

Juvenile Defense in Status Offense Cases

Guidance for Juvenile Defenders

The Coalition for Juvenile Justice's *National Standards for the Care of Youth Charged with Status Offenses* ("National Standards") includes concrete recommendations for limiting or avoiding court involvement and eliminating secure confinement for non-criminal juvenile offenders. The *National Standards* recognize that status offense behaviors are often symptomatic of larger issues the child faces in the home, school, or community and may be less a reflection of the child's risky behavior and more an indication of his or her unmet health, mental health, educational, or family needs.

Research indicates that formal justice system processing in and of itself can have a negative impact on youth, increasing the likelihood of future justice system involvement.ⁱ Studies also indicate that the best outcomes for public safety occur when the least restrictive interventions are offered.ⁱⁱ Formally processing young people who have allegedly committed status offenses through the court system may only increase the likelihood of their re-entering the justice system and experiencing other negative individual and family outcomes.

The *National Standards* acknowledge the important role juvenile defenders play in helping ensure young people charged with status offenses do not slip deeper into the justice system or experience the negative outcomes associated with system involvement.

Below are select excerpts from the *National Standards* that address important issues for juvenile counsel to consider in status offense cases:

Section I, Standard 1: Legal, judicial, and social service providers should apply a child- and family-centric approach to status offense cases. As discussed in the commentary to this section, there are several ways system stakeholders can better integrate the principles of safety, permanency, and well-being into status offense cases.

Section III, Standard 9: Juvenile counsel should advocate for voluntary and community-based assistance to limit and/or avoid continued court involvement and secure confinement. As the

WHAT IS THE SOS PROJECT?

CJJ's "Safety, Opportunity & Success (SOS): Standards of Care for Non-Delinquent Youth," ("SOS Project") is a multi-year partnership that engages State Advisory Group (SAG) members, judicial leaders, practitioners, service providers, policymakers and advocates to guide states in implementing policy and practices that eliminate the use of secure confinement for status offenders and offer them diversion and early intervention services to avoid court involvement.

As part of this project, CJJ convened an expert advisory group comprising key juvenile justice professionals, advocates, researchers, and judicial leaders to assist in the drafting and vetting of the *National Standards*. They met over the course of a year and a half to discuss policy and practice changes that would produce more favorable outcomes for youth charged with non-delinquent offenses.

Stakeholders who, at key decision points, can impact whether youth are funneled into, or remain in the juvenile justice system for non-delinquent offenses should read and use these standards. This includes law enforcement, lawyers, school officials, court services personnel, advocates, judges, and community- and youth-serving providers.

LEGAL REPRESENTATION IN STATUS OFFENSE CASES

The *National Standards* recognize that children should have legal representation at all stages of status offense cases. Despite requirements regarding waiver of counsel present in most states, many young people in these cases do not have legal representation because with they have waived their right to an attorney.

If a child waives his or her right to counsel, he or she loses the benefit of an important advocate throughout the court process. Lawyers serve many critical functions when representing youth who have been accused of status offenses, including helping protect their client's rights, ensuring they are being treated fairly, and that they have a meaningful opportunity to be heard in the court process.

CJJ's *National Standards* urge policymakers and court systems to comply with the *National Juvenile Defense Standards'* position on waiver of rights, which does not allow waiver unless:

- It is on the record;
- The court has fully inquired into the child's understanding and capacity; and
- The waiver occurs in the presence of and in consultation with an attorney.

commentary to this section illustrates, there are many steps attorneys can take to promote voluntary service alternatives for their clients and strategies to help clients avoid deeper justice system involvement and secure confinement.

Section III, Standard 10: Juvenile counsel should advocate that child clients be treated fairly throughout the court process and that their due process rights be protected. As discussed in the commentary to this standard, there are many ways that a young person's lawyer can help ensure fair treatment, such as assuring the client is present for each court hearing or protecting the client's privacy rights when mental health screenings or assessments are introduced. Commentary also enumerates due process protections that should be afforded

if the young person faces out of home or secure placement.

Section III, Standard 11: Juvenile defenders should also protect the child client's rights and entitlements. As illustrated in the commentary to this section, there are several entitlements or laws that may be applicable to a young person in the status offense system, such as Medicaid, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Indian Child Welfare Act.

In addition to the above, the *National Standards* address many considerations relevant to the representation of youth in status offenses cases, including adolescent brain development, trauma and early intervention and diversion strategies, and vulnerable populations, such as girls, LGBTQ, and minority youth.



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ⁱ Allina Boutilier and Marcia Cohen. (2009). Diversion Literature Review. OJJDP.

ⁱⁱ *The Truth about Consequences—Studies Point towards Sparing Use of Formal Juvenile Justice System Processing and Incarceration.* (January 2012) Washington, DC: National Juvenile Justice Network (citing Anthony Petrosino, Carolyn Turpin-Petrosino, and Sarah Guckenburg, "Formal System Processing of Juveniles: Effects on Delinquency." *Campbell Systematic Reviews*, 2010:1, pp. 32-38 (January 29, 2010)); see also Uberto Gatti et al. (2009) "Iatrogenic Effects of Juvenile Justice," 50 *Child Psychology and Psychiatry* 991, 994.