positions that can be taken on this issue. The first is to confer jurisdiction over status offenses to the state's juvenile or family court. This can be a very broad jurisdictional grant, covering all behaviors ordinarily considered status offenses, or a very restricted grant, making state intervention in a child's life the exception rather than the norm.

The other alternative is not to confer jurisdiction over status offenses to the court. This would preclude any state intervention in a child's life unless he or she had committed a criminal act or is subject to the court's jurisdiction on the basis of dependency or neglect.

4. Number of States at Each Position:

All states have statutes allowing their courts to take jurisdiction over one or more of the behaviors commonly included under the term "status offense."

5. Summary of Positions Recommended by Standards Groups:

Task Force Report: Juv. Del. & Youth Crime	Model Act for Family Courts	Intern'l Assoc. of Chiefs of Police Juv. Just. Adm.	Bd. of Dir., NCCD-Policy Statement	Nat. Adv. Commission Corrections	Nat. Adv. Commission Courts	Uniform Juvenile Court Act
Advocates serious consideration be given complete elimination of jurisdiction over conduct illegal only for a child.	Eliminates jurisdiction over status offenses.	Recommends removal of status offenses from the jurisdiction of the juvenile court.	Recommends removal of status offenses from the jurisdiction of the juvenile court.	Recommends children accused of non-criminal offenses no longer come under delinquent jurisdiction.	No position on extent to which, if at all, jurisdiction of the family court should include non-criminal misbehavior.	Permits jurisdiction over the unruly child (habitually disobedient, truant, offense applicable only to a child) who is in need of treatment.
ICJ/ABA Juvenile Justice Standards Project						
<p>No official position yet taken by Joint Commission.</p> <p>Aidan R. Gough--tentative draft recommends jurisdiction over unruly child eliminated.</p> <p>Limited intervention with regard to particular problems (runaways, youth in danger, need alternate living arrangements, need for emergency medical services).</p>						

6. Analysis of Issue

The term "status offense" refers generally to behavior troublesome in terms of parental, school or other authority, but which falls short of violating any criminal law. This behavior is of two specific types. First there is conduct unique to children such as truancy and incorrigibility (ungovernability, unruliness, wayward behavior, etc.). The law also typically sanctions many kinds of behavior tolerated of adults, but unacceptable in children. Under this category is included such things as smoking, drinking, using vulgar language, violating curfew laws, consensual sexual behavior, hanging around in bars, or with felons, or with gamblers.¹

Children have been subject to court jurisdiction for these various kinds of non-criminal misbehavior since early colonial times when the child was considered a necessary source of labor for the family.² Puritans at Plymouth Bay defined rude, stubborn, unruly, disobedient or disorderly children as criminals.³ Early juvenile court acts included such behavior in their definitions of delinquency.⁴ Today all states provide for juvenile court jurisdiction over status offenses under the label of delinquency or any of a number of various other designations such as "wayward child," "unruly child," and child or person or minor in need of supervision.

By far the most controversial issue with regard to status offenses today is whether or not the jurisdictional basis should exist at all. The arguments for and against abolishing the juvenile court's jurisdiction over these kinds of non-criminal misbehavior are many and complex. To fully understand the rationale behind each point of view, the following issues must be considered.

Pre-delinquency. Organized under the auspices of the doctrine of *parens patriae*, the basic concern of the juvenile courts has always been treatment and rehabilitation for the non-conforming child, to the end that he or she may become a law abiding and productive member of society.⁵ The idea is for the court to take jurisdiction over the misguided, deviant child, identify the cause of his or her problem, and marshal all available resources to provide the care or treatment needed.⁶ The rationale in support of the juvenile court having jurisdiction over the specific behaviors denominated status offenses stems from the belief that these in some manner predict future more serious deviant behavior, either delinquent or criminal. (Thus, the term often assigned to these non-criminal misbehavior statutes--pre-delinquent.)⁷

This rationale is characterized by the belief that poor behavior and attendance in school are early indications of delinquency and that today's truant will become tomorrow's dropout, with little chance of finding a good job, resulting in his or her turning to criminal means of support. Inability or unwillingness to follow the

commands of parents or school authorities is seen as indicative of an ultimate inability or unwillingness to conform to the society's criminal law.

Such a grant of jurisdiction over uncooperative children also reflects this "society's long-standing belief that the cohesion of the family and household is essential to the good order and functioning of the state."⁸ The family is seen as the primary source of control. Parents are charged with the task of rearing children who are well adjusted and able to function within the norms and laws of our society. The status offense jurisdiction merely provides the legal backing that many of these parents require to adequately perform this task. Supporters of this jurisdictional base argue that were we to remove status offenses from the reach of the juvenile court, parents would be left with only their own powers of persuasion to provide the necessary controls, and the children who are the most difficult to control are likely to be of parents with the least effective powers of persuasion.⁹ The picture is one of "poor harassed parents, terribly fearful of the results of the drinking, drug abuse, stealing, running away and promiscuity exhibited by their children. They want some help before something terrible happens."¹⁰

The California Assembly Interim Committee on Criminal Procedure: Juvenile Court Processes, however, found no significant evidence that states exercise of status offense jurisdiction has been effective in turning runaways, truants, promiscuous girls or other incorrigibles into the kind of children whose behavior satisfies adult expectations and even less evidence that the children themselves have been helped.¹¹ Edward Lemert in writing for the President's Task Force on Juvenile Delinquency and Youth Crime states, "As yet no behavior patterns or personality tendencies have been isolated and shown to be the antecedents of delinquency, and it is unlikely that they will be."¹² The point to be made is that the evidence simply does not support the assertion that intervention because of any of the behaviors commonly included under the status offense jurisdictional statutes accomplishes its avowed purpose of preventing subsequent deviant behavior.

Transitional Deviance or Severe Maladjustment. Supporters of abolition of the status offense jurisdiction feel that the specific conduct which the juvenile court seeks to control should not even be a matter of judicial cognizance.¹³ The behavior is seen as simply "transitional deviance, hardly indicative of a lifelong (or even short term) commitment to criminal behavior."¹⁴ The NCCD in its policy Statement advocating that status offense jurisdiction be abolished says that the challenge of authority, whether it be that of the parent, school or other institution is not only normal in an adolescent but essential in the establishment of personal identity.¹⁵ The child's actions, although they may indicate a need for some

kind of individual or family counseling, pose no threat to society.¹⁶ They may, in fact, be quite rational in view of the home, school or community environment in which the child is forced to function.¹⁷ Thus, the child whose behavior patterns indicate that he or she is experiencing difficulties in home, school or the community should not be subjected to juvenile court processes unless the situation can be so characterized that exercising jurisdiction can be justified under some kind of neglect or dependency rationale.¹⁸

A substantial number of authorities, however, continue to view this adolescent "acting out" as not within the realm of normal behavior. Judge Lindsay Arthur feels that although the particular behavior forming the basis for intervention may appear relatively insignificant, it is likely to be indicative of some serious underlying difficulty--possibly even more serious a difficulty than would be indicated by a criminal act.¹⁹ There is concern that if the juvenile court has no jurisdiction over status offenses, the state will have no power to intervene in a child's life when he or she needs help, but is unable or unwilling to accept it.

Labeling/Stigmatization. The avoidance of the degradation and stigma associated with the criminal conviction was one of the primary motivations for establishing the juvenile court in this country. In recent years, however, it has come to be recognized that the stigma of being adjudicated delinquent may be, in the words of the National Advisory Commission on Juvenile Justice, "as detrimental today as that associated with a criminal conviction."²⁰ Many states have attempted to prevent this stigma of delinquency from attaching to the status offender by designating him or her as something other than a delinquent in their jurisdictional scheme. Thus, we have some states using the designations Persons in Need of Supervision, Children in Need of Supervision, etc. The NCCD, however, states that present indications are, no matter what term, status offender or delinquent, we use, once the child has been brought into the juvenile court process he is stigmatized.²¹ In fact, the stigma associated with being adjudicated a status offender may have come to be even more devastating than that associated with being adjudicated a delinquent because it tends to indicate a pattern of abnormal behavior as opposed to a single deviant (criminal) act.²²

Concern over the possible adverse consequences of involving the status offender in the juvenile court process has been expressed by a number of the standards setting groups.²³ Many of these negative effects are treated in the President's Task Force Report on Juvenile Delinquency and Youth Crime. The report states that not only do employers consider delinquents bad job risks, but the Office of Economic Opportunity excludes them from their Job Corps Program. Most private social agencies do not accept delinquents in their programs and the parents of other children involved will often object to the presence of a "delinquent" in organized recreational and social activities.²⁴ Wardship of the juvenile court may be

grounds for rejection from the Armed Services and most certainly will bar officer candidacy. A juvenile court record often produces heightened police surveillance of the particular individual. Difficulties arise with school officials as a result of the delinquency label. This may be particularly damaging to a disadvantaged or minority youth who has no strong commitment to education in the first place. Moreover, those involved in the juvenile court system, the probation officers, the correctional officers--even the judges--often see the delinquency label as a sure indication of ultimate failure.²⁵

The concern over the adverse effects of labeling a child a "delinquent" or a "status offender" goes beyond the economic, educational and social consequences mentioned above. There is some evidence that the most serious consequence of involving the juvenile status offender in the juvenile justice process is that it tends to produce the precise behavior that such involvement was intended to prevent or deter.²⁶ This is the hypothesis of the currently popular "labeling theory." The analysis is that the label of "delinquent" produces a self-fulfilling prophecy--the child called a delinquent becomes a delinquent.²⁷

Put into a juvenile justice setting, the labeling theory works thus: The child commits a deviant act, whether it is an act which would be a crime if committed by an adult or simply one of the various "status offenses." If the deviant act goes officially unnoticed--the petty theft is not discovered, the unauthorized absence from school is not detected, etc.--the child comes to regard it as outside of his normal behavior pattern. He or she eventually grows out of his deviant behavior and becomes a law abiding member of adult society. If, on the other hand, the deviant act is discovered and does produce some official response, the labeling process begins. The child is brought into the juvenile justice system and receives his label--either delinquent or status offender. He or she comes to see the act, and as the labeling process proceeds, eventually himself or herself, as bad. This negative self-image is further reinforced by the rejections and other consequences produced by the stigma attached with the label until the particular youth becomes convinced he or she is not suited to associate with the "normal" members of society. He or she then begins to associate with others who carry the same stigma, closing more doors to acceptable behavior and facilitating the learning of new and different types of deviance.²⁸ The child's alienation from the rest of the community is intensified by confusion over the court process and by feelings that he or she has been treated unfairly by adult society. This is especially true where a child has been treated like a delinquent, even though he or she has committed no crime.²⁹

According to the labeling theory, most of the responsibility for the development of deviant behavior patterns belongs to the agent of social control who first responds to the child's deviant behavior.

Close to 90 percent of all young persons have, at some time in their lives, engaged in some behavior that could form the basis for juvenile court intervention.³⁰ What makes some of these young persons become delinquent while others escape this fate is not any underlying personality or character disorder, but the official reaction to the deviant act--here in the form of juvenile court intervention. Thus, the fact of adjudication as a status offender or delinquent is what distinguishes the two groups.³¹ The logical conclusion is that if the child would be left alone, he or she will stop behaving in a deviant manner.

This labeling theory is severely criticized by many judges and child care professionals.³² Judge Lindsay Arthur points out that, in the final analysis, the juvenile court record is less stigmatizing than an adult criminal record. Moreover, treatment is more important than stigma and the need for a means of providing this treatment to troubled youth outweighs any adverse effects that may come from involvement with the juvenile court. This is especially true with status offenders because they are often more mentally and/or emotionally disturbed than criminal offenders.³³

Anne Rankin Mahoney has attacked the labeling theory on a different ground. Pointing to the lack of empirical evidence available to support this theory, she concludes that it is at most a common sense notion glorified by being called a "theory." The difficulty is in attempting to show that a particular child modified his subsequent behavior toward delinquency as a result of his awareness of and reaction to the official label (delinquent) assigned to him. Although there is some evidence that the community reacts negatively to a child who has been involved with the juvenile court, there is very little evidence that the labeling affects family relationships or the child's self-perception.³⁴

Other criticisms directed at the labeling theory are that some scheme of classification is necessary to diagnosis an effective treatment of youths with behavior problems, and that the problem lies in the child's behavior rather than the labeling of it. The way to prevent long-term detrimental effects resulting from stigma is to make it more difficult for the public to gain access to juvenile court records.³⁵

Administrative Burden. The National Council on Crime and Delinquency has found that, "of approximately 600,000 children held each year in secure detention pending a court hearing, more than one-third are status offenders. Among the 85,000 committed each year to correctional institutions, 23 percent of the boys and 70 percent of the girls were adjudicated status offenders."³⁶ The International Association of Chiefs of Police says, "We cannot state precisely how overburdened the juvenile courts are with juvenile

cases that are non-criminal in nature; we can only guess from analyzing the writings of juvenile court judges that the number of such cases is indeed high and may, in some jurisdictions, comprises the largest percentage of all cases coming before the juvenile court."³⁷ The President's Task Force on Juvenile Delinquency and Youth Crime stated in 1967 that "(status offenders) account for over 25 percent of the total number of delinquent children appearing before children's courts and between 25 and 30 percent of the population of state institutions for delinquent children."³⁸ Professor Aidan R. Gough, in his tentative draft (Juvenile Justice Standards Relating to Status Offenses) for the IJA/ABA Juvenile Justice Standards Project, points out, "Every juvenile court law has some ground or grounds extending the court's power of intervention to cases involving anti-social but non-criminal behavior. Such cases probably comprise--though firm figures are not available--no less than one-third and probably close to one-half the workload of America's juvenile courts."³⁹

Thus, there appears to be close to unanimous concern among the major standards setting groups over the large number of children who come into contact with the juvenile court system as a result of some kind of status offense. That this state of affairs creates major problems for our courts today is probably not disputed by anyone. Court dockets are badly overloaded. Juvenile court personnel are required to spend so much time in processing truant, wayward or disobedient children through the system that precious little time is left over to investigate and deal with serious cases of delinquency and neglect.⁴⁰ A large portion of the court's usually meager resources must be devoted to children who pose no real threat to the community.⁴¹ The International Association of Chiefs of Police states that "As long as uncounted numbers of non-criminal cases are allowed to be referred to juvenile courts for disposition, these courts will never have adequate treatment resources to meet the needs of the delinquent child; i.e., the child who has committed a criminal offense."⁴²

The real issue here is not whether the vast numbers of status offenders create a problem for the juvenile courts (there is little or no dispute as to that fact), but what should be done to solve this problem. To those who feel the status offense jurisdiction meets genuine needs of society and children, the answer is more money--increased funding for court personnel, treatment programs and rehabilitative institutions.⁴³ The California Assembly Interim Committee which considered the California status offense statute, however, came to the conclusion that it was unrealistic to expect communities to provide the kind of resources necessary to effectively rehabilitate non-criminal problem children.⁴⁴ This committee and other standards groups see this overburdening as just one more argument for eliminating or at least narrowing the juvenile court's jurisdiction over non-criminal misbehavior.⁴⁵

The Court's Unsuitability to Handling Status Offense Problems.

The NCCD, in its 1974 Policy Statement advocating the removal of status offenses from the jurisdiction of the juvenile court, stated that although the juvenile court is capable of dealing effectively with criminal behavior that threatens the safety of the community, it is not capable of dealing effectively with the non-criminal behavior of troubled youth. It felt that the court is simply not structured to provide and supervise ongoing programs of rehabilitation services.⁴⁶ The California Interim Report found the most a court can do is monitor outward behavior and attempt to prevent any future deviance from the accepted norm--thus controlling the symptoms of any family difficulty, but doing nothing to alleviate the causes of such difficulties.⁴⁷

Professor Aidan R. Gough, in his Tentative Draft of Juvenile Justice Standards Relating to Status Offenses points out that typical status offense allegations do not lend themselves to resolution through the formal fact-finding process characteristically utilized by courts. Courts are not equipped to handle situations which can change with the passage of time, such as the relationship between a parent and a child.⁴⁸ Moreover, the task of evaluating the particular relationship and determining what can be done to rehabilitate it is far too complex and delicate to be handled in the traditional judicial fact-finding process.⁴⁹ Most judges lack the necessary expertise in diagnosing difficult behavioral problems and do not have at their disposal the resources to deal with them.⁵⁰ Thus, the court frequently draws inaccurate conclusions from the facts presented to it and orders a disposition that has no beneficial effect and sometimes a very negative effect.

On the other hand, the Task Force on Juvenile Delinquency and Youth Crime expressed concern over the possibility of having no effective way of preventing children from doing long-term harm to themselves.

"A firm objective way is needed to apply the truancy laws, fortify flagging parents, and encourage substitution of healthful for self-destructive pursuits before it is too late."⁵¹

Thus, there will be occasions when "the States concern for the child's welfare may outweigh doubts about the justification for and effectiveness of intervention."⁵² It is the responsibility of the juvenile court to decide when this crucial point has been reached--to decide when the child's right to liberty must give way to the state's interest in his or her welfare. It would be a violation of due process to place the responsibility for this decision entirely on any particular agency (private or governmental) without giving the child the chance to be heard in an impartial tribunal--the juvenile court.⁵³ Only a court can intervene in a child's life and force him or her to undergo treatment while at the same time

preserving to all constitutionally guaranteed rights.⁵⁴

Abuse of the Status Offenses Jurisdiction. Probably the most controversial of all the alleged abuses made of the status offense jurisdiction is that the juvenile court adjudicates a significant number of youths status offenders, when in actual statutory terms, they are neglected or delinquent children. In dealing with the California "status offense" statute,⁵⁵ the California Assembly Interim Committee on Criminal Procedure: Juvenile Court Processes found that most minors who come under the court's status offense jurisdiction could also come under the court's jurisdiction over neglected children.⁵⁶ The major difference appeared to the committee to be that the neglected child is usually younger and quite apparently the victim of an inadequate family situation. The status offender, on the other hand, is usually much older and, although also the victim of an inadequate family situation, has "the capacity to demonstrate in a dramatic fashion the results of abuse or neglect."⁵⁷ This problem is most apparent with allegations of incorrigibility, or being beyond parental control, where often the decision as to what kind of petition to file is made arbitrarily by a probation officer anxious to quiet the myriad of accusations, etc., characteristic of family conflict situations.⁵⁸ More often than not blame is placed on the child in these situations to a certain extent for the simple reason that it is easier to accuse a child than an adult and also because many courts, anxious to assume jurisdiction over a troublesome child, wish to avoid the delays associated with preserving the parents' rights in neglect proceedings.⁵⁹

Many children who have committed acts which would be crimes if committed by an adult are also made subject to the court's jurisdiction by means of a status offense petition. The most widely encountered explanation for this is that, because of the lesser standard of proof required for status offense allegations,⁶⁰ these petitions are easier to sustain than delinquency petitions. The status offense petition may also be the result of a plea bargain between the juvenile, who is anxious to avoid delinquency adjudication, and the probation department, that believes its proof of delinquency is inadequate. Judge Lindsay Arthur sees this as a favorable process for the juvenile because he is less stigmatized by his contact with the juvenile court if he is adjudicated a status offender rather than a delinquent. Furthermore, the range of dispositions available to the court is usually the same so the public is equally protected regardless of the jurisdictional basis employed.⁶¹ The California Assembly Interim Committee, however, called the practice of using status offense jurisdictional basis as an easy means of gaining control over a juvenile who had committed a criminal act a gross violation of fundamental legal principles. Moreover, since the minor and the community have come to equate the status offense with the delinquent, it is a worthless gesture in terms of protecting the child.⁶²

The other frequently discussed abuse of the status offense jurisdictional basis is that it is used by parents and other authorities as a means of escaping their own responsibilities to the child. The International Association of Chiefs of Police found that most status offense petitions stem from a parent, school, or other authority requesting the court to control behavior they have been unable to control themselves.⁶³ Thus, parents, etc., combine with the state to stigmatize a child for their own inadequacies. Furthermore, the courts may often allow themselves to be used by a parent as a means of punishing a difficult child. Once a petition has been filed, the court most often accommodates the desires of the parents possibly without ever making any determination as to whether or not the child has any need for court intervention.⁶⁴

Treatment. Nearly all standards groups have expressed concern over the fact that, in an overwhelming majority of jurisdictions, the dispositional alternatives available to the juvenile courts in dealing with status offenders are exactly the same as those used in dealing with delinquents. The most serious consequence of this identity of dispositional alternatives appears to be that non-delinquent children are committed to institutions where they are not only treated like delinquents, but come into constant contact with juveniles who have committed serious delinquent acts. Professor Aidan R. Gough, in his Tentative Draft of Juvenile Justice Standards Relating to Status Offenses states, "clearly the greatest vice (in the status offense jurisdiction) is the treatment of non-criminal but ungovernable children in essentially the same way as we treat youthful violators of the criminal law with maximum impetus (and opportunity for tutelage) given the former to become the latter."⁶⁵ The President's Task Force on Juvenile Delinquency and Youth Crime states that a child who has committed no criminal act should be sent to an institution for delinquents "only in the unlikely instance of a showing of special appropriateness or utter absence of alternatives."⁶⁶ The National Advisory Commission on Courts, although it took no position on whether or not the court should have jurisdiction over status offenses, did take the position that "if the ... court's jurisdiction includes children shown to have engaged in such 'conduct illegal only for children' placement of the children in institutions for delinquent children should not be permitted."⁶⁷ The International Association of Chiefs of Police states, "The mixing together of status offenders and real delinquents in detention centers and reform schools helps to provide learning experience for the non-delinquents on how to become real delinquents."⁶⁸

Amid all this sentiment expressed by the various standards groups against the commitment of status offenders and delinquents in the same institutions is the overwhelming state practice of doing just that. Only 14 states and the District of Columbia have any restrictions at all on placing status offenders and delinquents in the same treatment and/or detention facilities.⁶⁹ Judge Lindsay Arthur probably has found the key to this state of affairs--that most states

(if not all states) simply cannot afford to build and maintain two separate sets of institutions.⁷⁰ There is also the point of view that the fear of contamination from mixing status offenders and delinquents is grossly exaggerated. One child's needs may be quite different from another's and the system of treatment institutions should be able to respond to the requirements of both. However, the fact that one child commits a criminal act and the other only a status offense is not a valid measure of his or her needs.⁷¹ There is even some indication that the concern for the status offender forced to associate with delinquents may be misplaced. This is the feeling of those who believe that status offenders are often more mentally and emotionally disturbed than criminal offenders. It may be the delinquent who will suffer from forced association with seriously troubled status offenders.

The other major concern in the area of treatment of status offenders is that the juvenile court's goal of rehabilitating these youths and setting them straight with society is simply not being realized. The NCCD Board of Directors states that the "imprisonment of a status offender serves no humanitarian or rehabilitative purpose. It is instead unwarranted punishment, unjust because it is disproportionate to the harm done."⁷² The International Association of Chiefs of Police see the facilities for housing non-criminal juvenile offenders as the "state's human garbage dump" for poor problem children.⁷³

Moreover, the placement of the status offender in a "rehabilitative" institution requires removal from the family to treat a problem which is almost invariably family-centered, thus preventing any good that could have been attained through dealing with the problem in its natural setting.⁷⁴ These standards groups and commentators see the inability of the community to effectively treat and rehabilitate the status offender as a strong argument for abolishing the court's jurisdiction in this area.

Advocates of retaining the status offense jurisdiction respond with a statement of what they believe to be the reason for the court's apparent inability to rehabilitate--lack of resources. The community must provide the juvenile court with the programs and institutions it needs to effectively treat the beyond-control child, the truant, etc. Removal of the status offense jurisdiction would be a total abandoning of society's troubled youth. Furthermore, courts must be willing to compel agencies to develop treatment programs for children and must monitor the effectiveness of the programs once established. In essence, they call for creative reform of the juvenile court's system of handling status offenders, rather than abdication of responsibility to the community's difficult youth through abolishing the court's jurisdictional power over them.

Legal Issues. The most often cited constitutional infirmity of the status offense jurisdictional statutes is that the language of the statute is too indefinite to serve as a permissible standard by which to judge a juvenile's conduct and thus violates the Fifth and Fourteenth Amendment right not to be deprived of liberty without due process of law. A statute is too vague when it "either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application."⁷⁵ Language such as "in danger of leading an idle, dissolute life," "incorrigible" and "ungovernable" seem to fit the definition--especially in light of the fact that the same words or concepts vary in meaning from jurisdiction to jurisdiction.⁷⁶

When the indefinite statute is combined with the informal procedures of the juvenile court, the situation is ripe for overreaching. The judge becomes the "arbiter of not only the behavior, but also of the morals of every child (and to a certain extent the parents of every child) appearing before him."⁷⁷ The International Association of Chiefs of Police states, "A broad definition (of status offenders) has enlarged the limits of discretionary authority so that virtually any child can be deemed a delinquent if officials are persuaded that he needs correction."⁷⁸ Thus, judges will tend to fall back upon their own feelings as to what is or is not unreasonable behavior in a child. What to one person merely irritating may to another be the first steps toward a criminal career. The California Assembly Interim Committee felt that such a conflict built into a statute which can be the basis for depriving minors of their freedom, could only result in the most basic kind of injustice⁷⁹--depriving the child of his freedom without due process of law.

Although no upper level court has as yet declared a status offense jurisdictional statute void for vagueness,⁸⁰ lower federal courts have done so in a few cases. In Gesicki v. Oswald,⁸¹ the federal court for the Southern District of New York declared that state's Wayward Minor statute void for vagueness. The statute, which gave the court jurisdiction over one "who was morally depraved ... or in danger of becoming morally depraved,"⁸² was, however, in the criminal code and not in the Family Court Act. Thus, the holding may be limited to such statutes that carry obviously criminal sanctions--or at least to those located among a state's penal statutes.⁸³

In Gonzalez v. Maillard,⁸⁴ a three-judge federal court found the provision in California Welfare and Institutions Code Sec. 601 giving the juvenile court jurisdiction over a child "in danger of leading an idle, dissolute, lewd or immoral life" to be "too vague to serve as a constitutionally permissible standard on which to base an arrest, or an adjudication of a juvenile as a ward of the court" and permanently enjoined further enforcement of that provision.

The court based its decision on the seriousness of the deprivation of freedom and social stigma associated with being adjudicated a Sec. 601, and the fact that all other constitutional guarantees (right to counsel, hearing, notice, etc.) become meaningless when faced with a too vague statute. The Supreme Court vacated the Gonzalez decision in 1974 and remanded for reconsideration only of the order for injunction relief, thus possibly indicating that the declaratory judgment that the particular section of California Welfare and Institutions Code Section 601 in issue is unconstitutionally vague still remains valid.⁸⁵

To some of the standards groups, the answer to this vagueness problem is the elimination of the status offense jurisdiction entirely.⁸⁶ The President's Task Force on Juvenile Delinquency and Youth Crime felt that attempts to narrow the status offense jurisdictional base would probably be futile.⁸⁷ Statutes which deal with conduct or patterns of behavior must necessarily be more broadly drawn than statutes which deal with a specific act.⁸⁸ Furthermore, the responsibility for applying these necessarily broad statutes rests with those who administer its provisions, here the court personnel and the judges, and the situation will always be one in which overreaching is a problem.

The status offense jurisdiction may also be unconstitutional on the basis of equal protection of the laws. This doctrine requires not that all laws apply equally to everyone, but that all who are similarly situated before the law be treated the same. The questions then are whether (1) a child can be punished for stubbornness when his or her parent who shares responsibility for the child's actions goes unpunished and (2) whether a child can be adjudicated a delinquent for acts which are permissible when done by an adult. The answer to the first question depends on whether the status offense behavior is the fault of both the parents and the child or only the fault of the child.⁸⁹ If the former is true, the sanctioning of the child while the parent goes untouched by the law may be a violation of equal protection.⁹⁰ The answer to the second question depends on whether a child can constitutionally be punished for behavior wrong because of his or her social status of being a child. In Robinson v. California,⁹¹ the Supreme Court declared that punishment because of a status was unconstitutional. This is, however, arguably what is happening when a minor is adjudicated a status offender on the basis of a truancy law, or curfew law.

Two arguments are advanced for the legality of the status offense jurisdiction. The first is based on the *parens patriae* concept that children have a right to protection and custody rather than a right to freedom. Thus the state has the obligation to intervene and provide this protection where for some reason it is not forthcoming from parents. The second is that the state's

treatment of children in a manner different from the way in which it treats adults is necessary because of the child's immaturity. The child is incapable of adult understanding of the consequences of his or her actions and the state must intervene to prevent behavior which may be harmful to him or her.⁹²

7. Task Force Standards and Rationale:

The Introduction to the chapter on Families with Service Needs briefly describes the Task Force's overall response to this issue as follows:

After long and careful consideration of the various approaches taken by others, the members of the Task Force found themselves unhappy with the currently popular "either/or" approach--either retain court jurisdiction over "status offenses" in its traditional form or eliminate it entirely. When members asked themselves if there is conduct which is not criminal for an adult but which should be under some form of legal restriction for children, the answer was an emphatic "Yes!" Some retention of the court's power to intervene is appropriate and necessary not only to protect children from themselves but to serve as a forum where they can seek relief from intolerable circumstances. And a responsible approach demands more than the simple choice between accepting current practices and excluding all status offense behaviors from the family court's jurisdiction.

Therefore, the Task Force's primary action was to take the affirmative stance that some kind of well-planned court jurisdictional scheme for certain well-defined status behaviors can and must be established. The scheme must correct current evils without abandoning due process or fair proceedings. The Task Force then defined and limited the behaviors deserving of court intervention and described the judicial mechanism that should be set up to deal with the intervention in a new and limited way. In this approach, the traditional status "offenses" are abolished on the basis that such acts are no more offenses than the act of being neglected.

The Task Force was dissatisfied with the vague, open-ended criteria for jurisdiction presently employed. Instead, it selected five

specifically defined behaviors which it viewed as "clearly self-destructive or otherwise harmful to the child." These were: (1) repeated school truancy; (2) repeated disregard for or misuse of lawful parental authority; (3) repeated running away from home; (4) repeated use of intoxicating beverages; and (5) repeated or serious "delinquent acts" by children under 10 years of age.

The Task Force also specified that in determining jurisdiction the family court should be required to find (1) the truth of the allegations of the behavior and (2) that all available and appropriate outside services have been exhausted.

The truth of the facts set out in the request for services should be established without making any designation of fault. This requirement is a further expression of the Task Force's rejection of the traditional approach to status offenses which emphasizes the antisocial nature of the child's behavior....

In requiring that all nonjudicial and voluntary resources are first exhausted, the Task Force recognizes that, in most instances, the best and most effective place to deal with the behaviors that form the basis for Families with Service Needs jurisdiction is outside the family court system, through voluntary participation in a wide variety of community services and programs.... In this way, family court intervention will be made available only where a real need exists.

The Task Force viewed as especially important the concept that the behaviors identified

must be viewed in their entirety and adequate consideration must be given to the environment in which the behavior takes place. In some cases, a child engaging in this type of conduct may be behaving in an entirely normal or appropriate way.

Therefore, the Introduction emphasizes that,

In bringing these behaviors under the jurisdiction of the family court, the Task Force does not intend to perpetuate the traditional singular emphasis on the child. The Task Force feels that the first step in

this direction is to call this area of family court jurisdiction "Families with Service Needs." The change is more in substance than in semantics. What is advocated would bring the whole problem and all family participants under the jurisdiction and authority of the court regardless of who files the request for services.

The Task Force saw this as a major shift from the current approach to "status offenses" and an integral part of its philosophy on the subject. It articulated what it viewed as the proper scope of the court's jurisdiction in Standard 10.3

In the Families with Service Needs proceedings, once jurisdiction is established it should extend to the child, his parents and any public institution or agency with a legal responsibility to provide needed service to the child or parents.

In addition, the Task Force called for changes in the dispositional alternative available to the court in these cases (see Standard 14.23). It indicated that the court's dispositional authority should extend to any person or agency within its scope of jurisdiction, as outlined above. Consistent with the recommendations of many past commentators, the Task Force also specified that,

In no event shall the family court disposition confine the child in an institution to which delinquents are committed.

Footnotes:

¹President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, 25 (1967), hereinafter Task Force Report.

²Note, "Ungovernability, The Unjustifiable Jurisdiction," 83 Yale Law Journal 1383 (1974).

³J. Calof, "Issues on Status Offenders," unpublished paper prepared for New York State Division for Youth Council on Corrections.

⁴Note, supra note 2, p. 1384.

⁵Board of Directors, NCCD, "Jurisdiction Over Status Offenses Should be Removed from the Juvenile Court: A Policy Statement," 21 Crime and Delinquency 97 (1975), hereinafter NCCD Policy Statement.

⁶J. Calof, supra note 3, p. 2.

⁷A. Gough, "The Beyond-Control Child and the Right to Treatment: An Exercise in the Synthesis of Paradox," 16 St. Louis University Law Review, 182, 189 (1972).

⁸Id., p. 190.

⁹L. Ct. Arthur, "Status Offenders Need Help Too," 26 Juvenile Justice, 3, 5 (1975).

¹⁰J. Calof, supra note 3, p. 36.

¹¹Report of California Assembly Interim Committee on Criminal Procedure: Juvenile Court Processes, 30 hereinafter California Assembly Report.

¹²E. Lemert, "The Juvenile Court--Quest and Realities," in Task Force Report, pp. 91, 93 (1967).

¹³A. Gough, supra note 7, p. 192.

¹⁴Id., p. 193.

¹⁵NCCD Policy Statement 99.

¹⁶W. Sheridan and H. Beaser, Model Acts for Family Courts and State Local Children's Programs, p. 14, (Department of Health, Education and Welfare) hereinafter Model Act.

¹⁷A. Gough and M. Grilli, "The Unruly Child and the Law," 23 Juvenile Justice, 9, 11 (1972).

- ¹⁸Model Act, p. 15.
- ¹⁹Note, supra note 2, p. 1407.
- ²⁰National Advisory Commission on Criminal Justice Standards and Goals, Corrections, 574 (1973).
- ²¹NCCD Policy Statement, 99 (1974).
- ²²J. Calof, supra note 3, p. 31.
- ²³See, e.g., Task Force Report, National Advisory Commission, Corrections supra note 2, NCCD--Policy Statement; R. Kobetz and B. Bosarge, International Association of Chiefs of Police, Juvenile Justice Administration, 215 (1973) [hereinafter Juvenile Justice Administration]; Gough, Tentative Draft III, Juvenile Justice Standards Relating to Status Offenses (IJA/ABA Juvenile Justice Standards Project, 1975: not yet reviewed or approved by the Joint Commission [hereinafter Juvenile Justice Standards Draft]).
- ²⁴Task Force Report 23.
- ²⁵E. Lemert, supra note 12, pp. 92-93.
- ²⁶California Assembly Report 17.
- ²⁷J. Calof, supra note 3, p. 31.
- ²⁸A.R. Mahoney, "The Effect of Labeling Upon Youths in the Juvenile Justice System," 8 Law & Soc. Rev. 583 (1974).
- ²⁹J. Calof supra note 3, p. 31.
- ³⁰F. Orlando and J. Black, "Classification in Juvenile Court: The Delinquent Child and the Child in Need of Supervision," 25 Juvenile Justice 13 (1974).
- ³¹J. Calof supra note 3, p. 30.
- ³²Id., p. 32.
- ³³See L. Arthur supra note 9.
- ³⁴See A.R. Mahoney supra note 38.
- ³⁵See J. Calof supra note 3.
- ³⁶NCCD Policy Statement, 97.
- ³⁷Juvenile Justice Administration, 207.

- ³⁸Task Force Report, 4.
- ³⁹Gough, IJA/ABA Standards Draft, 1.
- ⁴⁰Gough, IJA/ABA Standards Draft, 6; Juvenile Justice Administration, 207.
- ⁴¹NCCD Policy Statement, 99.
- ⁴²Juvenile Justice Administration, 209.
- ⁴³J. Calof supra note 3, p. 41.
- ⁴⁴California Assembly Report, 10.
- ⁴⁵See, e.g., Juvenile Justice Administration, 209; Gough, IJA/ABA Standards Draft, 6.
- ⁴⁶NCCD Policy Statement, 98.
- ⁴⁷California Assembly Report, 11.
- ⁴⁸Gough, IJA/ABA Standards Draft, 18.
- ⁴⁹Note supra note 2, p. 1402.
- ⁵⁰J. Calof supra note 3, p. 38.
- ⁵¹Task Force Report, 26.
- ⁵²Id., p. 27.
- ⁵³R. Novak, "The Incurable Child Under the New Pennsylvania Juvenile Act: An Unsound, Unsupportable, and Unfortunate Policy Choice," 35 University of Pittsburgh L. Rev. 73, 90 (1973).
- ⁵⁴L. Arthur supra note 9, p. 6.
- ⁵⁵California Welfare and Institutions Code Section 601.
- ⁵⁶California Welfare and Institutions Code Section 600.
- ⁵⁷California Assembly Report, 4.
- ⁵⁸E. Lemert supra note 12, p. 93.
- ⁵⁹Note supra note 2, pp. 1392-1393.

- ⁶⁰Twelve states do require proof beyond a reasonable doubt for status offenses. They are Colorado, Florida, Georgia, Kentucky, Massachusetts, Nebraska, North Dakota, Oregon, South Dakota and Texas by statute; and New York and North Carolina by judicial decision.
- ⁶¹L. Arthur supra note 9, p. 6.
- ⁶²California Assembly Report, 26.
- ⁶³Juvenile Justice Administration, 206.
- ⁶⁴Note supra note 2, pp. 1394-1396.
- ⁶⁵Gough, IJA/ABA Standards Draft, 7.
- ⁶⁶Task Force Report, 27.
- ⁶⁷National Advisory Commission on Criminal Justice Standards and Goals, Courts, pp. 294-295 (1973).
- ⁶⁸Juvenile Justice Administration, 215.
- ⁶⁹Alaska, Maryland, Massachusetts, New Jersey, New Mexico and the District of Columbia prohibit by statute any commitment of status offenders to the same institutions as delinquents. New York has the same prohibition by virtue of judicial decision. Louisiana, South Dakota, Tennessee and Texas prohibit commitment of status offenders to state institutions housing delinquents. Florida and Minnesota prohibit the placement of first time status offenders in state institutions for delinquents. Georgia, Louisiana and the District of Columbia prohibit the temporary detention of status offenders awaiting hearing in the same facilities as juveniles charged with delinquent conduct. Gough, IJA/ABA Standards Draft, Appendix A.
- ⁷⁰Arthur supra note 9, p. 6.
- ⁷¹E. Schepes, "Delinquent Children and Wayward Children," 32 Federal Probation, pp. 42, 45 (1968).
- ⁷²NCCD Policy Statement, 98.
- ⁷³Juvenile Justice Administration, 215.
- ⁷⁴Gough and Grelle supra note 17, p. 11. See also Task Force Report, 45, Gough, IJA/ABA Standards Draft, pp. 18-19.
- ⁷⁵Connally v. General Construction Company, 269 U.S. 385 (1926).
- ⁷⁶E. Lemert supra note 12, p. 93.

- ⁷⁷Task Force Report, 25.
- ⁷⁸Juvenile Justice Administration, 214.
- ⁷⁹California Assembly Report, 22.
- ⁸⁰Gough, IJA/ABA Standards Draft, 14.
- ⁸¹Gesicki v. Oswald, 336 F. Supp. 371 (S.D.N.Y. 1971), aff'd sub. nom. Oswald v. Gesicki, 406 U.S. 913 (1972).
- ⁸²Id.
- ⁸³See Comment, "Juvenile Statutes and Non-criminal Delinquents: Applying the Void for Vagueness Doctrine," 4 Sexton Hall L. Rev., 184, 191 (1972).
- ⁸⁴Gonzalez v. Maillard, No. 50424 (N.D. Cal. 1971), vacated and remanded sub. nom. Maillard v. Gonzalez, 416 U.S. 918 (1974).
- ⁸⁵Gough, IJA/ABA Standards Draft, 16.
- ⁸⁶See, e.g., Task Force Report 27; Juvenile Justice Administration 214, Gough, Standards Draft, 16.
- ⁸⁷Task Force Report, 27.
- ⁸⁸Comment, supra note 83, p. 200.
- ⁸⁹See Sidman, "The Massachusetts Stubborn Child Law: Law and Order in the Home," 6 Fam. L. Q. 33, 49 (1972).
- ⁹⁰Gough IJA/ABA Standards Draft, 17.
- ⁹¹Robinson v. California, 370 U.S. 660 (1972).
- ⁹²J. Calof, supra note 3, pp. 45-50.

1. Issue Title: Truancy and Other School-Related Misbehavior--
Should school-related behavior be included
within the scope of jurisdiction of the family
court?

2. Description of the Issue:

Each state must decide if the state, and specifically the family court, should be provided with jurisdiction over truancy and/or in-school misbehavior. If such behavior is to fall within the jurisdiction of the family court, then the circumstances under which the family court can force a juvenile to attend school and/or intervene with respect to in-school misbehavior must be set forth.

3. Summary of Major Positions:

There are two positions taken on this issue:

One is to place the responsibility for dealing with truancy and in-school misbehavior on the state's juvenile or family court. Under this option, the court can force a juvenile to attend school and can also intervene to provide treatment and services at the first signs of in-school behavioral problems.

The other alternative is to place responsibility for dealing with children's school behavioral problems with the schools. Choosing this option may mean that the state educational system will require increased services to effectively deal with problems it has heretofore relied upon the juvenile or family court to handle.

4. Summary of State Practices:

Thirty-nine states and the District of Columbia specifically provide for court jurisdiction over truants.

They are Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

However, compulsory education laws exist in all states except Mississippi, thus it seems that those states without specific provisions for dealing with truancy do so under such categories as "ungovernable" or "incorrigible."

Most states also provide for court jurisdiction over juveniles who misbehave in school under the designations of "beyond control," "ungovernable," "incorrigible," or "habitually disobedient."

5. Summary of Positions by Standards Groups:

<p>IJA/ABA Tentative Draft</p> <p>Recommends withdrawal of the juvenile courts jurisdiction over truancy and in-school misbehavior.</p> <p>School related problems should be dealt with by noncoercive services outside of the juvenile justice system. Seriously disruptive or dangerous behavior dealt with under juvenile crimes.</p>	<p>Children's Defense Fund</p> <p>Recommends truancy be decriminalized & treated as school problem rather than as law enforcement problem.</p> <p>Looks to schools to solve behavior problems through increased services & better educational programs.</p>	<p>1967 President's Task Force on Juvenile Delinquency & Youth Crime</p> <p>Recommends serious consideration given to eliminating entire status offense jurisdictional base.</p> <p>Also looks to schools to develop programs, etc., which are more responsive to student needs.</p>	<p>Uniform Juvenile Court Act (1968)</p> <p>Includes youths who are habitually truant and in need of treatment within jurisdiction of juvenile court.</p>	<p>IACP</p> <p>Recommends elimination of status offense jurisdiction.</p>
<p>NAC Corrections</p> <p>Recommends children accused of non-criminal offenses no longer come under the delinquency provision.</p>	<p>NAC Courts</p> <p>No position taken.</p>	<p>NCCD</p> <p>Recommends elimination of status offense jurisdiction.</p>		

6. Analysis of the Issue:

American society places great value on the education of its youth. Traditionally, the parent's role in the educational process has been to provide encouragement, discipline and where necessary even coercion to see that their children receive the best education possible. It is not surprising, therefore, that the power to deal with school-related behavioral and attendance problems is usually included under the parens patriae function of the juvenile or family court. This is evidenced by the fact that 39 states and the District of Columbia include truancy among the behaviors which will subject a minor to the jurisdiction of the juvenile or family court,¹ and many states include disobedience of school authorities under the various characterizations of being beyond control, incorrigible, habitually disobedient, etc.² In addition, all states except one, Mississippi, provide for compulsory school attendance for all children below a given age.³

There is very little dispute over the fact that juvenile delinquency is closely associated with all types of childhood educational problems.⁴ Standards groups, commentators and experts agree that erratic attendance and poor patterns of school behavior are some of the primary indicators of delinquent tendencies.⁵ Today's truant is tomorrow's school dropout, unemployable and forced to resort to crime to earn a livelihood.⁶ Chronic inability or unwillingness to conform to the school's regulations or to follow the commands of school authorities indicates an ultimate inability or unwillingness to conform to society's criminal law.

Truancy. If the assumption is that each child must receive a given amount of formalized schooling to obtain the tools he or she needs to become a law abiding and productive member of society, some form of coerced involvement in the educational process will be necessary to deal with those who shun this socializing process. Some commentators note that to expect the school to deal with the problem of a child who is not even in attendance is unrealistic. The only institution with ultimate constitutional ability to intervene in a child's life and coerce a certain behavior is the court. To place this responsibility with any other agency, be it public or private, would be a basic denial of due process of law.⁷ Moreover, there is some evidence that involvement with the juvenile justice system, that is, having to appear in court before a judge, can have a long-range effect of reducing not only future truancy, but also future delinquency.⁸

Professor Aidan R. Gough in his Tentative Draft of the Institute for Judicial Administration/American Bar Association (IJA/ABA) Juvenile Justice Standards Relating to Status Offenses describes the typical American response to unauthorized non-attendance at school. The juvenile is first suspended, thus accomplishing for him or her the original goal of non-attendance, this time compelled.⁹ The

child is then referred to the juvenile court with the intention that that tribunal will order him or her to attend school. The ultimate sanction for failing to do so usually is a commitment to a state institution for juvenile delinquents.¹⁰

The Children's Defense Fund questions the effectiveness of such "criminal" sanctions to compel school attendance. It found that truancy can be the result of a number of social, educational, economic and health problems which may not in any sense evidence delinquent tendencies. School officials, however, customarily suspend children for truancy without any inquiry about its cause.¹¹ Furthermore, involving the truant in the juvenile justice system exposes him or her to all the negative implications associated with that involvement¹² and in some cases may do more harm than good.

Both the Tentative Draft of IJA/ABA Juvenile Justice Standards Relating to Status Offenses and the Children's Defense Fund recommend that truancy not come under the jurisdiction of juvenile or family court--that it be treated as a school problem and not a problem of law enforcement. The Children's Defense Fund further recommends a substantial reassessment of school attendance problems with an eye to finding a way to make the school a place where children want to be. The Tentative draft of Juvenile Justice Standards Relating to Status Offenses points out that this kind of reassessment and development of programs will not occur while the court continues to have jurisdiction over truants because the schools will continue to be encouraged to take the less complicated route of suspension and referral to juvenile court. Finally, Professor Gough states:

"Providing for the removal of juvenile court intervention in truancy cases in no sense denigrates the importance of a decent education, nor the devastating impact of a child's not having one. It reflects, rather, the conviction that coercive judicial intervention has not proven demonstrably apposite to severing that education, and in many cases has worked positive mischief by treating youth in the same way as if they had committed criminal acts."¹³

In-School Misbehavior. Failure or inability to behave while in school is also seen by some judges and commentators as a behavioral problem which indicates delinquent tendencies and therefore should be referred to the juvenile or family court. Schools, they say, are in the business of educating. They are not institutions for the treatment for childhood behavior problems and do not have the resources and personnel to carryout that function. Furthermore, the school system must respond to the educational needs of a vast number of children and must maintain an atmosphere conducive to learning. There must be some way to weed out the juvenile who is disruptive and makes it impossible for other students to obtain the maximum benefit from classroom instruction and other school

programs. By the same token this individual should not be suspended or expelled from school and ignored, but should be referred to the juvenile or family court where he or she can receive appropriate treatment and services.

The NCCD, however, states in its policy statement advocating the abolition of status offense jurisdiction that the challenge to school authority is a normal and essential part of growing up and establishing a personal identity and should not subject a juvenile to the jurisdiction of the court. The 1967 President's Commission on Law Enforcement and Administration of Justice: Task Force on Juvenile Delinquency states that "the way in which the school responds to early signs of misbehavior may have a profound influence in either diverting the youngster from or propelling him along the path to a delinquent career."¹⁴ Even a school administrative sanction of some sort, such as placement in a special classroom or temporary suspension, can have a severe labeling and exclusionary effect on the child¹⁵ and may significantly retard future educational achievement. It follows that official action by the juvenile or family court system may have an even more profound effect upon that child. This entire process may be particularly damaging to a disadvantaged minority child who has no strong commitment to education in the first place.

Where the behavior is violent, threatening or severely disruptive and endangering to others, all agree it should be handled under the laws relating to juvenile delinquency. However, where it has not reached such proportions, the 1967 President's Task Force, the Children's Defense Fund and the Tentative Draft of IJA/ABA Juvenile Justice Standards Relating to Status Offenses all look to the educational system to find the reasons behind and the appropriate ways of dealing with misbehavior in school.

7. Task Force Standards and Rationale :

The Task Force addressed this issue in Standard 10.5.

The Families with Service Needs Jurisdiction should include jurisdiction over truancy. Truancy should be defined as a pattern of repeated unauthorized absences or habitual absence from school by any juvenile subject to the compulsory education laws of the state.

As the commentary indicates,

/I/n considering the various school-related misbehaviors that commonly come within the juvenile or family court's jurisdiction, the Task Force came to three conclusions. First,

school misbehavior consisting of acts which would be crimes if committed by an adult should be handled under the family court's delinquency jurisdiction. Second, general in-school misbehavior not amounting to delinquent acts is not appropriate for family court intervention. The community should be encouraged to develop resources and services outside the court system to handle these problems. And finally, in a limited number of cases, school truancy is a problem that needs family court intervention.

As to the rationale for requiring "a pattern of repeated unauthorized absences or habitual absence," the commentary states:

Most children who are truant do not need the family court to provide them with the services they require. Their problems can be solved through existing community social services. Thus, the court's power to intervene in the case of truancy should be exercised only when a child continued absence from school clearly indicates that he is in need of services and all possibilities for obtaining these services outside of the court system have been explored and exhausted.

Footnotes:

¹They are Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

²Gough, Tentative Draft III, Juvenile Justice Standards Relating to Status Offenses (1975; not yet reviewed or approved by Joint Commission) [hereinafter Tentative IJA/ABA Standards Draft].

³See Children's Defense Fund, Children Out of School in America 56 [hereinafter Children Out of School].

⁴See President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, pp. 49-54 (1967); Children Out of School, pp. 55-58 and 117-147.

⁵See D. Saccuzzo & J. Milligan, "Mass Truancy Hearings: A Follow-Up Study," 24 Juvenile Justice, p. 31 (1973).

⁶E. Schepses, "Delinquent Children and Wayward Children," 32 Federal Probation (2) pp. 42, 45 (1973).

⁷R. Novak, "The Incurable Child Under the New Pennsylvania Juvenile Act: An Unsound, Unsupportable and Unfortunate Policy Choice," 35 U. of Pitt. L. Rev., pp. 73, 90 (1973).

⁸D. Saccuzzo and J. Milligan, supra note 5, p. 34.

⁹See Children Out of School 65; quoting Denver school official, "You haven't solved anything by suspending for truancy. To me it's ridiculous: the crime and the punishment are identical."

¹⁰Tentative IJA/ABA Standards Draft, pp. 58-59.

¹¹Children Out of School, p. 62.

¹²See Comparative Analysis "Should status offenses come within the jurisdiction of the juvenile or family court?"

¹³Tentative IJA/ABA Standards Draft, p. 60.

¹⁴Task Force Report, p. 51.

¹⁵See Children Out of School, Chapter 5 "School Discipline and Its Exclusionary Impact on Students."

¹⁶See Comparative Analysis supra note 12. "Labeling/Stigmatization."

1. Issue Title: Disobedience to Parents--Should disobedience to parents be included within the scope of jurisdiction of the family court?

2. Description of the Issue:

Each state must determine if the family court should have jurisdiction over the juvenile who is disobedient to his or her parents. Where the decision is made to grant the family court jurisdiction over this behavior, further determinations will have to be made as to how extensive the court's power of intervention should be, what procedure will accomplish this intervention, and what dispositional alternatives will be available to the court.

3. Summary of Major Positions:

There are three major positions taken on this issue:

One is to make the disobedient child subject to family court jurisdiction through some type of status offense statute. This alternative has the advantage of allowing the court to force the juvenile to obtain services and treatment at the earliest signs of difficulty. However, it tends to assign blame only to the child for what is often a family problem, and has all the disadvantages associated with involving a child in the juvenile justice system.

The opposite position would be to exclude entirely these disobedience problems from the jurisdiction of the family court. This does avoid all the adverse consequences commonly associated with juvenile or family court intervention in a child's life. On the other hand, the court, under this option, would be unable to intervene in even the most terrible of family conflicts unless such intervention could be justified on the basis of parental neglect or abuse or under the state's criminal laws.

A third alternative is to provide for only a very limited family court involvement in the problem of the disobedient child. Limitations can be structured in such a way that judicial intervention by virtue of this behavior is the exception rather than the norm and would take place only as a last resort where all other available resources have been exhausted.

4. Summary of State Practices:

State provisions for juvenile court intervention on the basis of disobedience to parents use the following characterizations:

Beyond Control	AL, AZ, CA, CO, CT, FL, HI, IL, IN, KY, LA, MD, MS, MT, NM, NY, NC, OH, OK, OR, SC, SD, UT, VT, VA, WA, WV, WY
Ungovernable	AK, DE, GA, IN, IA, LA, MD, MN, MS, MT, NB, NV, NH, NJ, NM, NY, ND, PA, TN, VA, WV, WI, WY
Incorrigible	AL, DC, IN, ME, MS, NJ, NY, VA, WA, WV WY
Habitually Disobedient	AD, AZ, AR, CA, FL, GA, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MT, NB, NV, NH, NJ, NM, NY, NC, ND, OH, PA, RI, TN, VA, WV, WY, DC

5. Summary of Positions Recommended by Standards Groups:

<p>IJA/ABA Tentative Draft</p> <p>Parental defiance which is neither criminal conduct on the part of the youth nor evidence of parental neglect or abuse should support juvenile court intervention only upon a crisis intervention rationale.</p> <p>Such behavior should never be the basis for making the juvenile a ward of the court.</p>	<p>IACP</p> <p>Supports removal of status offense jurisdiction.</p> <p>Recommends the establishment of a family "equity" court to rehabilitate children in a manner neither punitive nor stigmatizing.</p>	<p>NCCD</p> <p>Recommends removal of entire status offense jurisdiction.</p>	<p>HEW Model Act</p> <p>Eliminates jurisdiction over status offenders. Provides expanded definition of neglect to provide services on a "no fault" basis and only to accomplish a specific legal objective.</p>	<p>NAC Corrections</p> <p>Recommends children, accused of non-criminal offenses no longer come under the delinquency jurisdiction.</p>	<p>NAC Courts</p> <p>No position taken.</p>	<p>1967 President's Task Force on Juv. Delinquency & Youth Crime</p> <p>Advocates serious consideration given to complete elimination of jurisdiction over conduct illegal only for a child.</p>
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6. Analysis of the Issue:

Provisions for state intervention in the lives of children for failure to obey the commands of their parents appear under a number of various characterizations (habitually disobedient, ungovernable, beyond control, incorrigible) in the juvenile statutes of almost every jurisdiction in the United States.¹

Support for these provisions is strong among juvenile and family court judges and various child care specialists. Experience has demonstrated to these authorities that misbehavior at home often represents the initial stages of more serious social deviance and may be the first step toward a career of delinquency and crime. Judge Lindsay Arthur, for example, feels that even where the particular behavior forming the basis for court intervention appears relatively insignificant, it is often indicative of a serious underlying difficulty that calls for immediate treatment.²

Provision for court jurisdiction over disobedient children also reflects this "society's long standing belief that the cohesion of the family and household is essential to the good order and functioning of the state."³ The family is seen as the primary source of control and parents are charged with the task of rearing children who are well adjusted and able to function within the norms and laws of our society. Although most parents are able to accomplish this through consistent and sensitive discipline, some find it to be beyond their capabilities. The court's jurisdiction merely provides the legal backing these parents need to adequately perform their function. Supporters of jurisdiction over disobedience to parents thus argue that were we to remove this behavior from the reach of the juvenile court, parents would be left with only their own powers of persuasion to provide the necessary controls. Children who are the most difficult to control would most likely be of parents with the least effective powers of persuasion.⁴ The Honorable Justine Wise Polier (retired family court judge, New York City) describes the situation as relating to "poor harassed parents, terribly fearful of the results of drinking, drug abuse, stealing, running away and promiscuity exhibited by their children. They want some help before something terrible happens."⁵

On the other hand, many current standards groups and commentators have questioned the justification for and the effectiveness of dealing with the problems of the disobedient child through the juvenile justice system. Much of the concern expressed is that such problems are invariably family centered and the juvenile court process is demonstrably inept at dealing with such difficulties. The task, they say, of evaluating the relationship between a parent and child and determining what can be done to rehabilitate it is far too complex and delicate to be handled in the traditional

judicial fact-finding process.⁶ Professor Aidan R. Gough, in his Tentative Draft of IJA/ABA Juvenile Justice Standards Relating to Status Offenses states, "... the family problems encountered in the exercise of the status offense jurisdiction range from seemingly trivial matters to complicated, and polycentric dilemmas which virtually defy solution."⁷ Many times allegations of incorrigibility, etc., are almost impossible to distinguish from parental neglect or abuse.⁸ Probably a significant number of these status offense cases, particularly among older children, are in actual statutory terms, neglect or abuse.⁹

Concern is also expressed over the fact that the range of dispositions for status offenses is identical in most jurisdictions to that available for delinquents. The treatment programs that the juvenile justice system has to offer often remove the juvenile from the home, where his or her problem probably originated, still exists and seemingly must be treated.¹⁰ Also the existence of judicial power to intervene in cases of disobedience encourages parents to forego their role as disciplinarian and rely on the court to control a child every time they are unable to do so.¹¹ Thus, effective means of dealing with misbehavior within the family are never really given a chance to develop.

The above concerns have prompted some groups and commentators to advocate the complete abolishment of the juvenile or family court status offense jurisdiction. All acknowledge that a major drawback of this position is that it would preclude juvenile or family court involvement in even the worst situations and "would mean losing the opportunity of reclamation in a few cases."¹² However, justification for abolition is found in the fact that involvement with the juvenile justice system often works actual harm on a child and rarely provides any realistic help. To this justification, Judge William S. Fort states, "It is a novel doctrine indeed which would have the state ignore the needs of a child and abandon its protective function because 'we really do not know what our present power achieves, and in at least some cases suspect it may do more harm than good.'"¹³

Some of the standards groups have attempted to deal with this shortcoming inherent in abolishing all status offense jurisdiction. One example of this is the Tentative Draft of IJA/ABA Juvenile Justice Standards Relating to Status Offenses. It sets up a system of crisis oriented services which attempts, "To strike a balance between the present coercion of the status offense jurisdiction and a complete 'hands-off' attitude toward the minor, which is unrealistic and feasible /sic/."¹⁴ Judicial intervention is allowed only where a juvenile requires living arrangements other than with his parents or guardian, and such arrangements cannot be made by agreement between parent and child. In this situation, the family court has special jurisdiction to review any alternate residential placement chosen

by the juvenile or obtained through some kind of voluntary services. The determination the court is to make is whether the residential placement meets minimal requirements for the minor's safety and welfare. In no case may the court compel the minor to return to or remain at home, nor can it subject him or her to any long-term family court jurisdiction. Under this system, the family court can make sure that the child is not in danger without involving him or her in the entire juvenile justice process and without attempting to deal with problems best left to social service agencies.¹⁵

The HEW Model Act also attempts to provide a solution short of the traditional status offense jurisdiction to deal with the problem of court intervention in the case of disobedient children. It provides for an expanded definition of neglect, which allows the court to exercise its jurisdiction as a last resort where the parent is "unable to discharge (his or her) responsibility to and for the child," and court action is necessary to accomplish a specific legal objective-- such as a change in legal custody. In this way the court is able to supply services where needed without having to label a child as "incorrigible" etc.¹⁶

7. Task Force Standards and Rationale:

The Task Force's Standard 10.6 on Disregard for or Misuse of Parental Authority specifies that,

The Families with Service Needs jurisdiction should include jurisdiction over the repeated disregard for or misuse of lawful parental authority.

The commentary elaborates on the standard as follows:

Unfortunately, the traditional status offense jurisdiction over the "incorrigible" or "beyond control" child has been an easy and much overused means of court intervention in all kinds of family-related problems. ...

Family court jurisdiction over disobedient children should be narrowly confined to those instances where there is a very difficult family situation and a clear need for services otherwise unavailable in the community.

The standard is intended to cover not only cases where children repeatedly disregard proper exercises of parental authority, but also "situations where unreasonable and pointless parental demands on a child are producing serious family conflict." This approach was viewed as consistent with the Task Force's overall philosophy for the Families with Service Needs jurisdiction: that the behavior should be viewed in its entirety and adequate consideration should be given to the environment in which the behavior takes place.

Footnotes:

- ¹Mississippi and Texas do not appear to have provisions to deal with this problem under their status offense jurisdiction.
- ²L. Arthur, "Status Offenders Need Help Too" 26 Juvenile Justice 3 (1975).
- ³A. Gough, "The Beyond-Control Child and the Right to Treatment: An Exercise in the Synthesis of Paradox" 16 St. Louis University Law Review 182, 190 (1972).
- ⁴L. Arthur supra note 2, p. 5.
- ⁵J. Calof, "Issues on Status Offenders" 36 (unpublished paper prepared for the New York Division for Youth--Council on Corrections).
- ⁶Note, "Ungovernability, The Unjustifiable Jurisdiction" 83 Yale Law Journal 1383, 1402 (1974).
- ⁷Gough, Tentative Draft III, Juvenile Justice Standards Relating to Status Offenses 56 (1975; not yet reviewed or approved by Joint Commission) [hereinafter IJA/ABA Tentative Standards Draft].
- ⁸E. Lemert, "The Juvenile Court--Quest and Realities"--President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 91, 93 (1967).
- ⁹IJA/ABA Tentative Standards Draft 56.
- ¹⁰See, President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 45-47 (1967) [hereinafter Task Force Report].
- ¹¹IJA/ABA Tentative Standards Draft, 55-56.
- ¹²Task Force Report 27.
- ¹³Fort, "From the President" 19 Juvenile Court Judges Journal 2, 7 (1968).
- ¹⁴IJA/ABA Tentative Standards Draft 95.
- ¹⁵See IJA/ABA Tentative Standards Draft, Part V - Alternative Residential Placements for Minors in Family Conflict.
- ¹⁶W. Sheridan and H. Beaser, Model Acts for Family Courts and State Local Children's Programs 15 (1974).

1. Issue Title: Runaway--Should the family court have jurisdiction over children who have absented themselves from the home of their parent or guardian without permission?

2. Description of the Issue:

Each state must determine if the state family court should have jurisdiction over children who have absented themselves from the home of their parents or guardian without permission. Where the family court is given jurisdiction over this behavior, the state must also decide whether it should include all runaways or only a limited class of runaways--such as those in immediate danger. Finally, some determination will have to be made as to what dispositional alternatives and resources will be utilized to provide appropriate services.

3. Summary of Major Positions:

There are three major positions available on this issue:

The first is to include running away from home as one of the behaviors that allows the juvenile or family court to exercise its jurisdiction over a child. This alternative has the advantage of allowing the court to protect the child who is in danger by ordering immediate custody and services. However, it has the disadvantage of involving a child who has committed no criminal act in the juvenile justice system and potentially exposing him to the same dispositions that are available to treat children who have committed criminal acts.

The opposite position would be not to give the juvenile or family court jurisdiction over runaway youths, but to rely on voluntary services provided to such youth outside of the juvenile justice system. Where such services are not available, however, this position may expose a great many runaway children to danger that juvenile court jurisdiction may have avoided.

A third option would be to provide for some kind of limited family court jurisdiction over runaway youth who have not been helped by voluntary services because they do not exist or have been ineffective. This alternative would promote full utilization of available community resources, but would allow for family court intervention where it is absolutely necessary for the protection or treatment of a particular child.

4. Summary of State Practices:

Twenty-four states specifically provide for juvenile or family court jurisdiction over runaways. They are: Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Indiana, Kansas, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Nebraska, Nevada, North Carolina, Ohio, Oregon, Rhode Island, South Dakota, Texas, Virginia, West Virginia and Wyoming. Others do so by virtue of provisions for children who are "habitually disobedient," "ungovernable," etc.

5. Summary of Positions Recommended by Standards Groups:

IJA/ABA Tentative Standards Draft	IACP	HEW 1974 Model Act	President's 1967 Task Force on Juvenile Delinquency & Youth Crime	NAC Corrections
Advocates elimination of status offense category sets up system for dealing with runaways that is consistent with the federal Juvenile Justice & Delinquency Prevention Act of 1974--Runaway Youth Act.	Advocates elimination of status offense jurisdiction.	Eliminates status offense jurisdiction. Provides an expanded neglect definition to allow juvenile court intervention where necessary to provide services & placement.	Recommends serious consideration be given to eliminating status offense jurisdiction.	No position taken.
Uniform Act 1968	NCCD	Runaway Youth Act 1974		
Includes child who is habitually disobedient of lawful and reasonable commands of parents and in need of treatment--would cover child absent from home without parental permission.	Recommends elimination of status offense jurisdiction.	<p>Problem of locating, detaining and returning runaways should not be the responsibility of police departments and juvenile justice authorities.</p> <p>Federal government has the responsibility of developing an effective system of temporary control outside the law enforcement structure.</p>		

6. Analysis of the Issue:

Juveniles who have absented themselves from the home of their parents without permission present unique and critical problems for today's communities. Their numbers are staggering--more than one million per year in the years 1973 and 1974.¹ Many are pre- and early adolescents, inexperienced and without the resources to adequately care for themselves. Most have run away because of varying degrees of family problems, from insignificant disagreements to physical abuse at the hands of their parents. In some cases, emotional distress or mental illness has prompted the child's flight. In all instances there is some underlying personal or family conflict which has precipitated this behavior. One commentator states, "Today more and more youngsters tell us all is not well by 'voting with their feet'--running away from home."²

There is universal agreement that appropriate services must be made available to these youths. The crucial question is whether these services should be provided through family court jurisdiction over runaway youth, or whether they should be made available on a strictly voluntary basis through other community agencies.

Twenty-four states specifically provide for juvenile or family court jurisdiction over runaways.³ In other states this behavior is included under the more general terms of ungovernability, incorrigibility.

Most juvenile and family court judges and court personnel feel very strongly that the status offense jurisdiction over runaway juveniles is the only way to meet their unique needs. A great many of these children are finally taken into custody far away from home. If they are to be returned home, where whatever problem that prompted their behavior must be dealt with, they must be in some way held in one place while arrangements can be made. This is a clear deprivation of liberty and would be impossible without some manner of court action. The same is true where a child threatens to run away or consistently refuses to stay at home. There must be some authoritative control over him or her and the only constitutional way to provide this control is through the court.⁴

Moreover, supporters of court jurisdiction over runaways point to the undeniable fact that, at the present time, there is no other public or private agency willing or able to assume responsibility for protecting the welfare of these youths. Thus, if the juvenile and family courts were simply to abdicate their control in this area, thousands of runaways would be exposed to unnecessary danger while the various communities struggled to find resources and establish programs sufficient to handle such an extensive and complex problem.

Furthermore, communities which have special attraction to runaways (for example, Haight Ashbury in the late '60's) would, in the final analysis, bear a disproportionate cost of providing such services.

The United States Congress took a position on this issue in the Runaway Youth Act of the Juvenile Justice and Delinquency Control Act of 1974. It found that the problem of runaway youth has reached alarming proportions, creating a substantial law enforcement problem for most communities. Furthermore, it states that, "many such young people, because of their age and situation, are urgently in need of temporary shelter and counseling services." However, "the problem of locating, detaining, and returning runaway children should not be the responsibility of already overburdened police departments and juvenile justice authorities," and "in view of the interstate nature of the problem it is the responsibility of the Federal Government to develop ... an effective system of temporary care outside the law enforcement structure." To this end, a federal grant program has been established to provide funding for locally controlled facilities providing temporary shelter and counseling services to juveniles who have left home without the permission of their parents or guardian. Such facilities will not be a part of the law enforcement structure, but will have the obligation to set up a working relationship with that structure and to comply with the state laws concerning runaways.⁵

There are also a large number of commentators and standards groups that advocate the complete elimination of the status offense jurisdiction--including that over runaways. (For a complete analysis for the various arguments for and against abolition of the status offense jurisdiction see the Comparative Analysis titled "Should the family court have jurisdiction over status offenses?"). Two of these groups have gone one step further, however, and proposed a method of dealing with runaway children short of the traditional status offense jurisdiction.

Professor Aidan R. Gough in his Tentative Draft of IJA/ABA Juvenile Justice Standards Relating to Status Offenses states that running away, like all other forms of non-criminal misbehavior, should not be treated the same as behavior which violates the criminal law. There is no evidence to indicate that runaways are any more likely to violate the criminal law than any other juvenile. Furthermore, the family is usually in greater conflict in runaway situations, than in any other specific behavior covered under the traditional status offense jurisdiction. However, most courts have few resources to deal with this type of problem and can offer the juvenile little more than detention and institutional placement outside the home. For these reasons, the draft attempts to set forth a method of dealing with runaway children that is consistent with the Runaway Youth Act (supra). It provides for state-licensed

temporary shelter facilities for runaway youth, the staff of which would have the responsibility of notifying the minor's parents of his or her whereabouts and condition, and providing services necessary to find a secure living arrangement for the minor. If it is not possible to find such a secure living arrangement agreeable to both the minor and his or her parents, the Proposed IJA/ABA Standards provide for family court jurisdiction on the basis of neglect where the youth is unable to care for him or herself, or a certificate of emancipation where he or she is able to do so.⁶

The HEW Model Act provides similarly for family court jurisdiction in situations where a child has run away from home, and voluntary agreement for care and services cannot be made. This is not achieved, however, through a status offense jurisdiction, but through an expanded definition of neglect. The definition speaks of a condition or status--that of a child "whose parents are unable to discharge their responsibility to and for the child"--but requires no finding of fault as to any party. This is intended to allow the court to see to it that remedial measures are taken when needed, but avoids labeling the child as a runaway.⁷

7. Task Force Standards and Rationale:

The Task Force addressed the issue of runaways in Standard 10.4.

The Families with Service Needs jurisdiction should include jurisdiction over juveniles who repeatedly run away from home. Running away should be defined as a juvenile's unauthorized absence from home for more than 24 hours.

While the Task Force felt that isolated instances of running away rarely indicated such severe family dysfunction or personal problems as to justify judicial intervention, it recognized that a pattern of repeated acts of leaving home without permission and remaining away for extended periods of time may indicate an underlying problem requiring the attention of the family court.

The commentary to the standard indicates that,

The family court should be the agency of last resort for dealing with the child who refuses or has not benefited from voluntary services, repeatedly runs away and is unable to care for him or herself.

Footnotes:

¹Gough, Tentative Draft III, Juvenile Justice Standards Relating to Status Offenses (1975; not yet reviewed or approved by Joint Commission) [hereinafter IJA/ABA Tentative Standards Draft].

²J. Stekitee, "Community and Behavioral Approaches to Delinquency: The Courts Perspective" 24 Juvenile Justice 20 (1973).

³They are--Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Indiana, Kansas, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Nebraska, Nevada, North Carolina, Ohio, Oregon, Rhode Island, South Dakota, Texas, Virginia, West Virginia and Wyoming.

⁴W. Fort, "From the President" 19 Juvenile Court Judges Journal pp. 2, 7 (1968).

⁵Runaway Youth Act, 42 USC pp. 5701-5751 (1974).

⁶See IJA/ABA Tentative Standards Draft, Part III--"Runaway Minors" pp. 72-85.

⁷W. Sheridan and H. Beaser, Model Acts for Family Courts and State-Local Children's Programs p. 15 (1974).

1. Issue Title: Conduct Dangerous to Self or Others--Should the family court have jurisdiction over a juvenile on the basis of conduct which violates no criminal law, but presents a danger to the juvenile or others?

2. Description of the Issue:

When a child's behavior reaches the point where, although it violates no criminal law, it presents a danger either to him or herself or to others, the state must have some procedure to enable it to do whatever is necessary to protect that child and society. Each state must decide if this is to be accomplished through the family court status offense jurisdiction. If the family court is given jurisdiction over this kind of behavior, it must also be provided with dispositional alternatives appropriate to its treatment.

3. Summary of Major Positions:

There are two positions available on this issue:

The first is to give the family court jurisdiction over behavior which is not criminal, but which presents a danger to the juvenile or others. With this alternative, the family court must also be given access to a wide variety of community psychological and medical treatment personnel, services and facilities. It must also be provided with detention and dispositional alternatives appropriate to behavior which is dangerous because of mental or physical illness.

The opposite position is not to give the juvenile court jurisdiction over this kind of non-criminal, but potentially dangerous behavior. In this case, other areas of law, such as the state's mental health temporary custody and commitment procedures would have to be expansive enough to deal with the child who is acting in a manner dangerous to himself or others, but who is not within the delinquency or neglect jurisdiction of the family court.

4. Summary of State Practices:

Twenty-seven states provide for juvenile or family court jurisdiction over conduct dangerous to self or others. They are--Alaska, Arizona, Colorado, Connecticut, Delaware, Hawaii, Indiana, Iowa, Kansas, Louisiana, Maryland, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Utah, Virginia, West Virginia, Wisconsin and Wyoming.

5. Summary of Positions Recommended by Standards Groups:

<p>IJA/ABA Tentative Draft</p> <p>Recommends that conduct dangerous to self or others not form the basis for the court's exercising status offense jurisdiction.</p> <p>Sets up system of emergency services for minors in crisis.</p>	<p>IACP</p> <p>Support elimination of status offense jurisdiction.</p>	<p>NCCD</p> <p>Recommends elimination of status offense jurisdiction</p>	<p>HEW Model Act</p> <p>Eliminates jurisdiction over status offenders.</p>	<p>NAC Corrections</p> <p>Recommends children accused of non-criminal offenses no longer come under the delinquency jurisdiction.</p>
<p>NAC Courts</p> <p>No position taken.</p>	<p>President's Task Force</p> <p>Advocates serious consideration be given to complete elimination of jurisdiction over conduct illegal only for children.</p>			

6. Analysis of the Issue:

A little more than half of the states have provisions for juvenile court jurisdiction over a youth who is acting in a manner which is dangerous to himself or others.¹ Most of the problems that come within the court's jurisdiction in this area are medical ones--such as drug or alcohol intoxication or mental disturbances. Although these problems are real and often urgent, many standards groups and commentators take the position that the status offense jurisdiction of the juvenile court is not the proper vehicle for providing help in solving them. This is primarily because the dispositions available for status offenders are, in most instances, the same as those available for delinquents. They tend, therefore, to be punitive in nature and highly inappropriate in cases of physical or mental illness. Where the juvenile's difficulties have reached pathological proportions, they say he or she should be dealt with through the state's mental health commitment procedures. Where the child is engaging in acts which present a danger to others and is not mentally ill, he or she should be handled under the delinquency jurisdiction of the juvenile court.²

Juvenile and family court judges feel that this jurisdictional basis provides a much needed means of providing help to a juvenile who is in a crisis situation. The child may be suffering from such a degree of mental illness or emotional upset that immediate action is necessary. Status offense petitions provide the most expedient means of intervention because they are normally easily sustained and avoid the time consuming red tape necessary for a civil mental health commitment. Furthermore, family court jurisdiction avoids exposing the child to crowded and often terrifying adult mental health evaluation centers.

A major problem, however, is that most juvenile and family court systems simply do not have the resources and personnel necessary for dealing with behavior involving physical or mental illness. Facilities designed to house children with this kind of problem, court personnel trained in child psychology and judges sensitive to the complexity of mental and emotional illnesses are all necessary if family court jurisdiction is to be effective in this area.

The Tentative Draft of IJA/ABA Juvenile Justice Standards Relating to Status Offenders recommends a system whereby emergency care and treatment can be provided to a juvenile where he or she is "as a result of mental or emotional disorder, or intoxication by alcohol or other drug, is suicidal, seriously assaultive of others, or otherwise evidences an immediate need for emergency medical care."³ Intervention under this standard is intended to be allowed even if the juvenile has committed a criminal offense, but will not preclude filing a delinquency petition where that action is appropriate. However, the juvenile does not come under the court's jurisdiction as a status offender, and is not subject to any of the traditional court-ordered dispositions.

7. Task Force Standards and Rationale:

The Task Force rejected the use of a general, open-ended criterion for intervention in nondelinquent conduct believed to present a danger to the juvenile or others. Instead, it opted to restrict the grounds for formal Families with Service Needs proceedings to cases involving the five specifically-defined behaviors outlined in the first of these Comparative Analyses.

One of the behaviors which the Task Force felt should authorize judicial intervention was the repeated use of intoxicating beverages.

Standard 10.7: The Families with Service Needs jurisdiction should include jurisdiction over the repeated possession and/or consumption of intoxicating beverages by juveniles.

The commentary endorses the use of noncoercive resources in these cases whenever feasible.

Standards in portions of the volume other than the chapter on Families with Service Needs are also relevant to some of the concerns raised in this Comparative Analysis. For example, the Task Force recommended the general availability of voluntary mental health services to all children and families (see Standard 3.2). It also urged the expansion of family protective services and crisis intervention programs (see Standard 3.3). Moreover, it outlined procedures for dispositions of mentally ill or mentally retarded juveniles (see Standard 14.18). In addition, standards on Endangered (Neglected or Abused) Children authorize intervention in cases of emotional damage which meet specifically-defined criteria (see Standard 11.12).

Footnotes:

¹They are: Alaska, Arizona, Colorado, Connecticut, Delaware, Hawaii, Indiana, Iowa, Kansas, Louisiana, Maryland, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Utah, Virginia, West Virginia, Wisconsin and Wyoming.

²Gough, Tentative Draft III, Juvenile Justice Standards Relating to Status Offenses 63 (1975; not yet reviewed or approved by Joint Commission).

³Id., p. 98.

1. Issue Title: Conduct Which Imperils a Juvenile's Morals--Should the family court have jurisdiction over a child on the basis of conduct which imperils his or her morals?

2. Description of the Issue:

The legislature of each state will have to determine whether the family court should have jurisdiction over juvenile behavior which violates no criminal law, but which falls outside of a general standard of morality, and thus imperils the juvenile's moral character. Where the legislature decides that such behavior should come within the family court's jurisdiction, every effort must be made to draft statutes which are sufficiently narrow and precise to survive attack on the ground of vagueness.

3. Summary of Major Positions:

There are two points of view with respect to this issue:

The first is that the juvenile court should have the power under the doctrine of *parens patriae* to protect the moral character of juveniles. To accomplish this, statutes must either contain language broad enough to allow judges to exercise their discretion as to what does imperil a particular child's morals or the state legislature must provide very detailed descriptions of what behavior it has determined will imperil a child's morals.

The other point of view is that the state should not have the power to enforce one standard of morality over another. Any statute giving the court jurisdiction over conduct which imperils a child's morals will, by its very nature, give the state this power. Thus, provisions should not be made for family court jurisdiction on the basis of "immoral" or "potentially immoral" conduct.

4. Summary of State Practices:

A number of states appear to provide specifically for jurisdiction over immoral behavior:

Wayward AK, IA, KY, MN, MS, NB, NH, OH, WY,

Idle, Dissolute Life AL, CA, NJ, WA

Other states would allow enforcement of a standard of morality under generally written "incurable" or "ungovernable" provisions.

Jurisdiction in this area may also be possible under a provision which allows the juvenile court to intervene where the child is

engaging in conduct which is dangerous to himself or others.
 The states which have this provision are: Alaska, Arizona, Colorado, Connecticut, Delaware, Hawaii, Indiana, Iowa, Kansas, Louisiana, Maryland, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Utah, Virginia, West Virginia and Wisconsin.

5. Summary of Positions Recommended by Standards Groups:

IJA/ABA Tentative Standards Draft	President's 1967 Task Force on Juvenile Delinquency & Youth Crime	NCCD	HEW Model Act	NAC Corrections
Where sexual behavior is not proscribed by the criminal law and is not evidence of parental abuse or neglect, it should not be the basis for juvenile court jurisdiction.	Advocates serious consideration be given to complete elimination of jurisdiction over conduct illegal only for a child.	Recommends removal of entire status offense jurisdiction.	Eliminates jurisdiction over status offenders. Provides an expanded definition of neglect to provide services on a "no fault" basis where needed.	No position taken.
NAC Courts	IACP			
No position taken.	Supports removal of status offense jurisdiction.			

6. Analysis of the Issue

State juvenile statutes characteristically have broadly written provisions which allow the juvenile or family court to exercise jurisdiction over a number of behaviors which fall outside of a general standard of morality, but which do not violate any criminal law. Thus, court jurisdiction is often authorized for such behavior as associating with undesirables, acting in a way which endangers the morals of self or others, growing up in idleness and crime, leading a lewd, idle and dissolute life, etc.

These provisions stem from a very expansive notion of the *patriae* function of the juvenile and family courts. Most juvenile and family court judges know from experience that children are characteristically incapable of making mature decisions as to what is in their best interests. Even where a particular child is capable of such a decision, it is likely that he may lack the discipline necessary to conduct himself in accordance with that decision--especially in the face of peer pressure, the promise of thrills, etc. In most cases, the juvenile's parents would be expected to provide the controls necessary to help the juvenile to conduct himself in an appropriate manner. Where, however, these supplementary controls are not forthcoming for some reason or another, it is the responsibility of the juvenile court to intervene and supply them. Judge William S. Fort states that if the status offense jurisdiction over this behavior is eliminated, "supervision and control of children in wide areas of their needs and their conduct is abandoned by the state."¹

Current standards groups and commentators, however, find a great many difficulties with these general protective statutes. The major area of concern is the vagueness with which these behaviors are defined, creating a situation which lends itself to judicial overreach--to allowing juvenile and family court judges to impose their own sense of moral propriety on every child and parent who comes before the court.² Thus, the President's 1967 Task Force on Juvenile Delinquency and Youth Crime expresses concern that the general protective statutes are often used to coerce conformity to adult standards and eliminate such things as long hair, jeans, etc.³ The International Association of Chiefs of Police express a similar concern in stating, "The broad scope of delinquency statutes and juvenile court jurisdictions has permitted the coercive imposition of middle-class standards of child rearing."⁴

These provisions, intended to protect a juvenile's morals, have also been subject to attack in the courts. In *Gesicki v. Oswald*,⁵ the federal court for the Southern District of New York declared that state's Wayward Minor statute void for vagueness. The statute gave the court jurisdiction over one "who was morally depraved ... or in danger of becoming morally depraved."⁶

In *Gonzalez v. Maillard*,⁷ a three-judge federal court declared the provision in California Welfare and Institutions Code Sec. 601 giving the juvenile court jurisdiction over a child "in danger of leading an idle, dissolute, lewd or immoral life" too vague to serve as a constitutionally permissible standard on which to base an arrest, or an adjudication of a juvenile as a ward of the court and permanently enjoined further enforcement of that provision. The court based its decision on the seriousness of the deprivation of freedom and social stigma associated with being adjudicated a Sec. 601, and the fact that all other constitutional guarantees (right to counsel, hearing, notice, etc.) become meaningless when faced with a too vague statute. The Supreme Court vacated the *Gonzalez* decision in 1974 and remanded for reconsideration only of the order for injunction relief, thus possibly indicating that the declaratory judgment that the particular section of California Welfare and Institutions Code Sec. 601 in issue is unconstitutionally vague still remains valid.⁸

This vagueness problem has prompted a large proportion of standards groups and commentators to recommend that provisions like "growing up in idleness and crime," "associating with undesirables," etc., be eliminated from the juvenile or family court's jurisdiction. The President's Task Force on Juvenile Delinquency and Youth Crime considered the possibility that a statute intended to cover this kind of conduct could be drafted with sufficient precision so as to eliminate the possibility of overreach. If felt, however, that in the final analysis such an effort would probably be futile.

It must be recognized, however, that the most earnest efforts to narrow broad jurisdictional basis, in language or in practice, will not altogether remove the possibility of overextension. Statutory drafting deals necessarily in the general; applying legislation is in the last analysis subject to its administrator's views.⁹

Also characteristic of most state statutory schemes are provisions for juvenile court jurisdiction on the basis of sexual misconduct (or more realistically, sexual activity of any kind). Such provisions appear to be intended more to the protection of girls than boys as they are invoked almost exclusively for that purpose. Judges feel that this jurisdictional base gives them the power they need to protect a young girl from damaging her life with repeated illegitimate pregnancies--or even from taking the first steps down the path to prostitution.

Many standards groups and commentators feel that sexual misconduct should also not form the basis for juvenile or family court intervention in the lives of children. Professor Aidan R. Gough in his Tentative Draft of Juvenile Justice Standards Relating to Status Offenses submits that although a youth's sexual activity may be an indication that he or she is in need of some kind of services

or treatment, "the juvenile justice system is neither the place to get it or to be referred it /sic/."¹⁰ Judicial intervention in this area rarely alleviates the problem and more often than not worsens it. Therefore, unless the sexual conduct is a violation of the criminal law or is evidence of parental neglect or abuse, it should not form the basis for juvenile court jurisdiction.¹¹

7. Task Force Standards and Rationale:

The Task Force rejected such criteria for intervention as "wayward behavior," "in danger of leading an idle, dissolute life," and "sexually promiscuous." It felt that such vaguely drawn statutes lend themselves to discriminatory application and can result in inappropriate and often harmful intervention.

Footnotes:

¹W. Fort, "From the President," 19 Juvenile Court Judges Journal 2, 7 (1968).

²President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 25 (1967) /hereinafter Task Force Report/.

³Id.

⁴R. Kobetz and B. Bosarge, Juvenile Justice Administration 214 (1973).

⁵Gesicki v. Oswald, 336 F. Supp. 371 (S.D.N.Y. 1971), aff'd sub. nom. Oswald v. Gesicki, 406 U.S. 913 (1972).

⁶Id.

⁷Gonzalez v. Maillard, No. 50424 (N.D. Cal. 1971), vacated and remanded sub. nom. Maillard v. Gonzalez, 416 U.S. 918 (1974).

⁸Gough, Tentative Draft III, Juvenile Justice Standards Relating to Status Offenses 16 (1975; not yet reviewed or approved by Joint Commission) /hereinafter IJA/ABA Tentative Standards Draft/.

⁹Task Force Report 27.

¹⁰IJA/ABA Tentative Standards Draft 62.

¹¹Id.

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