Best Legal Practices for Handling Status Offense Cases in South Carolina

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Best Legal Practices for Handling
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This guide is intended for use by juvenile defense attorneys, solicitors, family court judges and staff of the S.C. Department of Juvenile Justice (DJJ) handling status offense cases. The purpose of this guide is to recommend best legal practices for addressing the common, complex, legal, and social issues presented in status offense cases. Some of the practices may not be mandated by law but are recommended to assist practitioners and improve outcomes for status offense cases. For additional information about family court process and procedure, please consult the Juvenile Justice Hearings Benchbook and the Truancy Intervention Guide located on the Children's Law Center website.

I. General

A. Naming Parents as Parties

- Parents should be named as parties in status offense cases so violations of orders not resulting from the child's willful violation can be addressed with the parent as appropriate.

B. Training for Legal Professionals

- Family court judges, attorneys, and DJJ staff involved with status offense cases should be trained on the current applicable statutes, alternatives to filing status offense petitions, alternatives to filing contempt of court petitions for violations of status offense disposition orders, alternatives to and legal limits on detention of status offending youth, the harms of unnecessary detention of status offending youth (including pre-trial detention and secure evaluation), the complex needs of status offending youth and their families, and tools for keeping status offending youth in the community.
- Other training topics should include trauma-informed courts, best legal practices for first-time school rules/hearings, and how to handle bullying and its impact on truancy.
- Practitioners would also benefit from basic training on school discipline, school records (PowerSchool), and special education records and procedures (Section 504 and IDEA).
- Practitioners should also receive training on mental health records, including diagnostic assessments and treatment notes. Practitioners should have a basic understanding of common disabilities among youth with behavioral issues, such as attention-deficit/hyperactivity disorder (ADHD), oppositional defiant disorder (ODD), depression, anxiety, autism/autism spectrum disorder (ASD) and learning disabilities.

C. Multi-disciplinary Advocacy for Children

- Children who are exhibiting status offending behaviors (truancy, incorrigibility, running away from home) and their families often have complex, unmet needs. The best response for these children includes an assessment of their needs by a qualified professional and an identification of the most appropriate services to effectively address those needs.
  - Focusing on the identification of the child's and family's unmet needs will assist with advocating for the provision of appropriate services and/or dismissal of some status offense or contempt petitions as an alternative to court involvement.
  - Such identification can also help ensure that pre-trial interventions and disposition orders are tailored to children's needs.
  - Early collection and review of complete records from the child's school, medical providers, and mental health providers should inform future decision-making.

D. Diversion as the First Option

- Community based diversion programs like behavioral contracts or other locally available programs should be the default option for disposing of status offense cases.
- Prosecution should be reserved for children who have already exhausted these programs or failed to cooperate with diversion. In cases where a child fails to complete a diversion program, the reasons for that failure should be analyzed to ensure it was the child's fault rather than another barrier (e.g., parent's lack of transportation, inability to pay program entry fee, etc.).

E. Multiple-Agency Involvement/Conflicts

- Families of youth charged with status offenses frequently have multiple agencies involved with their families. In some cases, there may be parallel Department of Social Services (DSS) proceedings occurring simultaneously with the juvenile justice process.
- These cases may present conflicts of interest between parents facing abuse and neglect charges and children facing status offense charges. Attorneys must consider and explain the conflicts carefully to their clients. All practitioners should be able to inform families of the possible consequences of different agency actions. Many of these cases benefit from the appointment of a guardian ad litem. Judges should consider whether duplicating one agency's efforts by ordering the family to cooperate with a second agency is in the best interests of the child.

II. Truancy Cases

A. Naming Parents as Parties

- Parents should be named as parties in truancy cases so violations of orders not resulting from the child's willful violation can be addressed with the parent as appropriate.
- Children under 12 should not be named as parties in truancy petitions or school attendance orders.
- Children aged 12 and older should not be named as parties in initial truancy petitions and should only be named as parties in school attendance orders if the court first, after hearing upon 10 days' notice, determines the reported absence(s) occurred without the parent's knowledge, consent, or connivance and that the parent has made a bona fide attempt to keep the child in school. See §§ 59-65-60, -70.

B. Legal Representation at Truancy Hearings

- Children should have meaningful access to legal counsel at all truancy hearings, including hearings where children charged with truancy are placed under an initial mandatory school attendance order (which if violated could lead to the child being locked up in secure confinement).
- When school officials notify a family that a truancy petition is being filed, they should also send notice of the right to an attorney and instructions for how to contact the local Public Defender's Office. The same information should accompany the summons and petition at the time of service. Rule 36, SCFCR.
- If the parent and child are unrepresented at the time of the first hearing, the judge should advise them of their right to appointed counsel. A waiver of counsel should only be accepted after the judge confirms that the child is aware (1) that an attorney can be appointed free of cost if the family cannot afford one; and (2) that the parent, child, or both could face incarceration for violating a mandatory school attendance order.
- Solicitors, defense counsel and judges may consider adopting a local rule appointing counsel for each *child* named in a first-time truancy petition.
- Defense attorneys who represent these children should receive specialized training on truancy and understand how to effectively represent youth throughout these hearings. Defense attorneys should be familiar with the local school district attendance policies, school records/records systems, special education procedures, and programs and services available to families through the local school district. District policies can usually be found on the school district's website.

- Defense attorneys, solicitors and judges should be trained on the serious implications of the initial hearing where the child is placed under a court order and providing alternatives to the court for disposition.

C. First Time Mandatory School Attendance Order Hearing Procedures

- Before being placed under a mandatory school attendance order, a child should have the opportunity to challenge whether the absences were the result of the child's willful violation of the state's truancy laws. The child should also be able to challenge whether the school strictly complied with the intervention requirements of S.C. Code 43-274. The school's failure to comply with the requirements should be grounds for dismissal. Solicitors should be able to identify deficiencies in petition materials and screen out defective petitions for dismissal or correction by school officials. This reduces both the number of petitions the court must process as well as the number of families that may erroneously consent to being placed under an order.
- Children should be provided with a clear understanding of the implications of being placed under a court order, by the defense attorney and the court before consenting to anything.
- Children should be provided with individualized and private hearings, as required by statute. S.C. Code 63-3-590. The current practice of hearing multiple children's truancy charges at the same time, with multiple children and parents before the court in a single hearing, should be banned.
  - Parents and children do not feel comfortable discussing their personal circumstances when surrounded by other families.
  - Many do not understand they have a right to challenge the petition allegations or present their version of events in a group setting.

D. School Attendance Orders

- Before placing a child under a school attendance order, the judge should inquire about (1) the identification of underlying causes of the truant behavior and (2) the actual services provided or attempted by the school. An account of school efforts to provide services or support should be placed on the record. The judge should consider whether sufficient time has elapsed since the development of the intervention plan to allow for the implementation and utilization of interventions and services. If no services have been provided, the judge should order the school to comply with the intervention plan or to develop an appropriate intervention plan. If no services have been provided due to the parent's refusal to cooperate with school officials, the court should proceed with placing the parent under the order, but not the child.
- Indefinite school attendance orders and those with extensive time periods are often unnecessary and set the child up for failure. School attendance orders

should be time limited with consideration given to the grade level and mitigating factors of the truant behavior. School attendance orders should generally not exceed one year absent unusual circumstances, which should be explained in writing in any order.

- Judges should consider including language allowing the child to come off the order after a period of compliance (setting attainable goals, not just restrictions, and using positive reinforcement while giving the child the opportunity to make better decisions and become empowered by those good decisions) and/or upon recommendation from the school.
- Attendance orders should be targeted to the type of truant behavior that is problematic for the child.
- Attendance orders should not include prohibitions on any of the following: tardies, class-cuts, disciplinary referrals, or suspensions or expulsions.
- By statute, mandatory school attendance orders are directed to enforce the state's truancy law. § 59-65-70. School-based behaviors occurring at school like tardies, class-cuts and disciplinary referrals are beyond the scope of the state's truancy law. Including school-based behaviors into a court order to attend school elevates these behaviors to conduct punishable by criminal contempt even though the child is attending school.
- The truancy statute, regulations, and case law expressly exclude suspension and expulsion absences from contributing toward truancy. *See* S.C. Code § 59-65-80; S.C. Code Regs. 43-274(I)(c); In the Interest of Michelle H., 287 S.C. 598, 340 S.E.2d 544 (1986).

E. Contempt of Court for Violation of a School Attendance Order

- Before prosecuting such petitions, DJJ and solicitors should examine whether the school has complied with S.C. Code Regs. 43-274, which requires schools to "exhaust all reasonable alternatives" before seeking a contempt adjudication.
- Judges should ensure the intervention plan is attached to the petition as required by the regulation.
- Complete school records – including all intervention plans, all attendance records, any disciplinary records, all report cards, all correspondence with the family, and any special education records – should be routinely provided as discovery in any contempt of court case. If the child is a student with a disability under the Individuals with Disabilities Education Act (IDEA), a copy of the child's Individualized Education Plan (IEP) and disciplinary records must be included with the referral documents. 34 C.F.R. §300.353(b). Although not legally required, a student's 504 accommodations plan or Individual Health Plan should be included as well.

- The contempt proceeding is often the first time the child has had access to representation. If a child was not represented by an attorney in the mandatory school attendance order hearing, the child should be able to challenge the underlying school attendance order, especially if the school failed to comply with the regulations regarding intervention plans.
- The school and DJJ should provide the court with a list of alternatives to secure confinement to assist with disposition.

III. Incorrigibility Cases

A. Incorrigible Petition Requirements

- Parents and guardians should be required to demonstrate their own commitment to seeking assistance outside of family court and show they have exhausted all possible resources prior to filing an incorrigible petition.
- Documentation should be required which indicates that the family and child have made reasonable efforts to resolve the challenges confronting the family unit through participation in family counseling, pastoral counseling, parenting improvement classes, or other family therapy services.
- Consideration should be given as to whether identified resources and interventions have been given adequate time to be effective.

B. Family Conflict and Parental Input

- Incorrigibility cases frequently include intense parent-child conflicts and even abuse or neglect allegations. Attorneys and the court should consider the appointment of a guardian ad litem in cases where these issues are present.
- The wishes of the parent often change before a petition comes to court. If the child's behavior changes, the parent-child relationship improves, or the parent learns more about the actual, realistic consequences of adjudication, the parent may no longer want to pursue the incorrigibility charge.

IV. Runaway Cases

A. Definition

- There is no statutory definition for a “runaway,” leaving law enforcement to make judgment calls about what children fall into this category of youth.

B. Special Detention Considerations

- According to DJJ data, roughly two-thirds of youth securely detained for status offenses in fiscal year 2018-2019 were detained on a runaway charge.
- Practitioners should focus on the reason(s) the child is leaving the home with special focus on the conditions of the home. Often, children are running away from something and DSS intervention or the appointment of a guardian ad litem may be appropriate.

- Identifying alternatives to secure detention should be a priority. Placement with relatives or other caregivers should be explored early. Sometimes a cooling down period is all that is needed.

C. Additional Considerations for Runaway Cases

- Runaway youth are at heightened risk for several dangerous situations.
- Exploitation and trafficking of runaway youth is of particular concern, as are drug abuse and gang involvement.
- These children should be screened for these issues and appropriate referrals should be made if a heightened risk is indicated.

V. Evaluations and Sentencing

A. Intake Screening

- Collecting accurate and thorough social, medical, psychological, and educational information about a child and family early in the process, allows practitioners to identify appropriate interventions and services and link children and families with what they need. If there is a need that can be identified and addressed, there is no need to wait for adjudication or disposition for services to begin. In some cases, the early provision of services may render the court process unnecessary.
- Federal law states that status offending youth detained for violating a valid court order should be assessed by a licensed or certified professional within 48 hours of being held. 34 U.S.C. 11133(23); 11103(38).

B. Community Evaluations

- An evaluation should only be ordered if necessary to determine the service needs of the child and family and should not duplicate other evaluations.
- Community evaluations should be the standard for all adjudicated status offending youth in need of a pre-dispositional evaluation.
- If the child is unable to remain at home due to safety reasons, strong consideration should be given to another placement within the community or a STAP (short-term alternative placement) home so the child may remain in a non-secure setting while undergoing a community evaluation.

C. Secure Evaluations

- Secure evaluations are only appropriate when “the child presents an unreasonable flight or public safety risk to his home community.” § 63-19-1440(C). Such situations will be very rare in status offense and contempt cases. Forty-five-day secure commitments exceed the maximum commitment allowed under the JJDPA.

- Orders for a secure evaluation should contain a written finding explaining the specific facts showing that a flight or public safety risk requires a secure evaluation, or that reasonable efforts were made to place that child in the community (with a relative able to provide adequate supervision or in a STAP home) if alternative placement was determined necessary.
- Secure evaluations should be reserved for high-level offenders or offenders who are a demonstrable flight risk and where other interventions (electronic monitoring, STAP homes, behavior contracts) cannot be used.

D. Probation

“Probation must not be ordered or administered as punishment but as a measure for the protection, guidance, and well-being of the child and the child’s family.” § 63-19-1410(A)(3).

- Probationary sentences should be limited to the time necessary to ensure children adjudicated for status offenses and their families receive adequate services and treatment.
- Probation orders should not exceed one year absent unusual circumstances, which should be explained in writing in any order.
- Placing a child on probation until their 20th birthday can be demoralizing and set the child up for failure and should not be ordered without a clear explanation as to why such an order is appropriate under the circumstances.

“Probation methods must be directed to the discovery and correction of the basic causes of maladjustment and to the development of the child’s personality and character, with the aid of the social resources of the community.” § 63-19-1410(A)(3).

- Sufficient information must be provided to the court (by DJJ, the defense attorney, and the solicitor) at the hearing to allow the judge to tailor the probationary terms to meet the specific needs of the child.
- Critical information that should be provided to the court when applicable includes:
    - Factors known to be contributing to the child’s status offending behavior.
    - Trauma/traumatic events experienced by the child (Has there been a recent death in the family or of a close friend? Victim of or witness to a violent act? Accident? Home fire?)
    - Any medical or mental health diagnosis or documented disability of the child.
    - Gender identity and sexual orientation (Use discretion and do not address in open court, but in chambers or approach the bench if appropriate).

- If ordered, community service should be “of a constructive nature designed to make reparation and to promote the rehabilitation of the child.” § 63-19-1410(A)(3).

VI. Dismissal

A. The court may “dismiss the petition or otherwise terminate its jurisdiction at any time on the motion of either party or on its own motion.” § 63-19-1410(A)(7). The parties and the court should consider such action before adjudication or at disposition when it appears that alternatives to court intervention will achieve the necessary rehabilitation.

B. Attorneys should consider filing a motion for termination of the court’s jurisdiction when the child has been in successful compliance with the probation order or school attendance order for a substantial period of time, such as 6 months to a year.

VII. Expungement

All parties should be advised of the provisions of the expungement statute and steps to be taken to ensure the child’s juvenile record of status offense adjudications is expunged when allowed. See S.C. Code of Laws § 63-19-2050(C)(1).

VIII. Legislation

State laws governing status offenses should be reviewed for possible revisions.

A. Statutory definitions for "incorrigibility" and "runaway," including standard prerequisites for formal prosecution, could assist law enforcement and the courts in processing these cases consistently.

B. **Expungement:** S.C. Code of Laws § 63-19-2050 should be amended to allow for expungement of a juvenile’s record pertaining to a status offense upon the juvenile reaching the age of 17 and successfully completing any dispositional sentence imposed, instead of at the age of 18. Automatic expungement, which is currently used in several states, should be an ideal standard for status offending youth and the logistical application of this approach should be explored.

C. **Records/Confidentiality**: State statutes should be reviewed regarding records and confidentiality to determine if statutory changes are required to ensure appropriate information-sharing among agencies working with these children. (See S.C. Code of Laws § 63-19-2020(B) & (C) for language allowing DJJ to share information.).

D. **Juvenile Delinquency Prevention Act Compliance**: State statutes should be amended to incorporate JJDPA provisions. This would include but not limited to limiting status offense related court ordered detentions and commitments to 7 days. See JJDPA, Section 223(a)(23).

State Statutes Specific to Status Offending Youth

- § 63-19-20(9). Definitions. “Status offense.”
- § 63-19-820(E). Out-of-home placement.
- § 63-19-1420(A). Driver's license suspension.
- § 63-19-1440(C). Commitment. (DJJ’s authority to conduct community evaluation of child ordered by the court to undergo a residential evaluation).
- § 63-19-1440(F), (G). Commitment.
- § 63-19-2050(A)(1), (C)(1). Petition for expungement of official records.
- See also § 63-19-2220. Interstate Compact for Juveniles, for responding to status offending youth who are subject to the Compact.

Statutory language that, while not specific to status offending youth, could be helpful in responding to children involved in the court system for status offenses.

- § 63-19-1410(A). Adjudication.
- § 63-19-1430(B)-(D). Youth Mentor Act.
- §§ 59-65-10 through -90. Compulsory attendance laws.
- S.C. Code Regs. § 43-274. Student attendance.