



CHAPTER FIVE

**Postadjudication
Strategies for
Defending
Juveniles in
Status Offense
Proceedings**

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Postadjudication Strategies for Defending Juveniles in Status Offense Proceedings

Contest allegations of a valid court order (VCO) violation.

Assess:

- **Was there a VCO?** There may not be if:
 - the VCO violation is filed after earlier proceedings resulted in a deferred adjudication (the terms the youth allegedly violated may not be part of a VCO);
 - the order was issued by a hearing officer whose directives do not have the effect of court orders;
 - the order exceeds the court’s lawful authority.
- **Did the order give fair notice of the conduct prohibited?** If an order is too broad and vague it could offend due process (e.g., if it requires the youth to “act properly” or “obey the reasonable commands of a parent”).
- **Was the youth able to comply?** Contest allegations of a VCO violation if the youth could not reasonably comply or his noncompliance is due to circumstances outside his control.
- **Did the youth’s alleged conduct clearly violate the order?** Just because the youth’s probation officer or prosecutor believes a court order prohibits certain conduct does not mean it does. If the court ordered the youth to attend school and he is suspended, did he violate the order? Reject attempts to argue that the suspension was due to the youth’s misconduct. Argue that the conduct itself did not violate the court order, so neither should the suspension.

Avoid secure detention.

- Show alternatives to secure custody will reduce future law-breaking.
- Argue that secure custody is more likely to harm than benefit the youth.
- Show that alternatives to secure custody are more likely to benefit the youth.
- Present effective alternatives to secure custody that are available in the community.
- Do not oversell and create unrealistically high expectations, especially in the short term where unhealthy family dynamics are entrenched and can take time to resolve.



As an attorney for a youth in a status offense proceeding, your representation of the youth may begin after adjudication. Federal law requires states to limit juvenile courts' authority to place a status offender in secure custody except for a violation of a valid court order (VCO).¹ Therefore, the immediate stakes may be greater in contempt or VCO-violation proceedings after adjudication. Avoiding adjudication is the surest way to avoid secure custody, but if your client is adjudicated a status offender, you should not view that as the end of your representation. The proceedings that follow adjudication may require just as much preparation.

Defending Alleged Contempt or VCO Violations

One of the most challenging tasks in a status offense proceeding is defending against an alleged VCO or contempt violation. Usually, the evidence of the alleged violation will be difficult to dispute. But that does not mean there will never be a defense. When presented with an alleged VCO violation, ask the four questions below. The answers to some questions may be an obvious yes. But you might answer “no” more often than you expect, which could provide the basis for a successful defense. An allegation of a VCO violation may be filed hastily in some cases because of parental complaints to the probation officer, or a prosecutor's restrictive view of what the youth is permitted to do. Even when that is not the case, an alleged VCO violation still warrants scrutiny. *Ask these questions:*

Assessing an Alleged VCO Violation

Was There a VCO?

This *should* never be an issue. It would be careless, at least, for a juvenile probation officer (JPO) or prosecutor to file a VCO-violation allegation without first verifying that it is based on something that constitutes a VCO, and failing that, the oversight should be detected by a court clerk or intake official. But it can happen; indeed, the Supreme Court of Illinois concluded that it happened to a pair of juveniles, one of them a status offender, in *City of Urbana v. Andrew N.B.*² After the juveniles entered uncounseled guilty pleas to the charges against them, the juvenile court ordered them to comply with “supervision,” defined by the Illinois supreme court as “similar to a continuance, with a dismissal of the charge against the defendant conditioned upon compliance with the terms of release set by the court.”³

When the juveniles violated the terms of supervision, the prosecution brought contempt proceedings against them.⁴ But the Supreme Court of Illinois held that they could not be held in contempt, because under Illinois law, supervision is comparable to “pretrial probation,” in which adjudication is deferred and the sanction for noncompliance is adjudication, not contempt.⁵ In other words, the juveniles’ supervision was more akin to a revocable agreement with the court than to a court order.

If a VCO violation is filed after earlier proceedings resulted in deferred adjudication, the terms the youth allegedly violated may not be part of a valid court order. The validity of a court order may be vulnerable to attack in other circumstances as well. For example, some juvenile cases may be heard by hearing officers who are not technically judges and whose directives do not have the effect of court orders until they are ratified by a judge—much like magistrate judges in United States District Court. If the purported VCO that the youth allegedly violated was entered by such a hearing officer, make sure it was validly ratified at the time of the alleged violation before assuming that it actually was a VCO.

The other potential issue focuses on the word “valid” rather than the word “order.” Even if the procedural requirements for a court order are satisfied, the order may not be valid, such as if it exceeds the court’s lawful authority. An obvious example of an order that exceeds the court’s authority is one that is unconstitutional—for example, an order to attend religious services. But there are other ways in which an order may exceed the court’s authority. State law may define a juvenile court’s dispositional powers in finite terms, e.g., by providing that the court may enter orders of certain types or for certain purposes. Watch for orders that appear to go too far.

Did the Order Give Fair Notice of the Prohibited Conduct?

Some juvenile probation orders include terms such as “Properly conduct yourself” and “Obey the law.” The former contemplates obedience to some less-explicit standard of conduct than the latter. It can fairly be characterized as a catchall term, intended to allow a judge to punish behavior that he disapproves of but has not explicitly prohibited elsewhere in the order. It could be argued that such an order is so broad and vague as to offend due process. “Proper” suggests a much more subjective judgment than a word such as “lawful” or a requirement to obey household rules, either of which incorporates by reference an explicit standard.

Arguing that a court order does not provide fair notice may be best done when the order is entered. At the VCO-violation stage, the no-fair-notice defense may be less compelling—unless you can also offer a reasonable argument regarding the next question.

Was the Youth Able to Comply?

This may be the most common flaw in allegations of VCO violations. The fact that a youth has been ordered to do something does not mean he can do so simply by making a reasonable effort. Kids have limited financial resources. Many do not have a vehicle or a driver's license. They may be unable to comply with some court orders without assistance from someone else, if at all.

If a youth faces a VCO violation because of something like missed drug tests or counseling appointments, was his own unwillingness the problem, or was he unable to get a ride from his parent or someone else? If he has not paid restitution or court fees, was he spending his money on other things or failing to look for a job, or did he simply not have enough money despite his own best efforts? If he failed to enroll in school, was it through some fault of his own, or did his parent fail to take the necessary steps or get caught in red tape?

Indeed, as in the school example, the problem may be that the youth has not been given enough time to comply. If attempts to enroll in school have stalled because of school processes outside the youth's control, the fact that the youth has not enrolled does not mean he will not do so. Drug testing requires patience. If a youth tests positive a week after the court order, it might mean that she used drugs after the order was entered, but it also might be due to something she did before the order. Different substances take different amounts of time to pass out of the body. A urine test may be positive for marijuana for weeks after use; other tests, such as hair-follicle tests, can look even further back into the youth's substance-abuse history.

Did the Youth's Alleged Conduct Clearly Violate the Order?

Just because a JPO or prosecutor believes a court order prohibits certain conduct does not necessarily mean it does. For instance, if a youth ordered to "attend school daily" gets suspended, has she violated the order? True, she did not attend school on the days that she was suspended, but she also did not attend on the preceding Sunday. It's hard to imagine that weekend absences violate the order, so why do absences because of suspension? In either instance, she would not have been able to attend school, no matter how hard she tried. The counterargument

may be that the suspension was due to the youth's misconduct, but if the conduct itself did not violate the court order, then why should the suspension?

In addition to these questions, familiarize yourself with the laws governing VCO-violation proceedings and how they compare to adjudicatory proceedings. If the rules of evidence and the burden of proof are the same at a VCO-violation hearing as they are in a delinquency trial, then that may affect how you prepare for the hearing. Your chances of having drug test results excluded rise significantly if they will be held to the same standard as other scientific evidence. Likewise, a JPO may be able to testify to very little if hearsay is inadmissible. So although defending against a VCO violation can be difficult, it is not hopeless, particularly if you know what to look for.

Avoiding Secure Custody

Defending against a VCO violation is simply a means to an end. The bottom line, however, is to avoid secure confinement. The formal finding of a VCO violation is not significant by itself; what matters is its potential to result in some new action by or requirement from the court. The most significant consequence is the most onerous: incarceration. With some judges, secure custody for a VCO violation may be a foregone conclusion. If not, then preparing for the dispositional phase of the hearing can be as important as preparing to defend against the VCO violation itself.

Despite differing opinions about such things as secure custody, parent-youth relationships, and the efficacy of court intervention, judges, prosecutors, and JPOs should all have the same fundamental objective: to reduce the likelihood of future unlawful conduct by the youth in the short term and in adulthood. Personal agendas and prejudices may sometimes distract from that focus, but if you can persuasively show alternatives to secure custody will reduce future law-breaking, then the judge, prosecutor, and JPO will be hard-pressed to oppose you. That argument can be broken down into two interdependent components:

Secure Custody is More Likely to Harm than Benefit the Youth

Every juvenile judge—indeed, every person who has contact with the juvenile justice system—has opinions about placing youth in secure custody and when it is appropriate. You probably cannot shake their convictions, but that does not mean that you should assume that their attitudes are immutable. A growing body of research on the effects of juvenile detention shows that being placed in secure

Effects of Juvenile Detention

Resources:

Justice Policy Institute

Barry Holman and Jason Ziedenberg. *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, 2006.

www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf

Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative

Offers a number of publications and reports on its Web site:

www.aecf.org/Home/MajorInitiatives/JuvenileDetentionAlternativesInitiative/Resources.aspx

custody does not benefit kids and actually hurts them. (See *Effects of Juvenile Detention* box and Chapter 3, *Assessing Intervention Services for Status Offenders and Avoiding Deeper Involvement in the Court System*.)

No amount of evidence is likely to convince a judge that detention is always inappropriate, but you don't have to win that argument when the youth is a status offender rather than a violent delinquent with a history of failing to appear in court. Status offenders will almost never merit incarceration on the most compelling ground, namely public safety. Whatever they have done would be legal if they were adults. The most likely justification for placing a status offender in secure custody is to prevent him from harming himself. In that context, evidence that the experience itself would be harmful is cogent—especially if it is presented with effective alternatives.

Secure Custody Alternatives are More Likely to Benefit than Harm the Youth

You should rarely, if ever, accept that there is no less-restrictive alternative to secure custody. The presence of less-restrictive alternatives is itself an argument against placement in detention. But if your objective is to persuade the court, as it should be, then arguing that there are less-restrictive alternatives will be less compelling than arguing that there are more-effective alternatives.

What are the Alternatives?

That depends on the youth. The better question is *What are the problems?* or *What are the needs?* If the youth is truant, what is keeping her from getting to

Should You Go After the Parent?

You may have a lot of ammunition, but don't shoot yourself in the foot. Many status offenders' behavior is directly traceable to things their parents do. It can be tempting—and perhaps even strategically advantageous—to shine a light on a parent's conduct and shift the blame from the youth. But doing so can have undesirable effects.

By taking an adversarial stance toward a parent, you may make it harder to get the parent's cooperation when you need it. Then again, the battle lines may already be clearly drawn, and it might be apparent that the parent will not help your client anyway. You will have to assess that on a case-by-case basis.

Another risk in going after a parent is the child welfare system may get drawn into the case. Even if you feel that would be in the youth's best interests, if you are acting as a youth's attorney rather than a guardian ad litem, you must be guided by the youth's wishes. Going after the parent may land the youth in foster care instead of secure custody—and probably for longer, too. Many kids have no more desire to be in foster care than to be incarcerated. So be sure you advise your client of the risks, and the likelihood that they will come to pass, before deciding to take on a parent.

school? If she will not get out of bed in the morning, perhaps she has unmet mental health needs. Propose an assessment, or if she has a diagnosed mental illness that has gone untreated, services to help her obtain treatment. Is she running away because of conflict at home? Ask for services to help the family members defuse the conflict themselves. Also, find out where the youth goes when she leaves. If it is not safe, talk to the youth, her parents, the JPO, and others about alternate safe destinations. On the other hand, if she heads to the home of a relative or friend and it is safe, propose removing the taboo and reconceptualizing her actions as something more benign than “running away.”

In looking for alternatives, do not focus only on the youth and her needs, especially if it is clear that the problems are not limited to the youth. (See *Should You Go after the Parent?* box.) No matter how poorly they may handle it, status offenders' parents often have stress that affects their parenting. Some courts focus exclusively on the youth's behavior and overlook the parents' behavior. But the corollary of that myopia is that courts often will overlook parents' needs as well. If part of defending the youth is to show how a parent's conduct contributes to the youth's behavior, then your responsibility at the dispositional stage is to

propose measures to go beyond disapproving of the parent's conduct to correcting it. Those measures may include substance abuse and mental health assessments to determine whether the parent needs treatment. It may also be appropriate to ask that the state or local child welfare agency investigate the youth's home if you have legitimate safety concerns. (See Chapter 7, *How Status Offenses Intersect with Other Civil and Criminal Proceedings*, for more guidance.) However, in doing so, consider your ethical duty to your client and the possibility that the request may lead to dependency proceedings, which your client may prefer to avoid.

A major obstacle to constructively addressing parent-youth conflict in status offenders' families is that the parent and youth may view the relationship as adversarial, where one party has to lose for the other to win. If a juvenile court approaches the family from the same zero-sum perspective, it may fail to recognize win-win solutions that address the parent's needs as well as the youth's. If the court moves beyond finding fault with the actions of the parent or the youth—for example, when an argument escalates to the point that the parent tells the youth to obey or leave and the youth chooses to leave—and can recognize that legitimate needs underlie those actions, then it can help the family find less dangerous solutions.

Status offenders' parents often need a break—from conflict, from parenting responsibilities, from teenage boundary-pushing. This need may lead a parent to kick his youth out of the house or to pester the JPO to lock up the youth. The lack of effective coping skills may reflect poorly on the parent, but simply blaming the parent is no solution. If the parent continues to feel overwhelmed, the destructive pattern will endure unless it is replaced. In looking for alternatives to secure custody, consider ways to give the parent—and in the process, the youth—a break without the harmful effects that come from incarceration.

Respite care is one such measure, and it need not be limited to formal arrangements through a public agency. Again, the solution may be as simple as destigmatizing the youth's getaway destination. If the youth is already seeking respite in a safe place on her own, ask the court to approve the destination for that limited purpose. If respite seems to be a need but the youth has not been leaving home—or if she does leave, but goes someplace the parent or someone else is concerned about—then try to identify a respite location that is acceptable to the youth, parent, and judge.⁶

Presenting effective alternatives to secure custody requires knowing the available options. The type, quality, and variety of programs and services available differ from state to state and county to county. Familiarize yourself with the

programs and services in your area. Talk to people who work with juveniles to find out what is available and which specific services are effective. This will help you identify possible measures to propose, but it probably will not be sufficient. There is no single prescription for what ails status offenders and their families. Many will share common characteristics, but when it comes to specifics, there may be as many alternatives to secure custody as there are status offenders. Getting to know the family and its problems and needs may be the most important part of developing a plan to avoid incarceration.

Finally, a note of caution: In presenting the anticipated benefits of your proposal to the court, be careful not to oversell and create unrealistically high expectations, especially in the short term. Reversing unhealthy family dynamics can be like turning a train around. Progress may be slow and halting. If you persuade the judge to accept your plan by convincing her you have found the silver bullet, then you likely will only delay incarceration, not avoid it. Instead, sell the long view. A plea for patience is more likely to work if you make it at disposition than if you wait until the VCO violation that comes shortly after your plan hits its first snag, at which point it will seem like a toothless request for “one more chance.”

Conclusion

Helping a status offender safely navigate the juvenile court process and avoid secure confinement presents challenges. Doing it well requires practice, dedication, and hard work. Be familiar with the procedural and substantive law, the judge, the youth and his family, and the available programs and services. Beyond that, be passionate about persuading others not to throw the youth away instead of finding real, lasting solutions to his problems. In doing so, you may annoy a parent, the judge, the JPO, or the prosecutor—or all of the above. And you may find yourself annoyed by others involved with the case, including your client.

In short, defending status offenders is not glamorous, and it is not for everybody. It is a specialized area of practice. Doing it well, however, can be extremely rewarding, for you and your client.

Endnotes

1. 28 C.F.R. § 31.304(o) (2008).
2. 813 N.E.2d 132 (Ill. 2004).
3. *Ibid.*, 141.

4. *Ibid.*, 136.

5. *Ibid.*, 142-43.

6. For more information about respite care, see Quraishi, Fiza, Heidi J. Segal and Jennifer Trone. *Respite Care: A Promising Response to Status Offenders at Risk of Court-Ordered Placements*. New York, NY: Vera Institute of Justice, 2002, available at www.vera.org/publication_pdf/188_356.pdf.