A BALANCE OF INTERESTS
Dealing with the juvenile offender

by Brad Stuart

In 1972, the authors of a North Carolina Bar Association study of the state's training schools wrote that their findings should be received with "indignation, even outrage." The system of training schools for juvenile offenders was "a total failure."

Ostensibly set up to provide education and counseling to wayward children, the eight training schools were in fact little more than prisons. Bleak, understaffed, they did not even provide their charges with basic dental and eye care, let alone deal with the more difficult problems of emotional and mental development. The report, titled *As the Twig Is Bent*, spoke of neglect and "mistreatment of helpless children."

While physical brutality by school personnel was rare, some school authorities were said to encourage their wards to pursue and to beat up children who attempted to escape. The study concluded that "it is difficult to inculcate moral principles in a young child who lives under custodial conditions, sleeps in an overcrowded dormitory, is deprived of family identification, and who if he tries to escape may be hunted by his fellows like an animal and punished by being isolated in a cell equipped with only a mattress."

Into this system the state poured not only its violent and larcenous young, but children under the ill-defined legal label "undisciplined" --- the runaway, the truant, the unmanageable, the unwanted. These undisciplined children (so-called status offenders because offenses such as truancy are illegal only because of the offenders' status as children) helped swell the commitment rolls to the point that North Carolina had more children per capita in training schools than any other state in the nation. The Bar Association called the training schools "a dumping ground for unfortunate children, most of whom have committed no crime whatsoever."

It took three years for the legislature to respond, but in 1975 the N. C. General Assembly passed a bill to help implement the central recommendation of *As the Twig Is Bent:* the creation statewide of community-based alternatives to training schools. Instead of being dumped in training schools, status offenders---and delinquents other than hard-core incorrigibles---were to be helped by foster care, group homes, counselors, special school programs and mental health therapy in their own communities.

There is a kicker to the bill, a provision which helps make House Bill 456 one of the most important and controversial changes in state juvenile law since the creation of a separate juvenile court in 1919. The provision,* in effect, forbids the commitment of minors to training schools on account of any status offense---any offense which is not a crime if committed by adults. In fact, the state's power to keep nondelinquent but undisciplined children in any type of long-term custody has been eliminated.

The effective date of the provision was delayed two years. As the 1977 implementation date drew near, the legislature saw that communities around the state weren't ready to deal with all the runaways, truants, and unmanageable children who

*Before the ban on incarceration of juvenile status offenders took effect July 1, many children were committed to the state training schools in a two-stage process. First, the juvenile court would adjudicate them as status offenders because of being truant, running away or being generally out of control of their parents, and would place them on probation. The terms of probation generally required the child to stop committing the offenses that brought him to the attention of the court. If the original offense were truancy, the probation order would order the child to go to school. Secondly, when the children repeated their status offenses following probation --- persisting in their truancy, for instance --- they were declared "delinquent" for violating a court order. As delinquents, they could be incarcerated in training schools.

The wording of the section of House Bill 456 that bans incarceration for status offenses can be understood only if this two-stage process is understood. The section states that G. S. 7A-278(2), which gives the legal definition of delinquency, "is rewritten to omit the words 'or a child who has violated the conditions of his probation.' " This means that children can no longer be declared "delinquent" solely because of probation violation. And, if not delinquent, they can not be sent to training school.

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—Judge Gil Burnett

had before been sent to training schools. The provision was delayed again. It went into effect July 1, 1978.

"Deinstitutionalization" of status offenders---a goal of federal juvenile justice policy and a requirement for state receipt of federal funds under the Juvenile Justice and Delinquency Prevention (JJDP) Act---is now an accomplished fact in North Carolina. The overall rate of commitment to training schools has dropped by about one third. From July through October of this year, 222 children were committed to training schools, compared to 363 during the same months in 1977. As of December 4, 1978, there were 685 children in training schools, as compared with more than 1,600 in 1972.

The overwhelming majority of professionals involved in children's services generally support the changes that are occurring and back the intent of House Bill 456.

In conversations with officials in Raleigh and with professionals elsewhere in the state, however, two basic concerns emerged. Most feel that state and local governments have appropriated only a fraction of the funds needed to make community services a viable alternative to training schools. And some feel H. B. 456 went too far in placing an absolute ban on incarceration of minors for status offenses. Opponents argue for repeal of this provision, arguing that it removes any "stick" the courts have to enforce compulsory school attendance laws and allows rebellious runaways to remain on the street.

UNMET NEEDS

There is no comprehensive body of data on the needs of troubled youth in North Carolina, nor is there a simple estimate of the amount of money required to provide adequate juvenile services, according to Ken Foster, director of the Community-Based Alternatives (CBA) program of the Division of Youth Services. There is little doubt, however, that, three years after its passage, the resources have not been provided to carry out the intent of House Bill 456.

The legislation appropriated only $15,000 for each of the next two years. The money went to set up CBA, a planning program in the Department of Human Resources. Despite scant funds, former CBA director Dennis Grady and Foster, his successor, are generally credited with doing an excellent job of organizing county participation. County governments were to be the major actors in the community-based program. Ninety-seven counties agreed to join in the effort.

In February, 1977, the Legislative Commission on Correctional Programs (the Knox Commission) recommended that the General Assembly appropriate $3 million for each year of the 1977-79 biennium for the support of community-based alternatives. The legislature chose to appropriate only half of that: $1 million the first year, $2 million the second. Counties were asked to chip in a maximum of 30 percent of that in match monies. Because many counties didn't have the funds, according to Foster, they were allowed to use "in kind" matches in the form of program facilities already in place.

By the time the state money is distributed to the 97 participating counties, it is stretched pretty thin.

"Last year, Forsyth County, one of the most populous counties in the state, received $30,000 in state CBA funds," said Ann Ryder, who supervises child mental health programs for the North Central Region, a quarter of the state. "How can that money spread among eight local agencies keep children in the community and give them the help they need? I can't think of any case where a community has supplemented state money enough to make a really viable community-based alternative to training schools."

There are some federal funds available: $1.6 million per year from the JJDP Act, North Carolina's reward for passing House Bill 456. But according to Barbara Sarudi, chairman of the state Juvenile Justice Planning Committee, which helps allocate federal grant monies, JJDP funds will be used to make up for other federal funds --- seed monies from the Law Enforcement Assistance Administration --- which are drying up. She added that North Carolina's fiscal commitment to community-based services for juveniles is small in comparison to other states'. She said, for example, that Minnesota spends $30 million and neighboring Virginia spends $18 million annually.

When a complaint is brought against a child for a status offense, it is the counselors of the juvenile court who try to locate the group home, alternative schooling or other services the youth may need. One of them, intake counselor Danny Smith of Lillington, had these bitter comments: "What the state has said in effect is, 'You can't put your problem kids in state institutions, but we're not going to give you the resources to deal with their problems at home.' It costs $16,000 a year to keep a kid in training school. They let him out and throw us a few pennies."

Many of the service needs of status offenders

are shared by other troubled youths, including delinquents and children with mental problems.

Some kids become status offenders by running away from family fights. They need a decent place to stay --- perhaps a temporary shelter home with house parents --- until things simmer down enough for them to go home. Others need longer-term care away from home. Some have been abused by their parents (a study by Yale law students R. Hale Andrews and Andrew H. Cohn found that in over a third of the cases of children being brought into the New York state courts on status offense petitions in 1974 the parents could have been charged with statutory abuse or neglect.) Some have learning disabilities or are emotionally disturbed and need intensive therapy.

The lack of temporary shelters and foster homes for runaways was cited repeatedly in interviews. Even in Wake County, where Wake House serves as a shelter, court counselors reported that runaways are often locked up in the county's juvenile detention center because there is no room in the shelter.

This writer spent two days at the Wake County Courthouse, observing juvenile court and interviewing court officials. All of one afternoon a 14-year-old boy sat in a room outside the counselors' offices waiting for a place to stay. He had fled from home after being repeatedly beaten by his brother, a counselor said. When no place was found for him, he finally went back to his first refuge, the home of a friend whose parents didn't want him in the house. His parents, the counselor said, had not phoned the boy in the two weeks he had been away.

Other children without access to friends' houses or shelter homes don't fare so well. When the state's eight detention centers* are too full or too far away for police to drive, children are locked up in county jails. A total of 2,600 --- delinquents, disturbed children and status offenders alike --- were lodged in jails last year, according to Wiley Teal, state juvenile detention director. Since the law forbids contact with adult prisoners, children are segregated in solitary lock-ups. Though the average stay is eight to ten days, Teal said he knew of cases in the recent past of children remaining in jail cells for up to a month.

"We had a girl in here from [a small community outside Raleigh]," said Steve Williams, chief court counselor for District 10. "She said, 'My mama and daddy are drunk; they were beating me. I'm not going home.' The emergency shelter was full. There were no foster homes. What do we do with her? We locked her up. Absolutely insane."

State officials and professionals cited a long list of children's service needs now unmet. Two which were mentioned regularly were the lack of programs for borderline retarded children who, without special help, can become truants and discipline problems, and so-called "multi-handicapped" children who are emotionally disturbed and retarded. Both kinds of children are generally excluded by the entrance requirements of existing programs and hence fall through the cracks.

The lack of adequate mental health services in North Carolina is most clearly seen in cases of the most seriously disturbed, the kids who, when untreated, cause the most trouble.

This writer observed a hearing in a Wake County courtroom for a 15-year-old delinquent girl charged with violation of probation. The girl was seriously mentally ill, both counselor and judge agreed. She needed intensive inpatient therapy. Because the state Dorothea Dix Hospital's juvenile unit was full, she was "temporarily" committed to training school. Later in the morning, another disturbed youngster appeared in the courtroom. A gangly boy wearing no shoes and an odd smile, he, too, had been turned away from Dix. Sent home on medication, by afternoon he had court officials scrambling for a detention order. As one of them put it, "That boy who went crazy over the weekend? He's done it again! Went home, tore all the lights out of the house and tried to kill his mama! He's downstairs in a straitjacket."

Child mental health specialist Ryder said that the John Umstead Hospital, which serves the North Central region, also regularly turns away children who need intensive care, "including ones who are dangerous to others."

Dr. Lenore Behar, the head of the state's mental health programs for children, acknowledged that the hospitals are turning away acutely ill youngsters. She spoke of a cruel trade-off, saying the need to provide adequate outpatient community services competes with the need to provide decent care and facilities in institutions. In both areas, she said, there is a critical shortage of funds.

Despite the glaring deficiencies, recent progress in providing services for troubled children is substantial, and in recent years the funding picture has improved markedly. The CBA unit intends to ask for a doubling of funds this legislative session --- to $4 million --- according to Foster. Mental health funds for children have more than doubled in the past three years, the current annual budget being $25.8 million. CBA resources for problem students have been greatly magnified by the cooperation of the public schools in creating programs for disruptive students and truants. In-school suspension programs have decreased the number of students

*The only state-operated juvenile detention facility is in Fayetteville. Because of stipulations attached to the federal funds used to build it, the center won't accept status offenders. County-operated detention centers are in Asheville, Charlotte, Winston-Salem, Greensboro, Durham, Raleigh and Wilmington.

expelled from school in some areas. Alternative schools, such as Ocean Sciences Institute in Wilmington, have been created. In mental health, the state-supported Wilderness Camping program operated by the Eckerd Foundation has reportedly helped some of the most severely disruptive and disturbed boys to become self-reliant, mentally and physically fit. In the juvenile courts, trained counselors have been hired in all court districts, and their caseloads (averaging 42 cases per month) are not generally seen as excessive.

Certainly not all of these efforts were in direct response to House Bill 456. But the bill has been the primary impetus of new programs for troubled children. And it is the "kicker" provision of the bill which many say has been the key force for change.

The ban on committing status offenders to training schools "is forcing us to do what needs to be done," said Ms. Ryder. "It was too easy to send these kids out of town. And once out of sight you usually forget them. Even the most dedicated professionals do. Because you've always got a new face in front of you."

"The court used to be seen as the answer, somebody you could pass the kid to when you gave up," said Goldsboro court counselor Donna Ramsey. "The courts could pass him on to training schools. They could send him home and the cycle would start all over again. Now that cycle has stopped."

REPEAL SOUGHT

Opposition to the new law focuses on its central paradox --- that the bill designed to encourage community-based programs for status offenders allows children to refuse those programs and to hit the streets instead.

Twice since 456 was passed, the North Carolina Association of District Court Judges has called for repeal of the section banning forcible confinement of status offenders. One opponent whose voice carries very far on this issue is Gil Burnett, chief judge of the Fifth District (New Hanover County). Well-known for his advocacy of children's services, Judge Burnett helped initiate Ocean Sciences Institute and is also credited with developing an evaluation program for juvenile offenders in his court which is perhaps the most systematic and thorough of any in the juvenile court system.

Judge Burnett argues that the commitment ban makes the courts incapable of enforcing the laws forbidding status offenses. "It kills the compulsory school attendance law. It kills the legal right of a parent to control his child."

He argues that children under 16 are too immature and vulnerable to get along on the street and says that unless the court has the ultimate sanction of training school, the street is where many kids will end up.

"Before the law was changed, the threat of training school was used as a lever to get these children into [education and mental health programs]. I'm concerned with civil rights. But some people, at a given time in their lives, need help when they aren't prepared to accept it."

There are preliminary indications that the problem Judge Burnett points to is already surfacing. Apparently, some children are successfully refusing any custody whatsoever. Bill Safriet, supervisor of child mental health services for the eastern region, said group homes for girls in his region had been nearly empty since the law's passage. The same was not the case with boys' groups homes, which, unlike the girls' homes, had never held many status offenders. Williams, the district court counselor, reported the group home in Wake County also had difficulty in convincing girls to stay there. Both Williams and Safriet attributed the attendance problems to the effect of the new 456 provision.

Judge Burnett wants the law changed so that it demands that judges use (not just consider) community services for status offenders, but with training school commitment possible as a last resort.

Other court officials would make an either-or request of the legislature. "A lot of judges feel they should either give us the ultimate sanction necessary to enforce court orders or get status offenders entirely out of the jurisdiction of the juvenile court," said Fred Elkins, chief court counselor in Durham.

Despite the opposition among court officials, one jurist may have inoculated the 456 provision against repeal. His intent was exactly the reverse.

George Bason, chief district court judge for the Tenth District (Wake County) won permission from N. C. Supreme Court Chief Justice Susie Sharp to put House Bill 456 into effect in Wake County one year ahead of the rest of the state. Part of his motivation, he now says, was his belief that the experiment would discredit the law before it became effective.

Eschewing the only means of enforcing probation --- the threat of training school commitment --- Judge Bason's court placed kids adjudicated as status offenders under "informal and voluntary court supervision." This meant that court counselors would direct them to community services and try to persuade them to accept services offered, but could not force the kids to do anything. (As was the case previously, most of the children with complaints of status offenses lodged against them were dealt with solely by intake counselors. They never appeared in court for adjudication).

The experiment made reluctant converts of both the judge and chief court counselor Williams. Both said the voluntary supervision procedure was

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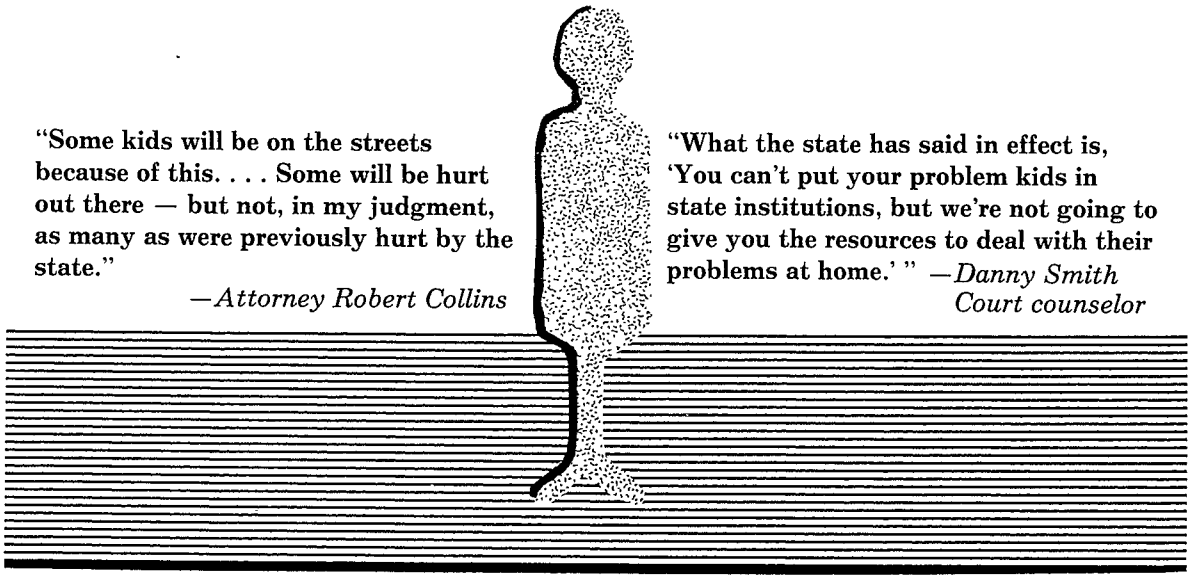
—Attorney Robert Collins



"What the state has said in effect is, 'You can't put your problem kids in state institutions, but we're not going to give you the resources to deal with their problems at home.' " *—Danny Smith*
Court counselor

generally as effective as probation in addressing status offenders' problem behavior.

Many kids continue with undisciplined behavior in either instance, Judge Bason said. "They (incorrigibles) didn't respond to probation and training school and they won't respond to 456. One difference is that now they're not sent to schools of crime, elbow to elbow with murderers and rapists."

Only seven of the 209 status offense cases studied during the experiment were judged by court counselors to be "less successful" than they would have been under the old system. On the other hand, only five were judged to be "more successful."

Students in local schools were informed that the new provision was in effect. Truancy did not increase.

The relative success of the experiment is all the more important because Judge Bason is chairman of the Juvenile Justice Code Revision Committee, which will advise this session of the legislature on needed changes in juvenile law. The committee will "endorse 456," he said. Moreover, he is adamantly opposed to removing status offenders from the jurisdiction of the courts. The ability of police to pursue and apprehend runaways, he says, is often crucial to their protection. Without jurisdiction, adults who exploit runaways could not be prosecuted for contributing to the delinquency of minors.

Juvenile court jurisdiction also allows the courts to punish parents who don't try to stop their children from committing offenses. Responding to the new law's removal of sanctions against truants themselves, Judge William H. Freeman recently sentenced two Winston-Salem women to 30-day jail terms for allowing their children to skip school. The Juvenile Justice Code Revision Committee, according to Judge Bason, is seeking legislation to expand on this concept, making parents subject to contempt citations if they do not fully cooperate in their children's court-ordered treatment programs. Another reason for jurisdiction is that "court counselors in some multicounty districts represent the only real resource [for troubled children] for 40 or 50 miles. Without jurisdiction, this resource would be lost," Judge Bason said.

Neither Judge Bason nor counselor Williams is absolutely sanguine about 456, however, and with the possible exception of Grady and Foster in Youth Services, neither is anyone else we spoke to.

"I'm as little concerned about the lack of an ultimate sanction as anyone," said Williams. "But I am concerned, because I have seen how some children can be positively coerced into accepting some discipline, settle down and be O.K. I'd like to have a training school in Timbuktu, and never send anyone to it, but have kids know it's there so they're willing to accept something else."

Robert Collins, staff attorney for the Juvenile Justice Code Revision Committee, sums up the position of those supporters of 456 who realize some kids will be hurt by it:

"Some people say training school should be available as a lever to coerce kids," he said. "But if a lever means anything, it has to be used. And to incarcerate a person who hasn't committed a crime is absolutely unjust.

"What we're talking about is a balance of interests. Some kids will be on the streets because of this. Some of them will grow up all right; some will be hurt out there --- but not, in my judgment, as many as were previously hurt by the state. Give the state the option of training school for kids who have committed no crime and those places will always be dumping grounds. We've tried that way. Let's give the new way a chance." □