

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

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

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. Juvenile status offenses include truancy, running-away from home, being ungovernable or incorrigible, violating curfew, and alcohol possession or consumption.

Repeat offenders create a serious conundrum for the system. A juvenile who repeatedly commits status offenses may create stress and frustration for the juvenile's family and others invested in

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the juvenile's life. Repeat status offenders may create similar headaches for the educational and legal systems and consume their valuable time and resources. Residential placement is often a traumatic experience for a juvenile and places the child at risk for a multitude of negative effects. Depriving a child of freedom and forcing the child to vacate his or her home is a substantial infringement on a child's life.

With these concerns in mind, in 1974, Congress enacted the Juvenile Justice and Delinquency Prevention Act (hereafter, the "JJDP Act" or the "Act"), in part, to curb the routine placement of status-offending youth in residential facilities. Under the Act, states must develop policies that comply with the Act's requirements in order to receive a formula grant. 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) 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. 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. 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. Under this provision, many youth who commit status offenses are still sent to out-of-home placements. The contempt provision is hotly debated and the effectiveness and fairness of the provision has received attention from national news sources.

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. 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.