

Examples of Model Status Offender Legislation

A. Summary of Relevant Model Legislation defining agencies or entities governing status offender systems:

Model legislation identifies a specific agency or agencies to oversee the status offender program. Identifying a lead agency in the legislation ensures that responsibility is clearly placed and with further definition ensures the status offender system is more about rehabilitation and providing comprehensive services than about the court system.¹ The Connecticut program is overseen by the Commissioner of Children and Families and the Judicial Department.² The Florida program is overseen by the Department of Children and Family Services and the Department of Juvenile Justice.³ The New York program is overseen by a lead agency identified for each county and city greater than one million.⁴

The Connecticut statute provides language that extensively describes the activities and duties expected from their lead agency, the Commissioner of Children and Families and the Judicial Department. The Commissioner of Children and Families must coordinate programs and services, develop and use procedures to evaluate the risk and service needs of child, and collaborate with community based programs, among other obligations.⁵ Additionally, the Judicial Department is required to provide services to the juvenile justice system including assessment, intakes, case management, and other services.⁶ Including directives to the agencies and departments in the statute solidifies the obligations and duties of each agency to ensure the children and families are receiving appropriate services. While neither Florida nor New York has a particular statutory provision to address the duties of the lead agencies, many of the individual laws include directives to the agencies.⁷

Unlike the aforementioned laws, the Louisiana statutes only provide vague references to actions the state must take in providing the families and children with services. While Louisiana does assign some duties to state officers, it is lacking any obligations placed on an overseeing agency, which eliminates an opportunity to create agency accountability.

¹ JESSICA R. KENDALL, FAMILIES IN NEED OF CRITICAL ASSISTANCE: LEGISLATION AND POLICY AIDING YOUTH WHO ENGAGE IN NONCRIMINAL MISBEHAVIOR iv (ABA Center on Children and the Law ed., 2007), at 15.

² See CONN. GEN. STAT. § 46b-121 (2011).

³ See FLA. STAT. § 984.03 (2011).

⁴ See N.Y. FAMILY COURT LAW § 712 (McKinney 2011).

⁵ See CONN. GEN. STAT. § 46b-149c (2011).

⁶ See *id.* § 46b-121i.

⁷ See FLA. STAT. § 984.11 (2011) (requiring the lead agencies make available particular services to the families and children); N.Y. FAMILY COURT LAW § 735 (McKinney 2011) (particularizing the steps the lead agency must take once a child has been referred).

Sample Statutes:

FLA. STAT. § 984.04 (2):

(2) The Department of Juvenile Justice shall be responsible for all nonjudicial proceedings involving a family in need of services.

N.Y. FCT. LAW § 735(a)-(b)

(a) Each county and any city having a population of one million or more shall offer diversion services as defined in section seven hundred twelve of this article to youth who are at risk of being the subject of a person in need of supervision petition. Such services shall be designed to provide an immediate response to families in crisis, to identify and utilize appropriate alternatives to detention and to divert youth from being the subject of a petition in family court. Each county and such city shall designate either the local social services district or the probation department as lead agency for the purposes of providing diversion services.

(b) The designated lead agency shall:

(i) confer with any person seeking to file a petition, the youth who may be a potential respondent, his or her family, and other interested persons, concerning the provision of diversion services before any petition may be filed; and

(ii) diligently attempt to prevent the filing of a petition under this article or, after the petition is filed, to prevent the placement of the youth into foster care; and (iii) assess whether the youth would benefit from residential respite services; and

(iv) determine whether alternatives to detention are appropriate to avoid remand of the youth to detention.

B. Summary of Relevant Model Legislation Defining Target Population of Status Offenders:

While most of the status offender laws define a status offender as one who has runaway, been consistently truant from school, or is disobedient, some states have slight variations that can make a difference in regards to who is in the target population. In Florida, only children who have “disobeyed the reasonable and lawful demands” of the parents can be considered CHINS, and can only be so declared after reasonable and good faith efforts have been made to remedy the problems.⁸ This provision, and a similar truancy provision, requiring the school to make efforts to remedy the problem,⁹ ensures that a child cannot be adjudicated as a CHINS or their family as a FINS without first making efforts to address the undesirable behavior. This language puts emphasis on the need for the families to try to work through their problems outside the court system. Additionally, a child can only be referred if no allegations from the Department of Juvenile Justice or the Department of Child and Family Services are currently pending against either the child or the family.¹⁰

None of the other states provides such specific requirements for actions which must be taken before children and families can be adjudicated as status offenders.¹¹

⁸ See FLA. STAT. § 984.03 (2011).

⁹ See *id.*

¹⁰ See *id.*

¹¹ See, e.g., LA. CHILD. CODE ANN. art. 730 (2011).

Legislation identifying the target population should include the actions to be considered status offenses as well as those actions which should NOT be considered status offenses. The legislation should include specific steps that must be taken before a referral is possible.

Sample Statutes:

Florida Statutes §984.03 Definitions (9) and (25)

(9) "Child in need of services" means a child for whom there is no pending investigation into an allegation or suspicion of abuse, neglect, or abandonment; no pending referral alleging the child is delinquent; or no current supervision by the Department of Juvenile Justice or the Department of Children and Family Services for an adjudication of dependency or delinquency. The child must also, pursuant to this chapter, be found by the court:

(a) To have persistently run away from the child's parents or legal custodians despite reasonable efforts of the child, the parents or legal custodians, and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts shall include voluntary participation by the child's parents or legal custodians and the child in family mediation, services, and treatment offered by the Department of Juvenile Justice or the Department of Children and Family Services;

(b) To be habitually truant from school, while subject to compulsory school attendance, despite reasonable efforts to remedy the situation pursuant to ss. [1003.26](#) and [1003.27](#) and through voluntary participation by the child's parents or legal custodians and by the child in family mediation, services, and treatment offered by the Department of Juvenile Justice or the Department of Children and Family Services; or

(c) To have persistently disobeyed the reasonable and lawful demands of the child's parents or legal custodians, and to be beyond their control despite efforts by the child's parents or legal custodians and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts may include such things as good faith participation in family or individual counseling.

(25) "Family in need of services" means a family that has a child who is running away; who is persistently disobeying reasonable and lawful demands of the parent or legal custodian and is beyond the control of the parent or legal custodian; or who is habitually truant from school or engaging in other serious behaviors that place the child at risk of future abuse, neglect, or abandonment or at risk of entering the juvenile justice system. The child must be referred to a law enforcement agency, the Department of Juvenile Justice, or an agency contracted to provide services to children in need of services. A family is not eligible to receive services if, at the time of the referral, there is an open investigation into an allegation of abuse, neglect, or abandonment or if the child is currently under supervision by the Department of Juvenile Justice or the Department of Children and Family Services due to an adjudication of dependency or delinquency.

Connecticut General Statutes §46b-120(7)

(7) "Family with service needs" means a family that includes a child or a youth who (A) has without just cause run away from the parental home or other properly authorized and lawful place of abode, (B) is beyond the control of the child's or youth's parent, parents, guardian or other custodian, (C) has engaged in indecent or immoral conduct, (D) is a truant or habitual truant or who, while in school, has been continuously and overtly defiant of school rules and regulations, or (E) is thirteen years of age or older and has engaged in sexual intercourse with another person and such other person is thirteen years of age or older and not more than two years older or younger than such child or youth:

States should develop a clearly articulated, well-defined target population for status offenders. This should include the determination that the presenting behavior rises to the level of status offending behavior as defined by statute, and is documented sufficiently. It should also address the needs of the youth and family who are not currently being served by another system *or* would be better served by another system. These criteria should also ensure that, when a youth is referred by a state or local entity already tasked to serve this youth—such as a school district—that the referring entity should be required to take appropriate steps before referring and provide documentation that these steps have been taken. Exclusion criteria should also be considered, such that youth currently being served by probation or child social services should not be referred, but the behaviors addressed as part of their ongoing treatment of the youth and family.

C. Summary of Relevant Model Program Legislation for the Support of Services: ^[1]

Both Connecticut and Florida laws set forth goals that emphasize keeping the child and the family intact and outside the court system. The Connecticut law states its intent is to provide community based programs and services, keep juveniles in their homes when appropriate, and develop individual treatment plans that take into account the family and family needs.^[2] The Florida law states:

It is the intent of the Legislature to address the problems of families in need of services by providing them with an array of services designed to preserve the unity and integrity of the family Judicial intervention to resolve the problems and conflict that exist within a family shall be limited to situations in which a resolution . . . has not been achieved . . . after all available less restrictive resources have been exhausted.^[3]

The language in both the Connecticut and Florida statutes, and particularly the Florida statute, emphasizes the importance of providing services entirely outside the courts and only using adjudication as a last and final result.

To create successful status offender processes, Connecticut, Florida, and New York have statutory support for: a) creating special programs for status offenders, b) specifying particular duties for the lead agency or agencies overseeing the status offender system, c) establishing intake procedures and requirements for subsequent efforts, and d) creating alternatives to court proceedings even after a petition has been filed.

Connecticut established Family Support Centers, which are community-based service centers for children and families that provide screenings, crisis intervention, mental health treatment, and more.^[4] The New York program uses lead agencies in each county to provide services for families and children to divert the children from adjudication.^[5] Both the Connecticut Family Support Centers and the New York lead agencies are required to provide services to status offenders and their families; these agencies not only create a plan for the families, but they also work with the family on the steps of implementing the plan. It is important that the services offered through the agency are voluntary. In Connecticut the statute calls for probation to refer the child “for voluntary services.”

Providing complete intake procedures with a social services-like agency and then asking the family to participate in voluntary services can ensure the child and family receive the services they need. In Connecticut and Florida a probation officer performs the intake,^[6] while in New York the lead agency conducts the intake.^[7] Louisiana law specifies for an intake officer.^[8]

Voluntary participation is enhanced when services are tailored to meet needs and when families are assured some level of confidentiality. Both Florida and New York have statutory provisions calling for confidentiality of status offense records. Following the intake, both the Florida and New York statutes contain explicit provisions for the actions the family, child, and state should take prior to filing an official provision. In Florida, the family must be provided with parent training, individual or family counseling, community mental health services, tutorial services, and others.^[9] The New York law requires that prior to filing a petition; the child should participate in diversion services that the lead agency has recommended for the family.^[10] These services should continue to be provided prior to the filing of a petition until it is determined that the child would no longer benefit from such services.^[11] For Connecticut, Florida, and New York, a petition cannot be filed until after alternative attempts to remedy the problem have proven unsuccessful and the time period for these services to be proven successful is indefinite.^[12]

Legislation should include mandating a basic level of service provision available through the status offender system. Services are voluntary; records related to programming are confidential; services are rendered by reliable providers who deliver outcome based programming; outcomes will be monitored by a responsible agency, and an array of services unique to status offending youth will be offered and available.

Sample Statute:

FLA. STAT. § 984.04

984.04 Families in need of services and children in need of services; procedures and jurisdiction.—

(1) It is the intent of the Legislature to address the problems of families in need of services by providing them with an array of services designed to preserve the unity and integrity of the family and to emphasize parental responsibility for the behavior of their children. Services to families in need of services and children in need of services shall be provided on a continuum of increasing intensity and participation by the parent and child. Judicial intervention to resolve the problems and conflicts that exist within a family shall be limited to situations in which a resolution to the problem or conflict has not been achieved through service, treatment, and family intervention after all available less restrictive resources have been exhausted. In creating this chapter, the Legislature recognizes the need to distinguish the problems of truants, runaways, and children beyond the control of their parents, and the services provided to these children, from the problems and services designed to meet the needs of abandoned, abused, neglected, and delinquent children. In achieving this recognition, it shall be the

policy of the state to develop short-term, temporary services and programs utilizing the least restrictive method for families in need of services and children in need of services.

(2) The Department of Juvenile Justice shall be responsible for all nonjudicial proceedings involving a family in need of services.

(3) All nonjudicial procedures in family-in-need-of-services cases shall be according to rules established by the Department of Juvenile Justice under chapter 120.

(4) The circuit court shall have exclusive original jurisdiction of judicial proceedings involving continued placement of a child from a family in need of services in shelter.

(5) The circuit court shall have exclusive original jurisdiction of proceedings in which a child is alleged to be a child in need of services. When the jurisdiction of any child who has been found to be a child in need of services or the parent, custodian, or legal guardian of such a child is obtained, the court shall retain jurisdiction, unless relinquished by its order or unless the department withdraws its petition because the child no longer meets the definition of a child in need of services as defined in s. 984.03, until the child reaches 18 years of age. This subsection shall not be construed to prevent the exercise of jurisdiction by any other court having jurisdiction of the child if the child commits a violation of law, is the subject of the dependency provisions under this chapter, or is the subject of a pending investigation into an allegation or suspicion of abuse, neglect, or abandonment.

(6) All procedures, including petitions, pleadings, subpoenas, summonses, and hearings, in family-in-need-of-services cases and child-in-need-of-services cases shall be according to the Florida Rules of Juvenile Procedure unless otherwise provided by law.

(7) The department may contract with a provider to provide services and programs for families in need of services and children in need of services.

D. Summary of Relevant Model Legislation to ensure Due Diligence Prior to Referral:

Model states have used legislation successfully to solidify due diligence reform. Connecticut, New York, and Florida have passed legislation that require the school system to take certain steps to address the needs of the child and avoid referral. These steps provide a buffer between schools and the status offender system to ensure that youth receive all possible services within the school before they are referred out. In Connecticut schools are required to perform an educational evaluation of any child who is “habitually truant” to determine if there are unmet educational needs prior to referring the child to the status offender system.¹² Florida has a provision in its statute requiring the school to name the efforts it has made to get the child to attend school and to list the number of contacts the school has

¹² See CONN. GEN. STAT. § 46b-149(e) (2011).

made with the child's family.¹³ In New York, when alleging chronic truancy, the school must include the steps it has taken to improve attendance and/or the conduct of the child in its referral to the court.¹⁴

Sample Statute: Fla. Stat. § 984.151 (4)

(4) The petition must contain the following: the name, age, and address of the student; the name and address of the student's parent or guardian; the school where the student is enrolled; **the efforts the school has made to get the student to attend school; the number of out-of-school contacts between the school system and student's parent or guardian;** and the number of days and dates of days the student has missed school. The petition shall be sworn to by the superintendent or his or her designee.

There are numerous reforms states may make related to the steps agencies should take prior to referring a child to the status offender system. These reforms could be done through policy change, practice reforms, and/or legislation.

The most demonstrably successful policy reform has occurred in Clayton County, GA (and its offshoots like Jefferson County, Alabama). The model from Clayton County is to get buy-in from all stakeholders and create an MOU or Cooperative Agreement with local school districts that greatly limits (and Louisiana could go even farther by totally barring) referrals from schools to the court system based on merely status or misdemeanor offenses. Clayton County requires three violations in the same school year and a review by school administrator of a behavior plan prior to referral.

Other states, including New York, Connecticut and Florida, have enacted legislation similar to the Clayton County Cooperative Agreement, but the data is not as prevalent as in Clayton County and thus the efficacy of legislative changes are not as readily apparent. The lesson from Clayton County is that the school administrators and other stakeholders must be invested in, trained in, held accountable by, and supportive of, any legislative or policy changes.

E. Summary of Relevant Model Legislation for Alternatives to Detaining Status Offenders:

Though states are permitted under JJDPa to place status offenders in secure facilities for violating a valid court order, many states have chosen to prohibit such placements. Studies have *not* shown detention to be an effective deterrent for status offense type behaviors.¹⁵ However, both Louisiana and Florida allow status offenders to be placed in secure detention facilities as the result of a valid court order violation.¹⁶ As an alternative to detention, the Florida court can choose to provide an alternative sanction for the child.¹⁷ Each circuit has an alternative sanctions coordinator who coordinates and maintains program alternatives such as community service.¹⁸ Explicitly providing for a person to maintain such programs can help ensure a child is not just being sent to secure facilities because the court has no other

¹³ See FLA. STAT. § 984.151 (4)(2011).

¹⁴ See N.Y. FAMILY COURT LAW, Part 3 § 732(a)(McKinney 2011).

¹⁵ See KENDALL, *supra* note 1, at 8.

¹⁶ See FLA. STAT. § 984.09 (2010); LA. CHILD. CODE ANN. art. 782 (2009).

¹⁷ See FLA. STAT. § 984.09 (2010).

¹⁸ See *id.*

mechanism for addressing the violation.

Neither Connecticut nor New York allow for detention in a secure facility as a result of a valid court order violation. In Connecticut, if a child violates a court order, then the child can be ordered to be under supervision or to more restrictive measures.¹⁹ The New York laws provide that the court can revoke the previous order and provide another order that would have been allowed at the time of the original disposition hearing, declare the child a delinquent, or can take other steps to provide more restrictive disposition.²⁰ While these additional consequences are less severe than placing the child in a secure facility, they still allow the court to address a child's noncompliance and further ensure future compliance.

In contrast to the New York and Connecticut provisions, and even the Florida provisions, the Louisiana law does not provide for any alternative sanctions for a child who has violated a valid court order; the only disposition mentioned in the statute is placement in a juvenile shelter or detention facility.²¹

States should enact legislation that provides for alternatives to detention as a remedy for violation of valid court orders related to status offenses. The legislation should call for closely tracking the use of detention for status offenders and encourage a limited use of detention that may ultimately lead to elimination of detention of status offenders.

Sample Statute: CONN. GEN. STAT. § 46b-148(a)

(a) Notwithstanding any provision of this chapter: (1) No child who has been adjudicated as a child from a family with service needs in accordance with section 46b-149 may be processed or held in a juvenile detention center as a delinquent child, or be convicted as delinquent, solely for the violation of a valid order which regulates future conduct of the child that was issued by the court following such an adjudication; and (2) no such child who is found to be in violation of any such order may be punished for such violation by placement in any juvenile detention center.

¹⁹ See CONN. GEN. STAT. § 46b-149f (2010).

²⁰ See N.Y. FAMILY COURT LAW § 746-48, 749a (McKinney 2010).

²¹ See LA. CHILD. CODE ANN. art. 782, 791 (2009).