

# Best Legal Practices For Handling Status Offense Cases

## ***Statement of Purpose***

This document provides guidelines for handling juvenile status offense cases. The Best Legal Practice Committee of the Status Offense Task Force, upon recommendation of the Children's Law Center, USC School of Law under JABG Grant # IJS12006 developed these guidelines for procedural best practices.

## **General**

- Naming Parents as Parties
  - Parents should be named as parties in status offender cases so violations of orders not resulting from the child's "willful violation" can be addressed with the parent as appropriate.
- Training for Legal Professionals
  - Family court judges, attorneys, and DJJ staff involved with status offender cases should be trained on the current 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 offenders, the harms of unnecessary detention of status offenders (including pre-trial detention and secure evaluation), the complex needs of status offending youth and families, and tools for keeping status offenders in the community.
  - Other training topics should include trauma-informed courts, BLP for first-time school rules/hearings, and how to handle bullying and its impact on truancy.
- Multi-disciplinary advocacy for children
  - Youth accused of status offenses and their families often have complex needs. The best advocacy for such youth includes an assessment of these needs and identification of the most appropriate services to address these needs. Such identification can help advocate for dismissal of some status offense or contempt petitions when providing such services is an alternative to court involvement. Such identification can also help ensure that disposition orders are tailored to children's needs.
  - To facilitate multi-disciplinary advocacy by defense counsel, the Legislature should consider legislation to make social workers and other mandatory reporters who are working for a lawyer or law firm on behalf of a client exempt from mandatory reporting statutes. (Louisiana just enacted a good example of such legislation - <http://www.legis.la.gov/legis/BillInfo.aspx?s=15RS&b=ACT217&sbi=y>. See also D.C. Code s 4-1321.02(b).)
  - Solicitors should also engage in multi-disciplinary advocacy.

## Truancy Cases

- 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 ages 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.
- Legal Representation at Truancy Hearings
  - Children should have meaningful access to legal counsel at all truancy hearings, including informal hearings where children charged with truancy are placed under a court order to attend school (which if violated could lead to the child being locked up in secure confinement).
    - Defense attorneys who counsel and represent these children should receive specialized training on truancy and understand how to effectively represent youth throughout these hearings. They should be trained on the serious implications of the initial hearing where child is placed under a court order, effectively advocating for the child, and providing alternatives to the court for disposition.
- First Time School Rule Hearing Procedures
  - Every child facing being placed under a school attendance order should have the opportunity, with assistance of counsel, to challenge whether they were in fact in willful violation of the state's truancy law and whether the school was in compliance with S.C. Code of Regs., R. 43-274. Failure to comply with those regulations should result in the dismissal of the truancy petition.
  - Children should be provided with a clear understanding of the implications of being placed under a court order before consenting to anything, by the defense attorney and the court.
  - Children should be provided with individualized and private hearings. 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.

- 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 compliance with the intervention plan.
  - 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 or two years absent unusual circumstances, which should be explained in writing in any order.
  - Indefinite and extensive time periods are often unnecessary and set the child up for failure.
  - 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.
  - Attendance orders should be targeted to the type of truant behavior that is problematic for the particular child and should not include a ban on discipline referrals if that child does not have a severe discipline history.
  
- 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 of Regs., R. 43-274, which requires schools to “exhaust all reasonable alternatives” before seeking a contempt adjudication.
  - Judge 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 counsel was not provided in the first time school attendance order case, then the child should be permitted an exception to the normal “no look back” rule – that is, 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.
  - DJJ should provide a list of alternatives to the court to assist with disposition.

## Incorrigibility Cases

- Incorporrigible Petition Requirements
  - Parents and guardians should be required to demonstrate their own commitment to seeking assistance outside of family court and show that 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.

## Adjudicatory Hearing

- 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 offenders 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 a STAP (short-term alternative placement) home so that the child may remain in a non-secure setting while undergoing a community evaluation.
- 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 rare in status offense and contempt cases.
  - Orders for a secure evaluation should contain a written finding explaining the specific facts showing that a flight or public safety risk require 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.
  - Lawyers, DJJ staff, and judges should be trained on studies showing that children ordered to a secure evaluation center have higher recidivism rates than similarly situated children ordered to have a community evaluation. Cheri J. Shapiro, *et al.*, 39 J. of Clinical Child & Adolescent Psychology 242 (2010).

## **Dispositional Hearing**

- Probation Orders
  - “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 generally not exceed one year absent unusual circumstances, which should be explained in writing in any order.
    - Placing a child on probation until the 18<sup>th</sup> birthday can be demoralizing and set the child up for failure.
  - “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 status offending behavior of the child.
    - 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?)
    - Sexual orientation – (Use discretion and do not address in open court, but in chambers or approach the bench)
  - 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).

## **Dismissal**

- 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.
- Attorneys should consider filing a motion for termination of the court’s jurisdiction upon child being in successful compliance with the probation order or school attendance order for a substantial period of time, such as one or two years.

## **Expungement**

- All parties should be advised of the expungement provisions of the new expungement statute.

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