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**FACT SHEET 2015**

**HB 3852**

## **Keep Status Offenders Out of Secure Facilities**

***Allowing These Youth to Be Held Only in Non-Secure Facilities Will Improve Outcomes, Increase Facility Safety, and Save Community Juvenile Justice Dollars***

### **YOUTH ACCUSED OF STATUS OFFENSES ARE DETAINED IN SECURE FACILITIES**

Texas law defines a “status offender” as “a child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime if committed by an adult.”<sup>1</sup> Thus, status offenses criminalize certain conduct for children when that same conduct is perfectly legal for adults. Examples of status offenses are missing too many days of school,<sup>2</sup> running away from home,<sup>3</sup> or violating curfew.<sup>4</sup>

The Juvenile Justice and Delinquency Prevention Act (JJDPA), a federal law passed by Congress in 1974 and last reauthorized in 2002, tied federal grant money to state compliance with four core requirements all designed to reduce juvenile incarceration.<sup>5</sup> The first of these requirements is the Deinstitutionalization of Status Offenders (DSO), which mandates states to find alternatives to the secure detention and confinement of these youth based on the research and recommendations of the President’s Commission on Law Enforcement and the Administration of Justice.<sup>6</sup> In compliance with the DSO requirement, **Texas law prohibits status offenders from being punished with a term of confinement in a secure facility.<sup>7</sup> However—despite the prohibition on the post-adjudication secure confinement—Texas law allows status offenders to be detained in a secure facility while they await an adjudication hearing.** Pre-adjudication secure detention is allowed for up to 24 hours, and can be extended to 10 days or beyond in particular statutory circumstances.<sup>8</sup>

### **THROUGH CONTEMPT OF COURT, STATUS OFFENDERS CAN BE DETAINED AND PUNISHED IN SECURE FACILITIES**

In 1980, the JJDPA was amended to add the “Valid Court Order” (VCO) Exception, which allows courts to punish status offenders who violate a court order related to a status offense with a term of secure confinement.<sup>9</sup> Texas law has recognized this exception through two different contempt of court mechanisms. For status offenses heard in Justice of the Peace and Municipal Courts, the exception is a delinquent conduct offense called “Contempt of Magistrate.”<sup>10</sup> For status offenses heard in the juvenile court, Texas has its own version of the VCO Exception.<sup>11</sup> Under either of these exceptions, a status offender who violates a court order—which could be something as simple as “stop missing school”—can be accused of a contempt offense and securely detained for up to 72 hours (which can be extended to 10 days or more under certain circumstances).<sup>12</sup> Further, under the VCO exception, a status offender may be punished with a term of secure confinement;<sup>13</sup> this is even though secure confinement is prohibited for Contempt of Magistrate.<sup>14</sup>

### **SECURE CONFINEMENT IS INAPPROPRIATE TO STATUS OFFENDERS’ NEEDS AND PUTS THEM AT RISK**

Unfortunately, even brief periods of secure confinement are counterproductive and dangerous for status offenders. Status offenses are by definition non-criminal behaviors, and “[t]he actions associated with status offenses are seldom isolated incidents and instead are often manifestations of underlying personal, familial, community and systemic issues, as well as other unmet and unaddressed needs.”<sup>15</sup> These needs persist in youth accused of contempt stemming from a status offense. Secure confinement makes it difficult to meet status offenders’ needs, as it interrupts their education and keeps them away from the home- and community-based

solutions that have been shown to be more effective.<sup>16</sup> Further, a substantial body of research demonstrates that secure detention of this population “may make it more likely that youth will continue to engage in delinquent behavior, and that the detention experience may increase the odds that youth will recidivate, further compromising public safety.”<sup>17</sup> When status offenders are confined with youth who have committed much more serious offenses, they can learn criminal behaviors that make it more likely they will commit unlawful acts in the future.<sup>18</sup> Finally, secure confinement is more expensive than the alternatives; these youth would be better served in non-secure facilities or community alternatives that address their needs while being more cost-effective for the State.<sup>19</sup>

## **KEY FINDINGS**

- **Texas detains thousands of status offenders in secure facilities each year.**
  - » According to the Texas Juvenile Justice Department, 1,092 status offenders were put in secure detention during 2013 for status offenses that originated in the juvenile court. 166 of these were for accusations of contempt pursuant to the VCO Exception.<sup>20</sup>
  - » For status offenses that originate in Justice of the Peace and Municipal Courts, precise detention data is not available. However, according to the Office of Court Administration, 114,609 youth were referred to these courts in offense categories that could include status offenders. Some of these categories, such as Failure to Attend School (79,250) and Local Curfew (6,804), are all status offense cases. Others contain a mix of status offenders and non-status offenders, such as Non-Driving Alcoholic Beverage (13,981) where only youth under age 17 qualify. Applying the detention rate of status offenders in juvenile court (20%) to only the categories of offenses that contain 100% status offenders, it is a conservative estimate that about 17,000 of these youth were detained during 2013.<sup>21</sup>
  
- **While most status offenders are detained for 24 hours or less, a substantial percentage is detained for longer than 24 hours.**
  - » Of the 1,092 status offenders securely detained during 2013, 31.5% (344) were held for longer than 24 hours. 69 youth were held for at least 10 days.<sup>22</sup>
  - » Again, specific Justice of the Peace and Municipal Court numbers are unavailable. However, we can estimate that 5,355 status offenders were detained for longer than 24 hours here by applying the 24+ hour detention rate in juvenile court (31.5%) to the detention estimate of 17,000.
  
- **There is considerable momentum nationally and in Texas for preventing the secure confinement of status offenders through contempt exceptions.**
  - » As part of a reauthorization of the JJDP in Congress, Senator Chuck Grassley (R-Iowa) is pushing for repeal of the VCO Exception.<sup>23</sup>
  - » Recent national polling indicates that 85% of registered voters agree that “Juveniles should never be placed in juvenile corrections facilities for status offenses like skipping school or running away, which would not be a crime if they were an adult.” 73% of those polled “Strongly Agreed.”<sup>24</sup>
  - » Texas judges are naturally shifting away from using the VCO Exception. While in 2007, Texas was among the top three states with the highest rate of youth confinement through use of the VCO Exception—making up 60% of nationwide uses of the exception along with Kentucky and Washington—in 2013, according to the Texas Juvenile Justice Department, only one youth was put into secure confinement pursuant to the VCO Exception.<sup>25</sup>
  
- **Research demonstrates that placing status offenders in secure facilities is against best practices.**
  - » Status offense behaviors are often caused by factors outside of a youth’s control, such as family dysfunction, problems in school, unmet mental health needs, or community problems.<sup>26</sup> Research has demonstrated that secure confinement is not an evidence-based practice for treating these underlying causes of status offenses.<sup>27</sup>

## KEY FINDINGS (CONTINUED)

- » Nationally, 20% of status offenders put into secure confinement are placed in units with youth who have committed murder or manslaughter.<sup>28</sup> Placement of status offenders in these facilities jeopardizes youths' safety and increases the likelihood of future delinquency through learned criminal behavior.<sup>29</sup>
- **Placing status offenders in secure facilities is expensive.**
  - » According to the Legislative Budget Board, secure detention costs \$262.52 per youth per day and secure confinement costs \$207.61 per youth per day.<sup>30</sup>

## COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 3852 BY REPRESENTATIVE MOODY

**HB 3852 prevents status offenders from being held in secure facilities, either pre- or post-adjudication, to bring Texas up to date with the most recent research regarding best practices for these youth.** HB 3852 prohibits the pre-adjudication secure detention of all status offenders, including those accused of violating a court order imposed for a status offense. Instead of secure detention, HB 3852 provides that status offenders may be detained in the juvenile processing offices and places of non-secure custody for up to 6 hours, and in non-secure correctional facilities for up to 24 hours. All of these non-secure facilities exist under current Texas law, and the bill does not alter the exceptions that allow for longer periods of detention in certain circumstances. Finally, HB 3852 effectively eliminates application of the VCO Exception to sentence status offenders to post-adjudication secure confinement. While some may argue that confinement is appropriate given that contempt of court is a separate offense, it bears remembering that a youth would not be involved with the court at all but for the original status offense. This contempt exception has become sparingly used, and HB 3852 gets it right by removing the possibility that the exceptions come back into common use. HB 3852 is in line with best practice: it removes the dangers that status offenders face when put in secure facilities with more delinquent youth.

*Citations on reverse*

## Citations

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- <sup>1</sup> Tex. Family Code § 51.02(15).
- <sup>2</sup> Tex. Educ. Code § 25.094; Tex. Family Code § 51.03(b)(2).
- <sup>3</sup> Tex. Family Code § 51.03(b)(3).
- <sup>4</sup> Tex. Local Gov. Code § 351.903.
- <sup>5</sup> Shay Bilchik and Erika Pinheiro, “Representing Juvenile Status Offenders, Chapter One: What the JJDP A Means for Lawyers Representing Juvenile Status Offenders,” *American Bar Association* (2010): 4, [http://www.americanbar.org/content/dam/aba/administrative/child\\_law/20100121\\_RJSO\\_Book.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/child_law/20100121_RJSO_Book.authcheckdam.pdf).
- <sup>6</sup> Claire Shubik and Jessica Kendall, “Rethinking Juvenile Status Offense Laws: Considerations for Congressional Review of the JJDP A,” *Family Court Review* 45, No. 3 (2007): 385-86, [http://juvjustice.org/sites/default/files/resource-files/resource\\_743\\_0.pdf](http://juvjustice.org/sites/default/files/resource-files/resource_743_0.pdf).
- <sup>7</sup> Tex. Fam. Code § 54.04(o)(2).
- <sup>8</sup> Tex. Fam. Code § 54.011.
- <sup>9</sup> Marc Levin & Derek Cohen, “Kids Doing Time for What’s Not a Crime: The Over-Incarceration of Status Offenders,” *Texas Public Policy Foundation* (March 2014): 4, <http://www.modelsforchange.net/publications/521>.
- <sup>10</sup> Tex. Family Code § 51.03(a)(2).
- <sup>11</sup> Tex. Family Code § 54.04(n).
- <sup>12</sup> Tex. Fam. Code § 54.011.
- <sup>13</sup> Tex. Fam. Code § 54.04(n).
- <sup>14</sup> Tex. Fam. Code § 54.04(o)(3).
- <sup>15</sup> Coalition for Juvenile Justice, “National Standards for the Care of Youth Charged with Status Offenses,” (2013): 1, [http://www.juvjustice.org/sites/default/files/resource-files/National%20Standards%20for%20the%20Care%20of%20Youth%20Charged%20with%20Status%20Offenses%20FINAL\\_0.pdf](http://www.juvjustice.org/sites/default/files/resource-files/National%20Standards%20for%20the%20Care%20of%20Youth%20Charged%20with%20Status%20Offenses%20FINAL_0.pdf).
- <sup>16</sup> National Juvenile Justice and Delinquency Prevention Coalition, “Promoting Safe Communities: Recommendations for the 113<sup>th</sup> Congress,” (2013): 6.
- <sup>17</sup> Barry Holdman and Jason Ziedenberg, “The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities,” *Justice Policy Institute* (2011): 2-3, [http://www.justicepolicy.org/images/upload/06-11\\_rep\\_dangersofdetention\\_jj.pdf](http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf).
- <sup>18</sup> Ibid.
- <sup>19</sup> Holdman and Ziedenberg, “The Dangers of Detention,” 10-11.
- <sup>20</sup> Texas Juvenile Justice Department, “Statewide Statistical Report: 2013.”
- <sup>21</sup> Office of Court Administration, “Trial Court Activity Database,” <http://www.txcourts.gov/statistics/trial-court-activity-database.aspx> (running “Juvenile and Minor Activity Report” in the Justice of the Peace and Municipals Courts from January 1, 2013 to December 31, 2013).
- <sup>22</sup> Texas Juvenile Justice Department, “Statewide Statistical Report: 2013.”
- <sup>23</sup> The Editorial Board, *Kids and Jails, a Bad Combination*, *New York Times* (Dec. 28, 2014).
- <sup>24</sup> *Public Opinion on Juvenile Justice in America*, The Pew Charitable Trusts (November 2014), [http://www.pewtrusts.org/~media/Assets/2014/12/PSPP\\_juvenile\\_poll\\_web.pdf](http://www.pewtrusts.org/~media/Assets/2014/12/PSPP_juvenile_poll_web.pdf).
- <sup>25</sup> Texas Juvenile Justice Department response to data request.
- <sup>26</sup> Juvenile Justice and Delinquency Prevention Coalition, “Fact Sheet: Deinstitutionalization of Status Offenses Core Protection,” (August 2014), <http://www.act4jj.org/sites/default/files/ckfinder/files/Act4JJ%20Core%20Protection%20DSO%20August%202014%20FINAL.pdf>.
- <sup>27</sup> Nelson, D. W. “A Road Map for Juvenile Justice Reform,” *Annie E. Casey Foundation* (2008): 9.
- <sup>28</sup> Nancy Gannon Hornberger, “Improving Outcomes for Status Offenders in the JJDP A Reauthorization. Juvenile and Family Justice Today” (2010), citing Sedlak, A. J., & McPherson, K. S., “Conditions of Confinement: Findings from the Survey of Youth in Residential Placement,” *Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice* (May 2010).
- <sup>29</sup> Coalition for Juvenile Justice, *National Standards for the Care of Youth Charged with Status Offenses*, (2013), 10, [http://www.juvjustice.org/sites/default/files/resource-files/National%20Standards%20for%20the%20Care%20of%20Youth%20Charged%20with%20Status%20Offenses%20FINAL\\_0.pdf](http://www.juvjustice.org/sites/default/files/resource-files/National%20Standards%20for%20the%20Care%20of%20Youth%20Charged%20with%20Status%20Offenses%20FINAL_0.pdf).
- <sup>30</sup> Legislative Budget Board (LBB), “Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2013 and 2014,” (February 2015): 11.