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Addressing the Loophole for Juvenile Status Offenses

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Abstract. Juvenile status offenses were created to protect against unnecessary physical detention of juveniles. Petty actions by teenagers are expected. Researchers have found that physically detaining juveniles in detention centers for behaviors such as truancy, running away, etc., did more harm than good. The Juvenile Justice and Delinquency Prevention Act of 1974 was enacted to create guidelines and prevent unnecessary detainment of juveniles. An amendment to the act in 1980 allowed judges to detain juveniles regarding status offenses if specific criteria were met. What seemed to be a minor change sought to protect juveniles from their own unruly conduct, i.e., running away or violating a court order. Ultimately, discretion to detain a juvenile began to be used very often. The undermining of status offenses has gained attention from many officials. The North Dakota Governor, Doug Burgum, did not hesitate to sign House Bill 1035 when it was made available to his office. The bill addresses the loophole, though the benefit has yet to be measured.

Keywords. Juvenile, Delinquency, Reasons, Prevention, Rehabilitation, Cases, Bangladesh

Addressing the Loophole for Juvenile Status Offenses

The Juvenile Justice and Delinquency Prevention Act of 1974 was created to set guidelines for juvenile courts in all states. One of the many purposes of the Juvenile Justice and Delinquency Prevention Act (JJDP A) is to reduce the number of juveniles who become delinquent. Status offenses were created to help secure the goal of the JJDP A by preventing juveniles from being put in detention facilities. A flaw in the JJDP A took place after an update to the act in 1980, which allowed judges to issue valid court orders for incarceration.

North Dakota Gov. Doug Burgum set out to address the issue that stemmed from the 1980 JJDP A update. The North Dakota Governor signed House Bill 1035 to address the deficiency of the 1980 JJDP A update. House Bill 1035 keeps specific status offenses out of the courtroom. Allowing welfare services to be rendered without the reign of the judge.

Since the bill was enacted in 2021, there has not been much research or statistical support regarding the outcome of House Bill 1035 (HB1035). A review of the North Dakota Juvenile Court Annual Report beyond the year 2021 may reveal the effectiveness of the legal action, in regard to the number of juvenile delinquent cases. Outside of non-scholarly sources, the success of HB 1035 has yet to be determined.

Background

Barry Feld and Perry Moriearty (2018) share that the distinction between treatment and punishment remains one of the fundamental justifications for a separate juvenile court and its procedural differences. In *re Gault*, 387 U.S. 1(1967), procedural safeguards had to be created to reduce the abuse of punishment concerning juveniles brought before the court (Feld & Moriearty, 2018). The unforeseen benefit, which stemmed from *In re Gault*, 387 U.S. 1(1967), from extending the 5th Amendment to juveniles, created procedural safeguards that allowed the juvenile system to function similarly to the adversarial criminal justice system (Feld & Moriearty, 2018). This procedural safeguard was a protection that became very useful in just a few short years after its ruling.

Get Tough Era

Despite the number of procedural safeguards that proliferated over the last century, legislative power has turned the courts from rehabilitation to retribution (Feld & Moriearty, 2018). Since the U.S. Constitution does not cover juvenile justice, state legislatures create most guidelines for juvenile courts. This became problematic when the propagation of nefarious youth needing to be accounted for due to the spike in urban crime created a political impetus to answer cries for harsher juvenile punishment (Feld & Moriearty, 2018), which led to harsher sentences. More juveniles were seen as incorrigible and, therefore, castigated.

Juvenile Justice and Delinquency Prevention Act of 1974

JJDPA allowed certain juvenile acts to be considered status offenses, separate from delinquent acts. A status offense is a noncriminal act considered a law violation only because of a youth's status as a minor (Office of Juvenile Justice and Delinquency Prevention, 2015). Typical status offenses include truancy, running away from home, violating curfew, underage use of alcohol, and general ungovernability (Office of Juvenile Justice and Delinquency Prevention, 2015).

According to Feld and Moriearty (2018), a child's long-term development depends on family, community, and schools which bear the primary responsibility for socializing, supervising, and controlling young people. So, when juveniles veer from the *paideia*, as described, it will likely cause a fissure in their long-term development. The jurisdiction and purpose of status offenses reinforce the socializing agencies' authority. The purpose of the status offense was to lower delinquent adjudications. It is intended to lead to fewer juveniles being placed in detention. The goal of fewer juveniles being placed in detention through the use of status offenses had been undermined by a legal loophole.

The Juvenile Justice Issue

Although there is significant variation in how states approach status-offense cases, states receiving federal funding from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) are expected to follow the critical requirements outlined in the JJDPA (Office of Juvenile Justice and Delinquency Prevention, 2015). The core requirement of the JJDPA is to deinstitutionalize status offenders, establishing that youths charged with status offenses shall not be placed in secure detention or locked confinement (Office of Juvenile Justice and Delinquency Prevention, 2015). This requirement is intended to encourage states to divert status-offending youths away from the juvenile justice system and place them in less restrictive, service-intensive, community-based programs (Office of Juvenile Justice and Delinquency Prevention, 2015). This reinforced that status offenders should be dealt with differently than

juvenile delinquents and should not be placed in secure detention or correctional facilities (Office of Juvenile Justice and Delinquency Prevention, 2015).

The 1980 Update to JJDPA

In 1980, Congress approved the amendment of JJDPA, whereby secure detention could also be permitted for offenses that violate valid court orders (Crippen, 1990). This permits discretion in placing a status offender in detention upon violating a previously established court order (Office of Juvenile Justice and Delinquency Prevention, 2015). The exception established that status offenders can be detained if they have violated a direct order from the court, such as attending school regularly or not violating curfew (Office of Juvenile Justice and Delinquency Prevention, 2015). The most symptomatic abuse by the system is its unnecessary use of secure incarceration (Crippen, 1990). Secure detention is harsh, punitive, and threatening to the fragile lives of young people (Crippen, 1990). Institutionalization’s many harms begin with removing youth from their families and communities, prohibiting them from developing the strong social network and support system necessary to transition successfully from adolescence to adulthood (Coalition for Juvenile Justice, 2014).

Proposed Solution

North Dakota Gov. Doug Burgum made an effort to combat the deficiencies of JJDPA when he signed House Bill 1035, the Juvenile Court Act. According to Jacob Agus-Kleinman and Sheridan Watson (2021), House Bill 1035 will assist North Dakota in aligning its systems serving youth with policies and practices shown to improve outcomes for young people. Kleinman and Watson (2021) share one of the significant changes to current law, which includes replacing the designation of “unruly child” with a designation of “child in need of services (CHINS),” which will allow youth to access social services through human service zones without formal involvement in the justice system. Allowing youths designated as CHINS to not go before a judge or be involved in the juvenile justice system provides juveniles a loophole from the loophole of a valid court order. This means status offenders receive treatment without entering the juvenile justice system. This gives judges no authority over status offenders in North Dakota.

Outcome

HB 1035 did not go into effect until July 1, 2021. The 2021 North Dakota Juvenile Court Annual Report does not show a monthly breakdown of statistics. Therefore, half of the year before HB 1035 was signed into law and the other half after its enactment are combined in the year-long stats for 2021. For this reason, it is difficult to decipher the level of success HB 1035 did or did not have. See Table 1 for a statistical comparison of North Dakota 2020 and 2021 delinquent and child in need of services (CHINS) referrals (North Dakota Courts, 2021).

Year	Delinquent Referrals	CHINS Referrals
2020	3,727	2,613
2021	4,985	2,486

Table 1.

Summary

The Get-Tough Era manipulated the JJDPA, which was implemented to provide juveniles with the welfare services they needed. Legislatures and judicial officials lost sight of the rehabilitative nature of juvenile courts, which were created to serve juveniles. Governor Doug Burgman and other North Dakota Legislative Assembly members should be applauded for their efforts to address the legal loophole that has undermined the creation of JJDPA.

By comparing the years 2020 and 2021, it is evident that the enactment of HB 1035 needs more than six months to see the effects of its existence. The 2020 stats did not show the number of juveniles placed into detention, only those detained after dispositions. It appears the number of juveniles placed into detention will be a statistic regularly documented in the year-end annual report since the enactment of HB 1035, which will be helpful in determining the impact of the new bill in future examinations. The criminal justice system would benefit from further research on solutions attempting to address the legal loophole of juvenile status offenses.

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