

Chapter 23: Nondelinquency Proceedings—Stand-Alone Status Offenses

[23.1] Overview

In the state systems, state and federal policy makers have sought to distinguish youth who commit status offenses from youth who commit delinquent acts.³¹ Status offenses are nondelinquent, noncriminal infractions that would not be offenses if the youth were an adult. They include running away, truancy, alcohol or tobacco possession, curfew violations, and circumstances in which youth are found to be beyond the control of their parent/guardian(s)—often called “ungovernability” or “incorrigibility.” Experts argue that status offenses are symptomatic of underlying personal, familial, community, and systemic issues, and unmet and unaddressed needs. Until the mid-1970s, the state juvenile delinquency systems handled status offenses that subjected youth to the same dispositional and probationary alternatives, including incarceration. However, many became concerned about the short- and long-term effects of detaining and institutionalizing nondelinquent youth.

In 1974, Congress encouraged states toward decriminalizing status offenses by enacting the [Juvenile Justice and Delinquency Prevention Act](#) (JJDP). States receiving federal grants under the JJDP agreed to prohibit the locked placement of youth charged with status offenses and pledged to reform their systems so that these youths and their families would receive family and community-based services. Nevertheless, every year, thousands of youth charged with only status offenses are placed in locked detention. Research has since proven that the secure detention of status offenders is both ineffective and dangerous:

³¹ Characterizations of state juvenile justice system policies and practices taken from the *National Standards for the Care of Youth Charged with Status Offenses*, Coalition for Juvenile Justice SOS Project, Washington DC, (2013); and Annie Salsich & Jennifer Trone, *From Courts to Communities: The Right Response to Truancy, Running Away, and Other Status Offenses*, The Vera Institute of Justice, Status Offense Reform Center, New York, New York (2013).

“Research and evidence-based approaches have proven that secure detention of status offenders is ineffective and frequently dangerous. Specifically, research has shown that:

- Detention facilities are often ill-equipped to address the underlying causes of status offenses.
- Detention does not serve as a deterrent to subsequent status-offending and/or delinquent behavior.
- Detained youth are often held in overcrowded, understaffed facilities—environments that can breed violence and exacerbate unmet needs.
- Almost 20 percent of detained status offenders and other non-offenders (e.g., youth involved with the child welfare system) are placed in living quarters with youth who have committed murder or manslaughter and 25 percent are placed in units with felony sex offenders.
- Placing youth who commit status offenses in locked detention facilities jeopardizes their safety and well-being, and may increase the likelihood of delinquent or criminal behavior.
- Removing youth from their families and communities prohibits them from developing the strong social networks and support systems necessary to transition successfully from adolescence to adulthood.”³²

Courts nationwide are overburdened and slow to respond. They are not equipped to assess the underlying circumstances that result in a status offense and judges have few options and the court process is expensive. In the early 2000s state officials began experimenting with alternatives to processing status offenders in family and juvenile courts. A new paradigm emerged connecting families with services in their communities. This approach is grounded in the understanding that families can resolve the problems with guidance and support. Recent studies show responding to kids at home and in their communities is more cost-effective, developmentally appropriate, and more ethical than incarceration when there is no public-safety risk. In 2005 the Connecticut legislature prohibited the use of secure detention for status offenders. That year New York State narrowed the circumstances under which status offenders can be placed in even nonsecure detention facilities. Successful community-based responses have been established in Florida, New York State, Louisiana, and Washington State.³³

³² *National Standards for the Care of Youth Charged with Status Offenses*, 12.

³³ *From Courts to Communities: The Right Response to Truancy, Running Away, and Other Status Offenses*, 5–6.

The hallmarks of an effective community-based system include:

1. **Diversification from court.** Keeping kids out of court requires having mechanisms in place that actively steer families away from the juvenile justice system and toward community-based services.
2. **An immediate response.** Families trying to cope with behaviors that are considered status offenses may need assistance right away from trained professionals who can work with them, often in their home, to de-escalate the situation. In some cases, families also benefit from a cool-down period in which the young person spends a few nights outside the home in a respite center.
3. **A triage process.** Through careful screening and assessment, the effective systems identify needs and tailor services accordingly. Some families require only brief and minimal intervention—a caring adult to listen and help the family navigate the issues at hand. At the other end of the spectrum are families that need intensive and ongoing support and services to resolve problems.
4. **Services that are accessible and effective.** Easy access is key. If services are far away, alienating, costly, or otherwise difficult to use, families may opt out before they can meaningfully address their needs. Equally important, local services must engage the entire family, not just the youth, and be proven to work based upon objective evidence.
5. **Internal assessment.** Regardless of how well new practices are designed and implemented, there are bound to be some that run more smoothly than others, at least at first. Monitoring outcomes and adjusting practices as needed are essential to be effective and also to sustain support for new practices.”³⁴

Many if not most tribes funnel status offenses through their juvenile justice systems where out-of-home placements and even secure detention are likely results. Most of these systems use a standalone status offense approach, in contrast to a FINS-type process. The standalone status offense approach is when a tribe defines a list of status offenses and provides for a civil adjudication in name. However, it is a quasicriminal trial-like process to determine guilt. The process provides a range of dispositions, applied in a probation format, for youth as an alternative to adult criminal sanctions. Proponents of the FINS approach argue that the standalone “status offender” approach unnecessarily labels and stigmatizes youth (e.g., truants and runaways) as “offenders.” They further argue that the status offender approach fails to statutorily require tribal and other agencies to provide critical services to youth and their families before permitting the filing of petitions in tribal court, and it may fail to adequately authorize tribal court jurisdiction and powers over parents and other important family members. However, it would be workable to apply the FINS court process

³⁴ Id. at p. 5.

to youth defined to be status offenders so that youth and their families benefit from family targeted and timely therapeutic interventions. This may be particularly important in tribal communities where most families are low income and where access to necessary counseling and mental health treatment may be available only through court order.

Because so many tribes use a standalone status offense approach we include examples in the following text. If used, this approach should be modified to include the FINS-type protections and interventions for youth and their families and for court jurisdiction and powers over family members.

[23.2] Tribal Code Examples

The Cherokee Code of the Eastern Band of the Cherokee Nation

Chapter 7A - JUVENILE CODE

ARTICLE I. - IN GENERAL

Sec. 7A-2. Definitions.

Unless the context clearly requires otherwise, the following words have the listed meanings:

(Note: Certain definitions were omitted)

- t. **Undisciplined juvenile** shall mean a juvenile who is less than 18 years of age who is unlawfully absent from school; who is regularly disobedient to his parent, guardian, or custodian and beyond their disciplinary control, who is found in places where it is unlawful for a juvenile to be; who purchases, possesses, consumes, or receives a tobacco product; or who has run away from home.

Native Village of Barrow Tribe Juvenile Delinquency Prevention and Rehabilitation Code

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1-2 DELINQUENT ACTS

1-2 E. Acts Which May Not Result in Secure Detention

The acts set out in this subsection, when committed by a child, shall be deemed to be delinquent acts that would bring the child within the jurisdiction of the juvenile court pursuant to this Code, but due to the nature of these acts the juvenile court may not order secure detention as a rehabilitative remedy for a juvenile adjudged to have engaged in any of these acts.

- 1. **Possession, Consumption or Being under the Influence of Alcoholic Beverages:**
Knowingly consuming, possessing, or being under the influence of alcoholic beverages.

Provided, however, that it is not a delinquent act for a juvenile to possess or consume alcoholic beverages for bona fide religious purposes based on tenets or teachings of a church or religious body, in a quantity limited to the amount necessary for religious purposes, and dispensed by a person recognized by the church or religious body.

2. **Possession or Use of Tobacco:** Knowingly possessing or using any cigarettes, cigars, or tobacco in any form. Provided, however, that it is not a delinquent act for a juvenile to possess or use tobacco for bona fide religious purposes based on tenets or teachings of a church or religious body, in a quantity limited to the amount necessary for religious purposes, and dispensed by a person recognized by the church or religious body.
3. **Soliciting Supply:** Wrongfully and willfully soliciting, inciting, or inducing any person to furnish him with cigarettes, cigars, or tobacco in any form, controlled substances, or alcoholic beverages.
4. **Sexual Conduct with a Juvenile:** Engaging in sexual conduct with a child. As used in this section, “sexual conduct” means any sexual touching or penetration and any unwanted exposure of genitalia. Provided, however, that “sexual conduct” does not include an act done for a bona fide medical purpose. Provided, further, that it shall not be considered a delinquent act if the actor is married to the child.
5. **Operation of Amusement Devices:** Playing or operating any amusement device during school hours.
6. **Restricted Places:** Entering any public building where alcoholic beverages are sold, distributed, or served when not in the company of a parent or guardian. This provision shall not apply to any restaurant or other facility whose primary business consists of serving food.
7. **Pulltab and Bingo Activities:** Entering any premises where a pulltab game or bingo activity is being conducted. This section does not apply to premises where the pulltab game or bingo activity is conducted in a separate section of the premises that is secured from viewing and entrance by juveniles.
8. **Driving without a License:** Operating an automobile, truck or other vehicle that requires licensing without a valid driver’s license. The age limits for driving vehicles that require licensing shall comply with State of Alaska requirements.
9. **Underage Driving:** For a juvenile under the age of twelve (12), driving a snowmachine, a three or four wheeler, or a boat without parental consent.
10. **Curfew Violation:** Violating the following curfew: A Village curfew for all juveniles shall be in effect during the school year between the hours of 10:00 P.M. and 6:00 A.M. on any evening on which the next day is a school day, and between the hours of midnight and

6:00 A.M. on any evening on which the next day is a Saturday, Sunday, or school holiday. During the summer months, a Village curfew will be in effect for all juveniles starting at midnight and ending at 6:00 A.M. A juvenile is not in violation of curfew if he is:

- (a) Accompanied by his or her parent or guardian;
- (b) On an errand at the written direction of his or her parent or guardian, without any detour or stop (written direction of his parent must be signed, timed and dated by the parent or guardian and must indicate the specific errand);
- (c) Involved in an emergency;
- (d) Engaged in, going to or returning from any employment activity, hunting, fishing, trapping, or other activities that are conducted outside the Village, without detour or stop;
- (e) On the public right-of-way immediately abutting the juvenile's residence or immediately abutting the residence of a next door neighbor, if the neighbor did not complain to the police department about the juvenile's presence;
- (f) Attending, going to, or returning home from, without any detour or stop, an official school, religious, or other recreational or Village activity such as church activities, Village dances, or meetings, supervised by adults and sponsored by the Native Village of Barrow, the City of Barrow, or another similar entity that takes responsibility for the juvenile; or
- (g) Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, or the right of assembly.

* Not available online, as of April 2015.

[23.3] Tribal Code Commentary

Here we provide two examples of how tribes have handled status offenses. The Eastern Band of Cherokee code establishes what is considered the standard list of status offenses. Specifically, it defines an “undisciplined juvenile” as a juvenile who is “unlawfully absent from school,” “regularly disobedient and beyond disciplinary control,” “found in places where it is unlawful for a juvenile to be,” “who purchases, possesses, consumes, or receives a tobacco product,” or “who has run away from home.” In contrast, the Native Village of Barrow code defines a comprehensive list of “delinquent acts” but singles out a separate list where “the juvenile court may not order secure detention.” These include:

- Possession, consumption, or being under the influence of alcoholic beverages;
- Possession or use of tobacco;

- Soliciting supply (of cigarettes, cigars, tobacco, controlled substances, or alcoholic beverages);
- Sexual conduct with a juvenile;
- Operating an amusement device;
- Entering restricted places (public building where alcoholic beverages are sold, distributed, or served);
- Pulltab and bingo activities;
- Driving without a license;
- Underage driving; and
- Curfew violations.

In defining status offenses, it would be helpful for tribes to work closely with their treatment and youth services professionals to identify and define youth conduct that merits tribal juvenile court intervention for purposes of youth and family habilitation and rehabilitation. Status offenses should be defined with available services in mind to avoid involving youth in the system where remedial services are lacking for their identified need areas.

Of the twenty-five tribal juvenile statutes reviewed, nine contained either a FINS-type system or used a list of status offenses as part of their nondelinquency process (the delinquency process deals with juvenile offenses—that would be criminal violations if they were committed by adults). A subset of the twenty-five blends their FINS and status offender categories with their dependent children category (i.e., the court process that deals with maltreated children—those abandoned, abused, and/or neglected). This is not recommended as the purpose and process of these systems are different in important ways.

The consolidated list of FINS criteria and status offenses includes (see the following table for source):

- Absence from home/”runaway”;
- Absence from school/”truancy”;
- Curfew violations;
- Disobeys parents, guardian, or custodian/”unamenable to parental control”;
- Disorderly conduct;*
- Endangers morals or health of self or others;
- Loitering about games of chance;
- Loitering about liquor establishment;
- Motor vehicle violations;
- Possession/consumption of alcohol;

- Possession/consumption of controlled substances;*
- Use of inhalants; and
- Use of over-the-counter-drugs.

*Technically a “criminal offense” versus a “status offense” in many tribes’ criminal statutes but singled out for treatment under a FINS- or status offense–type process in these tribes’ juvenile statutes.

Tribe	FINS-Type System	Status Offenses	Citation
Absentee-Shawnee	Disobeys parents; absent from home; or absent from school	n/a	Title 2 Juvenile Code, Section 3(h)
Blackfeet	n/a	Curfew violation; loitering about games of chance; loitering about retail liquor establishment; possession of alcohol; possession of drugs; truancy; inhaling; motor vehicle violations	Family Code, Chapter 4, Section 19
Leech Lake	n/a	Curfew violation; truancy; possession and/or consumption of alcohol and/or controlled substance; possession and/or consumption of tobacco; inhaling; use of over-the-counter drugs; disorderly conduct; running away	Title 4, Juvenile Justice Code, Section 4-2
Pascua Yaqui	Absent from school; curfew violation; runaway		Title 5 Civil Code, Chapter 7 Juveniles, Section 130
Saginaw Chippewa	n/a	Absence from school; disobeying parents, etc.; absent from home	Juvenile Code, Chapter 12.2, Section 12.224
Sisseton-Wahpeton Oyate	Truant, unamenable to parental control; runaway; habitually deports self to injure or endanger self or others	n/a	Chapter 38 Juvenile Code, Section 38-03-13
Confederated Tribes of Umatilla	n/a	Curfew violations; possession of alcohol; runaways; truancy violations	Juvenile Code Chapter 6 Juvenile Offenses, Section 6.04

Winnebago	Disobeys parents, etc.; absent from home; deports self to injure or endanger morals or health of self or others; absent from school	n/a	Title 4 Juvenile Procedure, Article I General Provisions, Section 4-102 (9)
Pueblo of Zuni	n/a	Absent from school; disobeys parents, etc., left home	Title IX, Children's Code, Chapter 1 General Provisions, Section 9-1-3 (30)

[23.4] Exercises

The following exercises are meant to guide you in writing the status offender section of the tribal juvenile code.

- Find and examine your juvenile code's provisions defining "delinquent act," "juvenile offense," "juvenile crime," "status offense," and/or FINS or some variant. List the conduct or misconduct targeted.
- Identify which of these are true "status offenses" (conduct or misconduct that is not criminal and that may only be committed by a minor, e.g., truancy, curfew violations, running away, and possession and use of tobacco/inhalants)?
- Find and examine your juvenile code's "disposition" section. Does your juvenile code treat juvenile offenders and status offenders the same?
- Make a list of the status offenses you wish to target

Read and Discuss*

How should tribes deal with "status offenders"?

In juvenile cases, a "status offense" involves conduct that would not be a crime if it was committed by an adult—in other words, the actions are considered to be a violation of the law only because of the youth's status as a minor (typically anyone under eighteen years of age).

Types of Status Offenses

The kind of conduct that might constitute a status offense varies by state. The most common status offenses include:

- truancy (skipping school),
- violating a city or county curfew,

- underage possession and consumption of alcohol,
- underage possession and use of tobacco,
- running away, and
- ungovernability (being beyond the control of parents or guardians).

How States Handle Status Offenses

Traditionally, status offenses were handled exclusively through the juvenile justice system. But in the 1960s and 1970s, many states began to view status offense violations as a warning signal that a child needed better supervision or some other type of assistance to avoid future run-ins with the law. This view is grounded in fact—research has linked status offenses to later delinquency.

For the most part, state goals in dealing with status offenses became threefold:

- to preserve families,
- to ensure public safety, and
- to prevent young people from becoming delinquent or committing crimes in the future.

In this vein, the 1974 Juvenile Justice and Delinquency Prevention Act emphasized “deinstitutionalizing” status offenses. This meant giving prosecutors broad discretion to divert status offense cases away from juvenile court and toward other government agencies that could better provide services to at-risk juveniles. Diverting a case before a delinquency petition was filed also allowed a young person to avoid the delinquent label—some believed that label itself impeded a juvenile’s chances for rehabilitation.

In 1997, only one in five status offense cases were formally processed by the courts, and even fewer status offense cases actually made it to juvenile court in the first place. That’s because law enforcement officers are less likely to refer status offense cases to juvenile court, compared with delinquency cases. Of those status offense cases that do get referred, 94% involve liquor law violations.

Today, most states refer to status offenders as “children or juveniles in need of supervision, services, or care.” A few states designate some status offenders as “dependent” or “neglected children,” and give responsibility for these young people over to state child welfare programs.

States approach status offenses in a number of different ways. In some states, a child who commits a status offense may end up in juvenile court. In other jurisdictions, the state’s child welfare agency is the first to deal with the problem. Some states have increased the use of residential placement for offenders, and others emphasize community-based programs. But, in all states, if informal efforts and programs fail to remedy the problem, the young person will end up in juvenile court.

*Taken from NOLO. Go to <http://www.nolo.com/legal-encyclopedia/juvenile-law-status-offenses-32227.html>.