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Why Truancy Cases Shouldn't be Handled in Court



Dean Rivkin, University of Tennessee College of Law

Why is truancy treated as a juvenile justice issue in so many states? Why do punitive approaches to truancy still prevail? Law students and lawyers in the Education Law Practicum at the University of Tennessee College of Law – which provides legal services to people who may not otherwise be able to afford an attorney – have struggled with this question. Over the last few years, the Practicum has represented young people charged with truancy offenses. Although legal representation is unusual among status offense cases that make it to court, in the opinion of lawyers representing these youths, it is essential that attorneys be present. They help youth and families navigate the court system, ensure that due process requirements are observed, and avoid potentially severe consequences, such as unwarranted out-of-home placement or illegal incarceration. Based on its experiences in truancy court, the Practicum has fervently campaigned to reform the current system of truancy prosecutions of students in Tennessee, as the Center for Public Integrity recently [reported](#).

Tennessee, however, is not alone in using punitive responses to status offenses like truancy. Nationwide, get-tough approaches to truancy have led to widespread due process abuses, incarcerations, fines, unwarranted drug testing, and other criminal-like [sanctions](#). Heightened concerns about the notion of truancy as a gateway to serious juvenile crime can be traced to the early 1990s, when [commentators](#) predicted an upsurge of lawlessness perpetrated by drug-crazed “super-predator” youth. This depiction helped fuel the proliferation of zero tolerance school discipline laws and policies, as well as other measures purportedly designed to deal with “bad” children and youth. In the mid-1990s, an [FBI-authored article](#) trumpeted the idea that truancy should be combatted through law enforcement and the justice system, arguably giving rise to another pathway to the school-to-prison pipeline. Soon after, federal grants targeted to district attorneys became available, and new staff dedicated to prosecuting students for committing truancy were hired. Although interventions were put in place, some [criminologists](#) argue that programs operated by courts are a prime example of criminal justice expansionism, where the roles of the school and other community institutions were replaced by the legal system.

Punitive responses to truancy, however, are [fast losing favor](#). There is a greater focus on finding school and community-based solutions, as Vera's Status Offense Reform Center, the Coalition for Juvenile Justice, and other groups are sharing ideas about how to develop effective status offense systems that draw on evidence and best practices, and keep kids in school and out of court.

Although these efforts are promising, more can be done. Lawyers in particular should get more involved in representing juveniles in truancy prosecutions and hold prosecutors to the high bar of proving that an offense has been committed. At the University of Tennessee, this has been the approach of our Education Law Practicum. Although there is no right to counsel in Tennessee in status offense cases, through community referrals, we undertook the representation of a select number of youth in truancy cases. Through the zealous defense of clients in court, and advocacy for them in the school setting, there has been a significant drop in the number of truancy petitions filed—from over 180 new petitions filed in 2009 to only 26 reportedly filed in 2013—and a greater assumption of responsibility by the school system to rigorously screen students who are chronically absent for possible educational disabilities, and to provide the necessary supports and services to stabilize and to re-engage absent children in school programs. Without question, young people will be better off with schools addressing these issues than the status offense system.

ABOUT DEAN RIVKIN

Dean Hill Rivkin is College of Law Distinguished Professor at the University of Tennessee College of Law, where he has taught since 1976. He teaches and writes in the field of public interest law and lawyering. Since 2009, he has taught a clinical course, The Education Law Practicum.

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Trafficked and Exploited Girls Need Help, Not Incarceration



Malika Saada Saar, Rights4Girls

A few years ago, I met a young girl, “Denise,” who told me that her uncle had repeatedly raped her since she was 8. To stop the endless abuse, Denise said, she deliberately got pregnant by another man. Her plan worked. The uncle did stop raping her, but by that time, she was a mother at 15. Sadly, I did not meet Denise at a support group for incest survivors or a special high school program for teen mothers. I met Denise in a Delaware detention center for girls. She was behind bars for a probation violation, a charge that originated from her arrest for truancy. Mind you, Denise missed school because she had to take care of her baby.

Denise’s story is representative of [why so many of our girls are behind bars](#). According to research produced by the Office of Juvenile Justice and Delinquency Prevention’s [Girls Study Group](#), girls who are sexually abused are much more likely to get caught up in the juvenile justice system. Currently, there are more than 14,000 girls under age 18 incarcerated in the United States and these girls are disproportionately black. Girls, who tend to be arrested at younger ages than boys and usually enter the system at 13 or 14, are mostly apprehended for minor, nonviolent offenses such as truancy, running away, loitering, alcohol and substance use—coping behaviors that overwhelmingly result from being sexually abused.

To escape the abuse, many girls run away from homes or foster care, only to be arrested for running away or enticed/coerced by pimps or traffickers and subsequently sold for sex. According to the Department of Justice, there are currently an estimated 293,000 American children at risk of commercial sexual exploitation. The majority of them are girls between the ages of 12 and 14. Often, they are girls of color. These children are abducted by traffickers and then routinely raped, beaten, and sometimes even branded. These girls are in desperate need of help, yet they are too often detained for child prostitution or prostitution-related charges.

Over the last couple of years, there has been considerable attention given to the “school to prison” pipeline. But, in so many ways, that is our boys’ story. Our girls have a different story, one of being entangled in a complex mix of sexual victimization and trauma.

It is time to shine some light their way. At a policy level, that means ending the detainment of girls for status offenses and ceasing to arrest and detain trafficked and exploited girls. Furthermore, discourse and research must be cognizant of the intersections of race and gender

so that the experiences of girls in the status offense system are no longer marginalized or obfuscated. Finally, policy and funding for trauma-informed, gender-specific and community-based diversion programs—such as PACE in Florida or the Center for Young Women’s Development in San Francisco—must be scaled up.

Our girls don’t deserve to be criminalized for enduring abuse and trauma. They deserve the chance to be seen and treated as the victims and survivors that they are. It is time to give girls like Denise that chance so that they can heal.

ABOUT MALIKA SAADA SAAR

Malika Saada Saar is Special Counsel on Human Rights at The Raben Group. She also serves as Director of the Human Rights Project for Girls (Rights4Girls), a human rights organization focused on gender-based violence against young women and girls in the U.S. As a human rights lawyer and advocate, Malika led the effort to shut down Craigslist sex ads that served as the leading site for the trafficking of children for sex, ended the federal practice of shackling pregnant mothers behind bars in U.S. prisons, and successfully advocated for millions in federal funding for treatment services for at-risk families. Newsweek and the Daily Beast have named Malika as one of “150 Women Who Shake the World.” The Obama White House selected Ms. Saada Saar to serve on the Presidential Advisory Council on HIV/AIDS. She also serves on the Board of Directors for the Robert F. Kennedy Center for Human Rights. Ms. Saada Saar holds a B.A. from Brown University, M.A. in Education from Stanford University, and a J.D. from Georgetown University Law Center. She lives in Washington, D.C. with her husband and three children.

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More Justice for Georgia's Youth



Melissa Carter, Barton Child Law and Policy Center

Historically a socially conservative state, Georgia readily embraced a “tough on crime” stance with respect to children and youth accused of violating the law. Notwithstanding steady declines in juvenile arrests and detention in the state since 2008, our juvenile justice policy has largely been shaped by reaction to the profile of the serious youthful offender. Now, the state is leading the way in the necessary course correction to achieve a greater measure of justice for all youth involved with the juvenile courts.

The transformation currently underway began nearly a decade ago with efforts by advocates and stakeholders across the juvenile justice system to reorganize and modernize the state’s juvenile code. Those efforts converged in 2013 with the political leadership of Governor Nathan Deal and his Special Council on Criminal Justice Reform. State leaders were confronted with a compelling data narrative showing that Georgia was expending considerable resources confining juvenile offenders who were at low risk to re-offend. Seventy-one percent of all disposed youth in Georgia in 2011 were assessed as being low risk, and the cost of detention was estimated to be \$90,000 per bed, per year. More important, these expensive and restrictive interventions have proven ineffective; Georgia’s recidivism rate for all youth in the juvenile justice system exceeded 50 percent.

Accordingly, public policy has shifted to focus on utilizing the state’s secure facilities on higher-risk, serious offenders and reducing recidivism by strengthening evidence-based community supervision and programs. To that end, [the new law](#) mandates the creation or revalidation of screening and assessment tools to ensure more information is available to inform the decisions made by judges and juvenile justice system staff. Greater clarity around the needs of low-risk youth resulted in the creation of a new statutory scheme for status offenders and youth who were previously deemed “unruly” under Georgia law. The new designation – Children in Need of Services (CHINS) – reminds us that a youth’s risky or problematic behavior is often rooted in family dysfunction, and it replaces the conventional court intervention with an interagency approach to family-centered service planning and delivery. Moreover, Georgia law now prohibits the detention of status offenders except for brief periods before and after the first court appearance, as allowed by the federal Juvenile Justice Delinquency Prevention Act (JJDP A).

The new laws took effect January 1, 2014. Six months into implementation, the reforms seem to be living up to their promise, particularly with respect to outcomes for delinquent youth and status offenders. Georgia's Department of Juvenile Justice reports a reduction in their detention census, which state leaders attribute to the reforms. Additionally, courts are reporting success at diverting CHINS cases to community resources.

Still, a good deal of work remains to be done to support the adoption of the new tools and modifications to local data collection systems. Even more critical, local communities must have adequate resources to provide the individualized response that justice for each and every youth requires.

ABOUT MELISSA CARTER

Melissa Carter is a Clinical Professor of Law and Executive Director of the Barton Child Law and Policy Center at Emory University School of Law in Atlanta, Georgia. She is responsible for the administration of the Center, including supervision of clinical faculty, staff, and students; development and budgeting; strategic planning; and external affairs. In addition, she directs the public policy and legislative advocacy clinics and teaches a related course in child welfare law and policy. Melissa also serves as an advisor to the Supreme Court of Georgia Committee on Justice for Children and as an ex-officio member of the Board of Directors of VOICES for Georgia's Children. Carter was recently named by the Fulton County Daily Report as one of Georgia's top lawyers under 40 "On the Rise."

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Kentucky Takes Steps Toward a Fairer Status Offense System



Tara Grieshop-Goodwin, Kentucky Youth Advocates

Kentucky has been among the states with the highest use of secure juvenile detention for status offenses, non-criminal behavior like running away or skipping school. Research shows that secure detention can lead kids down a path of deeper involvement with the juvenile and criminal justice systems and costs Kentucky an estimated \$100,000 per kid, per year. With the recent passage of [Senate Bill 200](#) into law, however, Kentucky begins a fundamental shift in how the state responds to status offense cases, as well as non-serious public offense cases.

Senator Whitney Westerfield and Representative John Tilley led a task force last year that dug deep into what was driving the high use of incarceration for status and other minor offenses. The numbers showed Kentucky too often placed kids away from home, even when they posed no risk to public safety. As a recent Frontline documentary demonstrated, children who have mental health issues or face turmoil at home are too often incarcerated for status offenses.

Based on task force recommendations, SB 200 includes core changes to front-load services to children and families to avoid the use of secure detention for status offenses. The bill strengthens the pre-court process with the Court Designated Worker program (which processes all complaints, or charges, against youth and administers a diversion program), requiring the use of evidence-based screenings and assessments to guide interventions. The bill creates Family Accountability, Intervention and Response (FAIR) teams to connect children to services prior to formal court involvement and puts some limitation on how secure detention can be used, such as limiting use of secure detention for contempt to 30 days.

Oversight of implementation and data collection represent another core piece of the bill to ensure Kentucky is getting the desired outcomes from the juvenile justice system. An oversight council will oversee implementation and review performance data collected. The legislation takes effect in July, but some of the components have a delayed implementation to allow courts, schools, and juvenile justice and child welfare agencies time to prepare.

While the legislation did not go as far as ending the use of secure detention for status offenses, deeper reforms on that front were considered during the legislative process. The oversight council is authorized to further consider reforms in that area. With the emphasis on services created under SB 200, the use of secure detention is expected to decline. Progress on that front can make it easier to identify further solutions to address status offenses without relying on

secure detention. Stopping the practice of locking up youth for status offenses will help Kentucky achieve what all Kentuckians want to see – better outcomes for youth and families and safer communities.

ABOUT TARA GRIESHOP-GOODWIN

Tara Grieshop-Goodwin serves as Chief Policy Officer at Kentucky Youth Advocates, where she oversees the organizations work in health, education, economic security, juvenile justice and safety. She also coordinates the work of the Blueprint for Kentucky’s Children, a unified agenda for policy change to improve child well-being in Kentucky, and serves on the State Advisory Group’s Subcommittee for Equity and Justice for All Youth (SEJAY).

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New Program in San Antonio Focuses on Early Intervention for Status Offenses



Dr. Brian Woods, Superintendent, Northside Independent School District (San Antonio)

In 2010, the state of Texas passed a law that placed truancy cases under the jurisdiction of district courts. As a result, courts can distribute cases to whomever they want, and school districts can pick and choose who hears their truancy cases to include Justices of the Peace and Municipal Courts. This led to disparities in how truancy cases were handled—some judges were taking positive measures, while others use more punitive approaches. In response, the San Antonio Municipal Court decided to establish a partnership with Northside ISD and other local school districts to create more

accountability and a set of agreed-upon standards for handling truancy cases.

The program, which is a collaboration between the court and the school districts, emphasizes early intervention. After a student's third unexcused absence, a warning notice is sent to the family. At this point, the school and family develop an individualized attendance and intervention plan, in which each agree to meet certain goals and address the root cause of the student's truant behavior.

Because family engagement is a key aspect of this program, our school district added attendance staff at the various campuses to facilitate early contact with families about problem behaviors. Additionally, the Municipal Court has also contributed resources, including parenting classes and linking families with appropriate community based organizations, and more judges have been added to ensure that cases are processed in a timely manner. In Northside, the head of the Office of Pupil Personnel is responsible for monitoring the program from the school district's side of the partnership, while the school district liaison from the Municipal Court is responsible for monitoring from the court's side. In so doing, we hope to establish standards across the district, so officials are not left to their own devices and responses remain consistent.

Finally, the program relies on a data system to track unexcused absences, as well as the number of conversations taking place with parents, the number of warning letters issued, and the number of court cases that are ultimately filed. This data is shared across schools, and stakeholders convene several times annually to discuss the outcomes.

Because the program is fairly new, we are still in the process of collecting outcome data. However, the initial results are showing promise. During the 2013-2014 school year, the district's student attendance rate was 95.8 percent, an all-time high. Additionally, the district four year graduation rate increased from 91.70 to 92.80 percent from 2011 to 2013. Student court filings have also decreased, from 3,130 during the 2011-2012 school year to 2,681 during the 2013-2014 school year.

Our experience points to the importance of finding a committed court partner with a similar philosophy about young people. Without agreement on avoiding punitive measures and a shared vision about creating supportive interventions, real change may be difficult.

ABOUT DR. BRIAN WOODS

Dr. Brian T. Woods has been Superintendent of the Northside Independent School District in San Antonio since 2012. Dr. Woods began his career in Northside in 1992 as a social studies teacher at Marshall High School and taught U.S. government, economics, and U.S. history. He then helped open O'Connor High School in 1998 as an Assistant Principal. Dr. Woods became Vice Principal at Clark High School in 2000 and was named Principal in 2004. He serves on the Executive and Legislative Committees for Texas Association of School Administrators and the RAC Executive Committee for Education Service Center, Region 20, as well as on the Education/Workforce Development Committee of the Greater San Antonio Chamber of Commerce.