



The Right to Counsel in Status Offense Cases

To learn more about representing juvenile status offenders generally, visit the American Bar Association's website at <http://new.abanet.org/child/Pages/rjso.aspx>.

Does Supreme Court precedent support the right to counsel for status offenders?

While the Supreme Court has not directly addressed the issue, some Supreme Court cases support the argument that status offenders have a waivable right to counsel. In *In re Gault*, the Supreme Court held that children in delinquency proceedings, where there is a possibility of incarceration, must be told of their right to counsel.¹ The court reasoned that counsel was necessary to assist the youth “with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it.”² This reasoning similarly applies to status offense cases. Status offenders in many states also face the threat of incarceration and in all states face the possibility of removal from their home. In addition, alleged status offenders are no more capable of preparing their own defense than an alleged delinquent youth.

Although the Supreme Court's 2002 decision in *Alabama v. Shelton* is an adult criminal case, it is relevant to status offense proceedings where youth face the possibility of incarceration. In *Shelton* the Court held that if a criminal defendant who was convicted of a crime and given a suspended sentence violates the terms of his probation, the state may not impose a prison term unless the defendant was advised of his right to counsel at the initial adjudication.³ The scenario the defendant in *Shelton* faced is similar to what happens in many status offense cases where adjudicated youth violate the court's dispositional order and then face incarceration. In many instances these youth were not advised of their right to counsel prior to adjudication, as was the case in *Shelton*. Also like *Shelton*, the youth's adjudication is a necessary pre-requisite to entering the dispositional order, which if violated can lead to detention. Hence, just as the violation of probation during a suspended sentence may lead to an adult defendant's incarceration, a violation of a court order following a status offense adjudication may lead to a youth's detention.

What does Federal law say about status offenders' right to counsel?

The regulations of the Juvenile Justice and Delinquency Prevention Act specify what due process protections must be afforded to status offenders who have violated a valid order of the court. At the violation hearing, the regulations state that status offenders must be afforded “the right to legal counsel, and the right to have such counsel appointed by the court if indigent[.]”⁴

Do States support the right to counsel for status offenders?

Sample statutes

Many states have passed laws that afford status offenders the right to counsel at some stage of the proceedings. Statutes seem to fall within one of several categories:

- Status offenders are automatically appointed counsel and are entitled to representation at all stages of the case.⁵
- Status offenders must be advised of their right to counsel at initial hearings.⁶



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- Status offenders are entitled to counsel when they face the possibility of removal from the home.⁷
- Status offenders are entitled to counsel when they face the possibility of detention.⁸

Select case law

There is limited state case law on the right to counsel in status offense cases. Of those cases that exist, some courts base their decisions on due process considerations while others focus on state statute. In all, the possibility of incarceration is of paramount concern to the courts when determining whether and when the youth has a right to counsel. In fact, while the below holdings vary, they agree that status offenders may not be placed in secure detention if they were never appointed counsel, or at least informed of this right.⁹

- In 2009, the Washington Court of Appeals in *Bellevue School District v. E.S.* considered whether youth have a due process right to counsel during truancy proceedings. The Court noted that these cases can implicate youth's liberty, educational, and privacy interests. It also recognized that youth may have difficulty advocating for themselves in court. The court held that youth have a due process right to be represented by an attorney in truancy proceedings.¹⁰
- In 2005, Arizona's Court of Appeals in *Lana v. Woodburn* examined the state's statute, which says that "a juvenile has the right to be represented by counsel" in juvenile proceedings "that may result in detention." Under Arizona law, courts have the limited authority to hold adjudicated status offenders in detention pending the final disposition of the incorrigibility hearing. The court reasoned that since the initial incorrigibility hearing may result in detention, the juvenile has the right to an attorney at this hearing. The court is therefore obligated to inform status offenders of their right to counsel at the initial hearing and to appoint counsel if the youth is indigent.¹¹
- In 1972, the North Carolina Supreme Court determined that children do not have a due process right to counsel during the initial status offense hearing.¹² In 2005, a North Carolina appellate court upheld this precedent and citing state statute held that children subject to undisciplined allegations only have a right to counsel when there is an allegation that they were in contempt of court following adjudication.¹³

Other support for the right to counsel for status offenders

American Bar Association (ABA) Policies and Standards

ABA policies and standards support a right to counsel for status offenders:

- Policy supporting reauthorization of the Juvenile Justice and Delinquency Prevention Act and stating that the Act should guarantee juveniles' right to counsel. (1992)
- The IJA/ABA Juvenile Justice Standards Relating to Counsel for Private Parties (1977): they state that the interests of justice, fairness, and accuracy require the participation of counsel on behalf of all parties subject to juvenile and family court proceedings. They also state that counsel should be provided to any juvenile during in need of supervision proceedings and during any proceedings arising from or relating to in need of supervision proceedings.¹⁴

¹ *Application of Gault*, 387 U.S. 1, 4 (1967).

² *Ibid.* at 36 (citing *Powell v. State of Alabama*, 287 U.S. 45, 69 (1932)).



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³ *Alabama v. Shelton*, 535 U.S. 654, 662 (2002) (citing *Argersinger v. Hamlin*, 407 U.S. 24 (2006); *Scott v. Illinois*, 440 U.S. 367 (1979)).

⁴ 28 C.F.R. § 31.303(f)(3)(v)(D).

⁵ See, e.g., Md. Cts. & Jud. Pro. § 3-8A-20; Pa.R.J.C.P. No 1151 B(1) (2010).

⁶ See, e.g., Wyo. Stat. Ann. § 14-6-422(a)(iv) (2009); Conn. R. Super. Ct. Juv. § 30a-1(b)(2) (2009); M.G.L.A. 119 § 39F (2010).

⁷ Tenn. Code. Ann. § 37-1-126(a)(1) (2009).

⁸ Ariz. Rev. Stat. § 8-221 (2010).

⁹ *Lana A. v. Woodburn*, 116 P.3d 1222 (Ariz. App. Div. 1 2005); *Bellevue School District v. E.S.*, 148 Wash. App. 216 (Wash. Ct. App. 2009); *In re Walker*, 282 N.C. 28 (N.C. 1972); *In Interest of Hutchins*, 345 So.2d 703 (Fl. 1977).

¹⁰ *Bellevue School District*, 148 Wash. App. 216 (Wash. Ct. App. 2009) (this case is on appeal to the Washington state Supreme Court: *Bellevue School Dist. v. E.S.*, 166 Wash. 2d 1011 (Wash. 2009)).

¹¹ *Lana A.*, 116 P.3d. at 1224-1225 (citing A.R.S. § 8-221(A)).

¹² *In re Walker*, 282 N.C. 28, 38 (N.C. 1972).

¹³ *In the Matter of B.A.T.*, 2005 WL 2850897, at *2 (N.C. App. 2005).

¹⁴ Reprinted in IJA-ABA Juvenile Justice Standards Annotated: Standards Relating to Counsel for Private Parties, Robert E. Shepherd, Jr., ed., Standards 1.1, 2.3(a) (1996).