

THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT'S CONTEMPT PROVISION: TIME TO AMEND

Max Schmitz

I. INTRODUCTION

Adolescents are at a unique stage of biological development that compromises their ability to make the same rational decisions that are expected of adults.¹ Despite the scientific and legal recognition of adolescent's diminished decision making capabilities,^{2 3} many of these children are sent to out of home placements for relatively minor offenses.⁴

¹ Kerstin Konrad, Christin Firk, & Peter Uhlhaas, *Brain Development During Adolescence Neuroscientific Insights Into This Developmental Period*, 110 DTSCH ARZTEBL INT. 425-431 (2013), available at

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3705203/>.

² *Id.*

³ See, e.g., *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

⁴ National Center for Juvenile Justice, *JUVENILE COURT STATISTICS 80* (2013), estimating that the court system placed 3,800 status offending youth in out-of-home facilities in 2013.

Specifically, children may be punished and, under certain circumstances, removed from their homes for committing “status offenses,” which are offenses that are only punishable due to the offender’s status as a juvenile.⁵ Juvenile status offenses include truancy, running-away from home, being ungovernable or incorrigible, violating curfew, and alcohol possession or consumption.⁶

Repeat offenders create a serious conundrum for the system.⁷ A juvenile who repeatedly commits status offenses may create stress and frustration for the juvenile’s family and others invested in the juvenile’s life.⁸ Repeat status offenders may create similar headaches for the educational and legal systems and consume their valuable time and resources.⁹ Residential placement is often a traumatic experience for a juvenile and places the

⁵ *Id.* at 65.

⁶ *Id.*

⁷ Models for Change Juvenile Diversion Workgroup, *Juvenile Diversion Guidebook 12* (2011).

⁸ James Lehman, *Running Away Part 1: Why Kids Do It and How to Stop Them*, Empowering Parents, <https://www.empoweringparents.com/article/running-away-part-i-why-kids-do-it-and-how-to-stop-them/#>.

⁹ Models for Change Juvenile Diversion Workgroup, at 12.

child at risk for a multitude of negative effects.¹⁰ Depriving a child of freedom and forcing the child to vacate his or her home is a substantial infringement on a child's life.¹¹

With these concerns in mind, in 1974, Congress enacted the Juvenile Justice and Delinquency Prevention Act (hereafter, the "JJJPA" or the "Act"), in part, to curb the routine placement of status-offending youth in residential facilities.¹² Under the Act, states must develop policies that comply with the Act's requirements in order to receive a formula grant.¹³ The Act provides that states must use at least 75% of its federal funding for: (1) community-based alternatives to incarceration and institutionalization; (2) comprehensive juvenile justice and delinquency programs; (3) educational programs and support services for juveniles; (4)

¹⁰ Yael Zakai Cannon, *There's No Place Like Home: Realizing the Vision of Community-Based Mental Health Treatment for Children*, 61 DEPAUL L. REV., 1049, 1058 (2012).

¹¹ Patricia Arthur & Regina Waugh, *Status Offenses and the Juvenile Justice and Delinquency Prevention Act: The Exception that Swallowed the Rule*, 7 Seattle J. for Soc. Just. 555, 557-558 (2009).

¹² 42 USC § 5633.

¹³ 42 USC § 5633(a).

expanding the use of probation officers “particularly for the purpose of permitting nonviolent juvenile offenders (including status offenders) to remain at home”; (5) deterrence programs; and many other programs and services for juveniles and their families.¹⁴ However, under the Act, states may place status-offending youth in residential facilities for violating a court order that prohibits the child from committing the status offense.¹⁵ In effect, only the method of residential placement has changed: the court must first order the child not to commit the status offense, then a subsequent violation confers power on the court to order residential placement.¹⁶ Under this provision, many youth who commit status offenses are still sent to out-of-home placements.¹⁷ The contempt provision is hotly debated and the effectiveness and fairness of the provision has received attention from national news sources.¹⁸

¹⁴ 42 USC § 5633(a)(9).

¹⁵ 42 USC § 5633(a)(11)(A)(ii).

¹⁶ *Id.*

¹⁷ National Center for Juvenile Justice, *Juvenile Court Statistics* 80 (2013).

¹⁸ See Molly Knefel, *Five Offenses that Can Land Kids (but Not Adults) in Jail*, ROLLING STONE, March 24, 2014,

Considering the adverse effects of residential placement and the relatively minor nature of status offenses, the JJDPa should be amended to: (1) require states to implement diversion programs prior to filing a petition for a status offense; and (2) eliminate the contempt provision in order to curb juvenile status offenders' placement in residential facilities.¹⁹ Section II analyzes the legal background for this problem. Section III discusses adolescent physiological development in order to establish the importance of legal recognition of behavioral and biological immaturity of adolescents, further discussed in Section IV. Section V analyzes the negative effects of residential placement; and, finally, Section VI advocates for courts to implement a valid court order provision. The Article's final two sections make recommendations and draw conclusions.

<http://www.rollingstone.com/politics/news/five-offenses-that-can-land-kids-but-not-adults-in-jail-20140324>.

¹⁹ Cannon, *supra*, at 1058.

II. LEGAL BACKGROUND

Status offense legislation prohibits conduct that would otherwise be legal but-for the offender's juvenile status.²⁰ Common status offenses include truancy, running-away from home, ungovernability or incorrigibility, curfew violations, and alcohol possession or consumption.²¹

In the 1960's, many juvenile advocates were concerned about the judicial system's approach to status offenses.²² In 1967, the President's Commission on Law Enforcement and the Administration of Justice released the *Task Force Report on Juvenile Delinquency*.²³ The Report concluded that many juvenile status offenders were in jails and detention facilities, and it recommended that lawmakers take action to remove the status offenders from these facilities and confer

²⁰ National Center for Juvenile Justice, *Juvenile Court Statistics* 65 (2013).

²¹ *Id.*

²² Claire Shubik & Jessica Kendall, *Rethinking Juvenile Status Offense Laws: Considerations for Congressional Review of the Juvenile Justice and Delinquency Prevention Act*, 45 FAM. CT. REV. 384, 385 (2007).

²³ *Id.*

responsibility for the offenders to families and community organizations.²⁴

In 1974, Congress recognized the deficiencies in residential placement and passed the JJDP Act.²⁵ The Act required states to remove status offenders from secure detention facilities and develop treatment, prevention, and other programs to aid juvenile status offenders.²⁶ However, the Act did not preclude states from placing juvenile status offenders in detention facilities for violating a court order related to the status offense; thus, under the JJDP Act, courts retained power to place juveniles out of their homes for status offense violations, as long as the commission of the status offense was in violation of a court order.²⁷

III. ADOLESCENT PHYSIOLOGICAL DEVELOPMENT

Prior to, and often beyond, when an adolescent reaches the age of majority (which varies state-by-

²⁴ *Id.*

²⁵ 42 USC § 5633.

²⁶ *Id.*

²⁷ 42 USC § 5633(a)(11)(A)(ii).

state), his or her body undergoes significant biological development; for example, a child may grow taller, develop muscle, and grow towards sexual maturity.²⁸ During this period of development, a child's brain is also undergoing significant change.²⁹

Adolescents' brain structure and development differs from adults' brain structure in several important ways; one area of particular importance is the prefrontal cortex.³⁰ The prefrontal cortex is the area of the brain that serves higher cognitive functions, such as "behavioral control, planning, and assessing the risk of decisions."³¹ Research shows that this center of higher cognitive functions may not reach full development until an individual reaches her or his mid-twenties.³² Although human behavior is complex and research on the topic continues, there is "fairly widespread agreement that adolescents take

²⁸ Medline Plus, *Puberty*, November 1, 2016, <https://medlineplus.gov/puberty.html>.

²⁹ Konrad, *supra*, at 425-431.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

more risks at least partly because they have an immature frontal cortex, because this is the area of the brain that takes a second look at something and reasons about a particular behavior.”³³

IV. LEGAL RECOGNITION OF BEHAVIORAL AND BIOLOGICAL IMMATUREITY OF ADOLESCENTS

Science is not the only field that recognizes the role of biological development on behavior.³⁴ The United States’ courts, including the United States Supreme Court, have recognized adolescent’s biological immaturity in making key policy decisions.³⁵ For example, in *Roper v. Simmons*, the U.S. Supreme Court abolished the death penalty for juvenile offenders, in part, due to the behavioral and biological immaturity of juveniles.³⁶ The Court

³³ Sarah Spinks, *Adolescent Brains are Works in Progress*, PBS, <http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain/work/adolescent.html>.

³⁴ See, e.g., *Roper v. Simmons*, 543 U.S. 551, 569 (2005), abolishing the death penalty for juvenile offenders

³⁵ *Id.*; Carmen M. Cusack, *Kent Make-Up Their Minds: Juveniles, Mental Illness, and the Need for Continued Implementation of Therapeutic Justice within the Juvenile Justice and Criminal Justice Systems*, 22 AM. U. J. GENDER, SOC. POL’Y & L. 149 (2013).

³⁶ *Id.*

named three key reasons why “juvenile offenders cannot . . . be classified among the worst offenders.”³⁷

First, adolescents engage in more reckless behaviors than adults.³⁸ The Court explained that:

[A]s any parent knows and as the scientific and sociological studies . . . tend to confirm, ‘a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults . . . [and] these qualities often result in impetuous and ill-considered actions and decisions.’³⁹

Second, adolescents are more vulnerable to and have less control over environmental influences, such as peer pressure, than adults.⁴⁰ Lastly, adolescents’ personality and character traits are less fixed than adults.⁴¹

In *Graham v. Florida*, another U.S. Supreme Court case, the Court held that the Eighth

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

Amendment prevents non-homicide juvenile offenders from being issued a life without parole sentence.⁴² The decision was, in part, based on the biological and behavioral immaturity of adolescents.⁴³ The Court cited *Roper* and agreed with its proposition that adolescent and adult development differ in legally significant ways.⁴⁴ The Court added that retribution and deterrence justifications for punishment are lessened in the juvenile context due to such biological and behavioral immaturity.⁴⁵

In *Miller*, the U.S. Supreme Court extended *Graham* and held that life in prison without parole sentences for juveniles guilty of homicide was impermissible under the Eighth Amendment.⁴⁶ As was the case in *Graham* and *Roper*, the Court based its decision, again, in part, on the notion that biological and behavioral immaturity among juveniles diminishes punishment justifications.⁴⁷ The

⁴² *Graham v. Florida*, 56 U.S. 48, 82 (2011).

⁴³ *Id.* at 68.

⁴⁴ *Id.*

⁴⁵ *Id.* at 71-73.

⁴⁶ *Miller v. Alabama*, 132 S. Ct. 2455, 2475 (2012).

⁴⁷ *Id.* at 2464-65.

court also added that juveniles have “greater prospects for reform.”⁴⁸

Further, the U.S. Supreme Court, in *J.D.B. v. North Carolina*, determined that, during police questioning, a child’s age is relevant in the *Miranda* custody analysis.⁴⁹ Once again, the Court’s decision was based on the behavioral and biological differences between adults and juveniles.⁵⁰ The Court explained:

In some circumstances, a child’s age ‘would have affected how a reasonable person’ in the suspect’s position ‘would perceive his or her freedom to leave.’... That is, a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go.⁵¹

This body of U.S. Supreme Court jurisprudence highlights important medical-legal intersections.⁵²

⁴⁸ *Id* at 2464.

⁴⁹ *J.D.B. v. North Carolina*, 564 U.S. 261, 281 (2011).

⁵⁰ *Id* at 271-72.

⁵¹ *Id.*

⁵² See, e.g., *J.D.B.*, 564 U.S. 261.

American law recognizes that adolescents have not reached behavioral and biological maturity, and this immaturity has legal implications.⁵³ Adolescent immaturity manifests itself in reckless behavior, diminished decision making skills, greater susceptibility to environmental pressures, and less-fixed behavior and character traits.⁵⁴ Adolescent biological and behavioral immaturity diminishes the common justifications for punishment, such as deterrence and retribution.⁵⁵ Furthermore, juveniles' chances for reform justify more lenient sentencing.⁵⁶ Nevertheless, the JJDPa endowed courts with the authority to take status offending juveniles out of their homes and place them in residential facilities; a relocation that has serious implications for some adolescents.⁵⁷

⁵³ *Id.*

⁵⁴ *Roper*, 543 U.S. 551; *Graham*, 56 U.S. 48; *Miller*, 132 S. Ct. 2455; *J.D.B.*, 564 U.S. 261.

⁵⁵ *Miller*, 132 S. Ct. at 2464-65.

⁵⁶ *Id.*

⁵⁷ 42 USC § 5633; *Cannon*, *supra*, at 1058..

V. NEGATIVE EFFECTS OF RESIDENTIAL PLACEMENT

Despite the ideological goals of residential placement facilities, the facilities do a disservice to some adolescents.⁵⁸ One of the primary goals of placing a status-offending youth in a residential facility is to improve the child's problematic behavior.⁵⁹ However, for a child that has only committed a minor offense, around-the-clock exposure to other adolescents who often have more serious behavioral issues may make such child susceptible to his or her peers' influence and at risk of adopting or conforming to "antisocial or bizarre behavior."⁶⁰

Placement at a residential facility does not help the family, community, and juvenile to learn to coexist.⁶¹ Instead, placement isolates the child from his or her family and community.⁶² The child's placement facility may not be located near the

⁵⁸ Cannon, *supra*, at 1058.

⁵⁹ *Id.* at 1057-60.

⁶⁰ *Id.*

⁶¹ *Id.* at 1058.

⁶² *Id.*

family⁶³. A family, especially one with limited resources, may struggle to keep in contact with the child, creating loneliness and isolation for him or her.⁶⁴ These factors and others can make it difficult for the child to re-enter the family, and the family might even abandon him or her upon his or her release from the facility.⁶⁵

For many youths, moving to a new town with their family and starting school with strangers is a stressful, and sometimes traumatic, experience.⁶⁶ A child placed out of his or her home may face a greater challenge.⁶⁷ The child moved to a residential facility is taken from his or her family and community and cast into an unfamiliar environment among strangers; and some of these strangers may have severe mental and behavioral issues.⁶⁸

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Nancy Darling, *Moving is Tough for Kids*, PSYCHOLOGY TODAY, July 11, 2010, <https://www.psychologytoday.com/blog/thinking-about-kids/201007/moving-is-tough-kids>.

⁶⁷ Cannon, *supra*, at 1058.

⁶⁸ *Id.*

In a new and stressful environment, the youth may want to speak with family or other supporters, such as attorneys or advocates.⁶⁹ However, depending on the distance, the family may need to travel to the facility and the family's resources, the family may not be able to visit very often.⁷⁰ Also, the facility's limitation on visitation and telephone "privileges" may further restrict contact with the child's family.⁷¹ For similar reasons, the child might also have limited access to advocates and attorneys at his or her placement.⁷²

Sometimes, the child may form a healthy relationship with a facility staff member or fellow resident.⁷³ However, staff and residents can also exacerbate problems and cause greater trauma for the

⁶⁹ *Id* at 1058-59.

⁷⁰ *Id.*

⁷¹ *See, e.g.*, Youth Focus Residential Treatment Facility, EMPLOYEE TRAINING MANUAL 7, 13 (2014). Residents' phone privileges are based on a level system. The treatment team has discretion to restrict residents' phone privileges.

⁷² Cannon, *supra*, at 1059.

⁷³ Dan Hibbs, *Relationship – The Foundation of Residential Treatment for Kids*, Spurwink, July 15, 2015, <http://spurwink.org/relationship-the-foundation-of-residential-treatment-for-kids/>.

child.⁷⁴ Children at out-of-home facilities may be subjected to “inhumane and degrading discipline, inappropriate and dangerous use of seclusion and restraint, medical and nutritional neglect,” sexual abuse, and other forms of abuse.⁷⁵ The abuse can be severe and sometimes results in the child’s death.⁷⁶ Juveniles may also be physically or sexually abused by other residents.⁷⁷ Thus, despite the legitimate goals of residential placements, a child entering the facility with relatively minor behavioral or psychological issues may emerge worse than before.⁷⁸

VI. COURTS IMPLEMENT THE VALID COURT ORDER PROVISION

Despite the non-violent and relatively minor nature of status offenses, juveniles’ immature biological and behavioral development, and the

⁷⁴ Cannon, *supra*, at 1059.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ See *In re Edward M.*, No. A120799, 2009 WL 1383477 (Cal. App. 1st May 18, 2009).

⁷⁸ Cannon, *supra*, at 1058.

multitude of negative effects stemming from residential treatment, many juvenile status offenders are still placed out of their homes under the JJDPA's contempt provision.⁷⁹ Some states and courts are reluctant to use the contempt provision as a means for placement.⁸⁰ In *S.S.*, the court held that a status offender could not be sentenced to a placement for engaging in the same behavior that necessitated the order.⁸¹ In *State v. Damian R.*, the West Virginia Supreme Court reversed the decision to place the child out of his home because the Department of Health and Human Resources did not meet its burden of:

Showing by clear and convincing evidence that such a custody or placement order is actually necessary; that the effective provision of services cannot occur absent such an order; and that all reasonable efforts have been made to provide appropriate

⁷⁹ National Center for Juvenile Justice, *Juvenile Court Statistics 80* (2013), estimating that the court system placed 3,800 status offending youth in out-of-home facilities in 2013.

⁸⁰ *State ex rel. S.S.*, 367 N.J. Super. 400 (2004).

⁸¹ *Id.* at 416.

services without an out-of-home placement and/or custody transfer.⁸²

However, many juveniles are still placed in detention and residential facilities based on status offenses.⁸³ In *Commonwealth v. May*, the court sentenced a child to fifty-five days in a detention center and ten days in jail for violating a court order that required her to attend school.⁸⁴ In *W.H. v. Commonwealth*, the court placed the child, who was a “habitual runaway and beyond the reasonable control of his parents,” in a residential facility for repeated violations of a court order, including violation of curfew.⁸⁵ In *B.P v. Commonwealth*, the child was sentenced to ten days in a juvenile detention center because she disobeyed a court order that required her to attend school.⁸⁶

⁸² State v. Damian R., 214 W.Va. 610, 617 (2003).

⁸³ National Center for Juvenile Justice at 80, estimating that the court system placed 3,800 status offending youth in out-of-home facilities in 2013.

⁸⁴ Commonwealth v. May, No. 27695, 2003 WL 21733728 (VA. Cir. 2003).

⁸⁵ W.H. v. Commonwealth, No. 2005-CA-000673-ME, 2006 WL 1114562 (Ky. App. April 28, 2006).

⁸⁶ B.P. v. Commonwealth, 38 Va. App. 735, 743 (2002).

Thus, some judiciaries are still willing to implement the JJDPa's contempt provision to remove status offending children from their homes.⁸⁷ The contempt provision is not a mere statutory artifact, but rather a living mechanism used to uproot children from their families and homes.⁸⁸

VII. RECOMMENDATIONS

A. Congress

To avoid the negative effects of residential placement on children, Congress should amend the JJDPa to prevent juvenile status offenders from being placed in out-of-home facilities or, at a minimum, make placement significantly more difficult.⁸⁹ Specifically, Congress should require courts to offer diversion programs to status offending

⁸⁷ May, No. 27695; W.H., No. 2005-CA-000673-ME; B.P., 38 Va. App. At 743.

⁸⁸ *Id.*

⁸⁹ Cannon, *supra*, at 1058.

juveniles and eliminate the JJDPAs' contempt provision.⁹⁰

1. Diversion programs

Congress should amend the JJDPAs to require courts to offer diversion programs to status offending youth at the outset of court proceedings.⁹¹ Such a requirement would not only benefit the children and families involved, but also the greater community.⁹² For the children involved, many of the benefits are obvious; the child has an opportunity to bypass adjudication; prevent a judge from issuing a court order, which can improve the prospects of remaining at home; and avoid the negative effects of out-of-home placement.⁹³ Furthermore, diversion programs may reduce recidivism and subsequent involvement with courts; give the child and his or her family

⁹⁰ Models for Change Juvenile Diversion Workgroup, *Juvenile Diversion Guidebook* 12 (2011); 42 U.S.C. § 5633; Cannon, *supra*, at 1058.

⁹¹ Models for Change Juvenile Diversion Workgroup, *Juvenile Diversion Guidebook* 12 (2011).

⁹² *Id.*

⁹³ *Id.*

access to resources they may need; reduce the effects of labeling and stigma; and provide the youth with assistance in the least restrictive environment.⁹⁴

Society also benefits because diversion programs can lessen the burden on the crowded court system and detention, and residential facilities.⁹⁵ Not only may diversion programs reduce the workload of the court and placement facilities, but they also may reduce societal costs due to the comparatively low cost of community-based services.⁹⁶

2. Elimination of the valid court order provision

Congress should also amend the JJDPA to eliminate the “Valid Court Order” provision because it undermines the purpose of the legislation by exposing youth who commit relatively minor offenses to the negative effects of out-of-home placement.⁹⁷

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ 42 U.S.C. § 5633; Cannon, *supra*, at 1058.

Instead, the court should facilitate the child and his or her family's access to helpful resources and services and implement diversion programs and other alternatives to adjudication in order to treat the cause of the problematic behavior and avoid the negative effects of residential placement.⁹⁸ By effectively amending the JJDP, Congress can help keep kids with minor behavioral issues at home and shift the focus of court intervention to solving, rather than exacerbating, the issue.⁹⁹

B. Advocates and researchers

Advocates and researchers also play a key role in changing and improving the JJDP and the legal system's approach to status offenders.¹⁰⁰ Despite the need for further research and development, some alternative approaches have been implemented that other jurisdictions should evaluate and consider.¹⁰¹

⁹⁸ Models for Change Juvenile Diversion Workgroup, at 12.

⁹⁹ 42 U.S.C. § 5633.

¹⁰⁰ Claire Shubick, *What Social Science Tells Us About Youth Who Commit Status Offenses: Practice Tips for Attorneys*, 29 Child L. Prac 129, 140 (2010).

¹⁰¹ *Id.*

Cook County of Illinois contracts with Youth Outreach Services, a non-profit organization, to provide a 24-hour call line for status offense complaints; respond to calls within 60 minutes; counsel families; and connects families with necessary services through consistent contact for 30 days.¹⁰²

In Florida, a network of non-profit organizations provide crisis assistance to families 24-hours a day, seven days a week.¹⁰³ The nonprofit network provides screening; an intake meeting with the family and adolescent; psychosocial assessment; referrals to providers; ongoing case review; and a mandatory follow-up for 180 days after the conclusion of services.¹⁰⁴ Studies indicate that the approach is effective.¹⁰⁵ Florida courts handled only

¹⁰² *Id.*

¹⁰³ Gary Gately, *Center Aims to Keep Status Offenders Out of Courts*, Juvenile Justice Information Exchange, December 13, 2013, <http://jjie.org/2013/12/13/center-aims-to-keep-status-offenders-out-of-courts/105909/>.

¹⁰⁴ Annie Salsich & Jennifer Trone, *From Courts to Communities: The Right Response to Truancy, Running Away, and Other Status Offenses*, The Vera Institute 5-6 (2013), available at <http://archive.vera.org/sites/default/files/resources/downloads/from-courts-to-communities-response-to-status-offenses-v2.pdf>.

¹⁰⁵ *Id.*

four percent of status offenses in 2013, and, in 2011, the network's services eliminated an estimated \$160 million in out-of-home placement costs.¹⁰⁶

Orange County of New York, a primarily rural county, has counselors who respond to status offense complaints within two to forty-eight hours.¹⁰⁷ The counselor performs an assessment and creates a "voluntary service plan" for the family and follows up with the family over the next 2-3 weeks.¹⁰⁸ Orange County's approach led to statewide legislation "encouraging and supporting court diversion."¹⁰⁹ Subsequently, the number of New York status offense cases that went to court dropped by seventy percent.¹¹⁰

C. Judiciaries

Where statutory language is vague or otherwise leaves room for interpretation, judiciaries should

¹⁰⁶ *Id.*

¹⁰⁷ Shubick, *supra*, at 140.

¹⁰⁸ *Id.*

¹⁰⁹ Salsich, *supra*, at 5-6.

¹¹⁰ *Id.*

interpret legislation in a manner that avoids filing petitions for status offenses and otherwise advances the JJDPAs goal of avoiding placement.¹¹¹ An analysis of the following cases illustrates the importance of judicial interpretation.

In New York, state law provides that diversion programs are required to record “diligent attempts” to avoid filing a petition.¹¹² In *James S. v. Jessica B.*, the court dismissed the status offense petition because the agency failed to record any attempts to avoid filing a petition.¹¹³ ¹¹⁴ Similarly, Kentucky law provides “[n]o complaint shall be received by the court designated worker alleging habitual truancy unless an adequate assessment of the child has been performed.”¹¹⁵ In *T.D. v. Commonwealth*, the court held that oral testimony that the school district had

¹¹¹ See, e.g., *James S. v. Jessica B.*, 800 N.Y.S.2d 892 (2005).

¹¹² N.Y. Family Court Act § 735 (McKinney, 2005).

¹¹³ *James S.*, 800 N.Y.S.2d at 894-95.

¹¹⁴ *Shubik & Kendall*, *supra*, at 387.

¹¹⁵ Ky. Rev. Stat. Ann. § 630.060(2).

visited the child's home was not sufficient to meet the statutory requirements.^{116 117}

In the two cases above, the court interpreted the state statutes strictly and held the respective authorities accountable for inaction.¹¹⁸ However, an Alabama court reached a different outcome on a similar issue.¹¹⁹ Alabama law requires an “attendance officer to investigate all cases of non-enrollment and of nonattendance” to determine if there was a valid cause for the absences.¹²⁰ In *S.H. v. State*, the school's principal reviewed the child's attendance record and reported the child's absences to the truancy officer.^{121 122} The court held that the filing of truancy petition was valid because it was not the school principal, but rather the attendance officer's duty to investigate the truancy charge.¹²³ However, the court never mentioned that an

¹¹⁶ *T.D. v. Commonwealth*, 165 S.W.3d 480, 483 (Ky Ct. App. 2005).

¹¹⁷ Shubik & Kendall, *supra*, at 387-88.

¹¹⁸ *James S.*, 800 N.Y.S.2d at 894-95; *T.D.*, 165 S.W.3d at 483.

¹¹⁹ *S.H. v. State*, 868 So.2d 1110, 1115 (Ala. Civ. App. 2003).

¹²⁰ Ala. Code § 16-28-16(a) (2006).

¹²¹ *S.H.*, 868 So.2d at 1115.

¹²² Shubik & Kendall, *supra*, at 387-88.

¹²³ *S.H.*, 868 So.2d at 1116-17.

attendance officer investigated the case.¹²⁴ The opinion indicates that the court allowed authorities to shirk their duty to investigate the truancy complaint.¹²⁵ The Alabama statute requires the attendance officer to investigate all cases of non-attendance, but the principal made no such investigation.¹²⁶ Had an attendance officer investigated the situation, no controversy would have arisen; but, the opinion does not state that an attendance officer ever conducted an investigation.¹²⁷ This suggests that the court relaxed or ignored the investigation requirement.¹²⁸

While the full story of *S.H.* is not apparent from the record, this case, as well as the *T.D.* and *James S.* cases, illustrate the impact of judicial interpretation.¹²⁹ When a judiciary adopts a lax or adverse attitude toward even the most minor statutory practices and procedures, status-offense

¹²⁴ *S.H.*, 868 So.2d at 1110-17.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *S.H.*, 868 So.2d 1110; *T.D.*, 165 S.W.3d 480; *James S.*, 800 N.Y.S.2d 892.

petitions and subsequent out-of-home placement become all the more likely for the children involved.¹³⁰

VIII. CONCLUSION

Adolescents are, by their nature, physiologically, psychologically, and behaviorally immature. Due to the child's immaturity, he or she may test boundaries and make poor judgments. When these misjudgments are slight, the legal system should provide the child with support rather than punishment in order effectively to treat the underlying causes of the behavior.

When the legal system places status offending youth in out-of-home treatment centers, these facilities can adversely affect the child and fail to address the root issues of the problematic behavior. Congress should amend the JJDPa to ensure that status offending youth are not subject to out-of-home placement; judiciaries should avoid placing juvenile

¹³⁰ See, e.g., S.H., 868 So.2d 1110.

status offenders in residential facilities by resorting to diversionary and rehabilitative programs and interpreting legislation in a manner that advances the JJDP A's goal of avoiding placement; and advocates and researchers should continue to develop and critically review alternatives to out-of-home placement.