

# COMMENTS

## Washington's Becca Bill: The Costs of Empowering Parents

*Alison G. Ivey\**

### I. INTRODUCTION

Abuse was the pervasive theme of Washington teen Rebecca Hedman's short life. "Becca," as she was known by her family, was sexually abused by her natural mother. At the age of fifteen months, Becca was placed in a foster home with the family that eventually adopted her, the Hedmans. When she was five years old, Becca was sexually abused by her older adopted brother. Her adoptive family provided her with counseling to cope with her abusive past, and at the age of twelve, she seemed to be adjusting well. In middle school, however, Becca became involved with the "wrong crowd" and began to rebel. Unable to handle her, her parents sent her to a state-run Crisis Residential Center and then to a group home. At the group home, Becca met older girls who introduced her to crack cocaine, prostitution, and a life on the streets.

After running away from the group home for forty-seven days, Becca returned home to her parents. They enrolled her in drug counseling and, for a short time, she appeared to be getting her life together. Her parents, still concerned about her drug habit, sent her to a residential drug counseling clinic in Spokane, Washington. They were under the impression that the staff of the clinic would call if she ran away from the clinic. However, Becca ran away from the clinic five times and her parents were never notified.

---

\* B.A. 1991, Connecticut College; J.D. Candidate 1997, Seattle University School of Law. The author thanks attorneys at the Attorney General's office and the Department of Assigned Counsel, as well as social workers at Family Reconciliation Services, for their invaluable input.

In October 1993, during one of her runaway periods, Becca was picked up on a Spokane street corner by a thirty-five year old man who paid her fifty dollars for sex. Because Becca did not adequately satisfy the man, he became enraged and demanded a refund. When she refused, he grabbed a baseball bat and hit her in the back of the head six times, killing her. He dumped her body in the Spokane River.<sup>1</sup>

It was Becca's short life and tragic death which spawned Washington's new legislation regarding runaway youths and the parents who want to control them. Appropriately nicknamed the "Becca Bill," Senate Bill 5439 became law in Washington in July 1995.<sup>2</sup> The Becca Bill is the Legislature's attempt to accommodate frustrated parents' demands for control over their children's lives. It provides for detainment and court intervention into the lives of juveniles known as "status offenders." Unlike juvenile delinquents, status offenders fall within the jurisdiction of the juvenile court for actions which would not be criminal if committed by an adult.<sup>3</sup>

This Comment gives a practical overview of the Becca Bill and its provisions and addresses the potentially dangerous ramifications of the bill. Part II of this Comment gives a brief history of the trends in juvenile justice in this country, establishing a context for what led to the Becca Bill's passage. Part II also introduces the Juvenile Justice

---

1. Kery Murakami, *Would "Becca Bill" Have Saved Becca?—Named For Runaway Girl Who Was Murdered, New Law Gives Parents More Control Over Kids*, THE SEATTLE TIMES, June 23, 1995, at A1.

2. Becca Bill, ch. 312, 1995 Wash. Laws 1319, amended by Becca Too Bill, ch. 133, 1996 Wash. Laws 426.

3. Status offenses include such things as running away, truancy, incorrigibility, disobedience of parents, and being in danger of leading a idle and dissolute life. See, e.g., MD. CODE ANN., CTS. & JUD. PROC. § 3-801(f) (1995) (asserting juvenile court jurisdiction over juveniles who are truant, ungovernable, and endanger themselves); R.I. GEN. LAWS § 14-1-3(9) (1995) (asserting juvenile court jurisdiction over juveniles who are leading an immoral or vicious life and disobeying their parents); 705 ILL. COMP. STAT. 405/3-3 (West 1992) (asserting juvenile court jurisdiction over juveniles who are absent from home without consent of a parent). "Juvenile delinquents" refers to juveniles convicted of criminal offenses. See, e.g., R.I. GEN. LAWS § 14-1-3(5) (1995) ("The term 'delinquent' when applied to a child shall mean . . . any child—who has committed any offense which, if committed by an adult would constitute a felony. . . ."); ARK. CODE ANN. 59-27-303(11) (Michie 1995) ("'Delinquent juvenile' means any juvenile . . . who has committed an act . . . which, if such act had been committed by an adult, would subject such adult to prosecution . . . under the applicable criminal laws of this State. . . ."); N.Y. SOC. SERV. LAWS § 371(5) (McKinney 1996) ("'Juvenile delinquent' means a person over seven and less than sixteen years of age who does any act which, if done by an adult, would constitute a crime."). Early delinquency laws lumped delinquency and status offenses under one jurisdiction. See, e.g., Illinois Juvenile Court Act of 1899, § 1, 1899 Ill. Laws 132.

For a thorough history on how status offense jurisdiction developed, see Peter D. Garlock, "Wayward" Children and the Law, 1820-1900: *The Genesis of the Status Offense Jurisdiction of the Juvenile Court*, 13 GA. L. REV. 341 (1979).

and Delinquency Prevention (JJDP) Act of 1974, the first federal act to mandate the deinstitutionalization of the status offender.

Part III of this Comment gives a brief history of Washington's statutes dealing with status offenders. This section then outlines the key portions of the Becca Bill, focusing primarily on the "lockup" provision and new petitions available to parents in order to obtain court intervention into the lives of their unmanageable children. Part III also briefly discusses controversial portions of the Becca Bill that were vetoed by Governor Lowry, as well as alternative bills that were before the Washington Legislature.

Part IV of this Comment addresses potential problems with the Becca Bill as enacted. This section discusses how the Bill is working, one year after its passage, based primarily on reports by practitioners who are attempting to carry out the law. Part IV then addresses concerns about the potential loss of federal funding under the JJDP Act of 1974, and discusses the extent that federal dollars provided to Washington for enacting juvenile justice programs are placed in jeopardy by the Becca Bill. Part IV also examines the practice of "bootstrapping" juvenile status offenders into the criminal justice system through the bill's contempt of court provisions.

This Comment concludes that not only is the Becca Bill not working in practice, but that it represents a dangerous trend back to the days of *parens patriae* and excessive court intervention into the lives of noncriminal youths. Close watch should be placed upon our Legislature to ensure that even stronger laws to control noncriminal juveniles are never passed, as well as to ensure that valuable federal dollars are not further jeopardized. Additionally, advocates for children's rights should be watchful that contempt provisions, now more accessible to parents through the Becca Bill, are not used as a way of bootstrapping a child into the criminal justice system.

## II. TRENDS IN JUVENILE JUSTICE

### A. *Parens Patriae and the Rise of the Child-Savers*

Around the turn of the century, a growing concern developed over the apparent disintegration of our nation's youth. Out of a trend referred to as the "child-saving" movement arose a new way of looking at the plight of juveniles who misbehaved.<sup>4</sup> These children were seen as young human beings to be rehabilitated, rather than criminals to be

---

4. See generally ANTHONY PLATT, *THE CHILD SAVERS* (1969).

punished.<sup>5</sup> The goal of the juvenile courts was a benevolent one: to save the children. The first juvenile court was established in Chicago in 1899 to implement this lofty ideal.<sup>6</sup> By 1920, all but three states had established a juvenile court system.<sup>7</sup>

The creators of the juvenile courts envisioned a kinder, gentler court which would relax the formalism and constitutional protections of the adult courts in order to allow a judge to discern what was troubling a child.<sup>8</sup> The proceeding was viewed as civil rather than criminal.<sup>9</sup> In order to meet the "best interests of the child," intervention was to be informal and individualized.<sup>10</sup> The child-savers believed that society's role was not to ascertain whether the child was "guilty" or "innocent" but rather

to find out what he is, physically, mentally, morally, and then if it learns that he is treading the path that leads to criminality, to take him in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen.<sup>11</sup>

The authority under which the child-savers believed they could do this was the doctrine of *parens patriae*.<sup>12</sup> The phrase literally means "parent of the country."<sup>13</sup>

The doctrine of *parens patriae* developed in medieval English courts of chancery.<sup>14</sup> The major issues in the medieval courts involved the distribution of property and testamentary and guardianship problems.<sup>15</sup> Chancery, acting as an agent of the monarchy, used the doctrine to authorize involvement in the family in the interest of maintaining the feudal structure.<sup>16</sup>

---

5. Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 109 (1909).

6. *Id.* at 107. See generally Illinois Juvenile Court Act of 1899, 1899 Ill. Laws 131.

7. Thomas R. Bearrows, *Status Offenders and the Juvenile Court*, in 2 FROM CHILDREN TO CITIZENS, 176, 178 (Francis X. Hartmann, ed. 1987). Washington's juvenile court was established in 1905. Act of Feb. 15, 1905, ch. 18, 1905 Wash. Laws 34.

8. Mack, *supra* note 5, at 107.

9. *Id.* at 109.

10. *Id.* at 107.

11. *Id.*

12. See generally Neil Howard Cogan, *Juvenile Law, Before and After the Entrance of "Parens Patriae,"* 22 S.C. L. REV. 147 (1970).

13. BLACK'S LAW DICTIONARY 1003 (6th ed. 1990).

14. See generally Douglas R. Rendleman, *Parens Patriae: From Chancery to The Juvenile Court*, 23 S.C. L. REV. 205 (1970).

15. *Id.* at 208.

16. *Id.*

The first American court to use the doctrine of *parens patriae* was a Pennsylvania court in the case of *Ex parte Crouse*.<sup>17</sup> In *Crouse*, a girl was committed to a "House of Refuge."<sup>18</sup> The girl's father petitioned for habeas corpus to have her released from the house and the court denied the petition.<sup>19</sup> In an historic opinion, the court used the term *parens patriae*, previously used only in dealing with property interests in feudal England, to justify the further detention of the girl in the House of Refuge.<sup>20</sup> The court stated:

To this end, may not the natural parents, when unequal to the task of education, or unworthy of it, be superseded by the *parens patriae*, or common guardian of the community? It is to be remembered that the public has a paramount interest in the virtue and knowledge of its members, and that, of strict right, the business of education belongs to it.<sup>21</sup>

The *Crouse* court thereby transformed a doctrine used in medieval England into a "new" doctrine, which was fully embraced by the creators of the juvenile court.<sup>22</sup> The doctrine provided a rather murky justification for state intervention into the lives of children. Because the state considered that it had a profound interest in seeing that its children grew up to be moral, virtuous, and productive members of society, it utilized the *parens patriae* doctrine to fulfill this goal.<sup>23</sup>

*Parens patriae* provided a rationale for juvenile court jurisdiction over criminal and noncriminal offenders. The juvenile courts' reach

17. *Ex parte Crouse*, 4 Whart. 9, 11 (Pa. 1838).

18. *Id.* at 9. The opinion implies that the young woman's mother had her committed to the House of Refuge because "her vicious conduct, has rendered her control beyond the power of the said complainant, and made it manifestly requisite that from regard to the moral and future welfare of the said infant she should be placed under the guardianship of the managers of the House of Refuge . . ." *Id.* at 10.

19. *Id.* at 12.

20. *Id.* at 11.

21. *Id.*

22. Rendleman, *supra* note 14, at 219.

23. *Id.* at 222. *Parens patriae* has been used in Washington, as in other states, as a justification for a wide variety of state action. See, e.g., *In re Young*, 122 Wash. 2d 1, 22 857 P.2d 989, 998 (1993) (using the doctrine to justify the sexually violent predator statute and the detainment of the mentally ill); *In re the Dependency of A.V.D.*, 62 Wash. App. 562, 567, 815 P.2d 277, 281 (1991) (justifying the removal of a child from his unfit parents); *Converse v. State Lottery Commission*, 56 Wash. App. 431, 436, 783 P.2d 1116, 1119 (1989) (extending the state's *parens patriae* power to justify giving out lottery winnings in installments in order to insulate lottery winners "from their own human frailties and the possible excesses to which they might be subjected").

extended to all children in danger of leading a societally unacceptable life, regardless of whether or not they had committed a crime.

### B. In re Gault and Its Influence: *Parens Patriae* Questioned

While the child-saving movement may have grown out of the best of intentions, the juvenile court soon fell under criticism for causing children to suffer the worst of both worlds.<sup>24</sup> Because of the informality of court proceedings, constitutional safeguards were often relaxed or altogether abandoned.<sup>25</sup> In addition, children under the jurisdiction of the juvenile court were not undergoing the expected transformation into virtuous citizens.<sup>26</sup> In essence, the child-savers were neither fulfilling their role as rehabilitators, nor providing procedural safeguards to ensure the integrity of the court process.<sup>27</sup>

Although the exclusion of juveniles from the constitutional scheme went unchecked for many decades,<sup>28</sup> in 1967 the United States Supreme Court sharply criticized many of the juvenile theories and practices of the last sixty years when it decided *In re Gault*.<sup>29</sup> In an

24. *Kent v. United States*, 383 U.S. 541, 556 (1966).

25. See, e.g., *In re Holmes*, 109 A.2d 523, 605 (Pa. 1954) (holding that "Juvenile Courts are not criminal courts, the constitutional rights granted to persons accused of a crime are not applicable to children brought before them . . ."); *Weber v. Doust*, 84 Wash. 330, 338, 146 P. 623, 625 (1915) (holding that a restraint without a warrant under the Juvenile Delinquency Act does not violate due process).

26. See Michael J. Dale, *The Supreme Court and the Minimization of Children's Constitutional Rights: Implications for the Juvenile Justice System*, 13 *HAMLIN J. PUB. L. & POL'Y* 199, 226 (1992).

27. *Kent*, 383 U.S. at 555-556. The *Kent* court stated:

While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guaranties applicable to adults.

*Id.* at 555.

28. Challenges to the courts' unlimited discretion, when raised, were generally defeated without much discussion in the early years of the juvenile courts. The discretionary approach was hailed as indispensable in promoting rehabilitation. See, e.g., *In re Broughton*, 158 N.W. 884, 886 (Mich. 1916) (holding that in a delinquency proceeding, a juvenile court judge has complete discretion in deciding whether to send an unmanageable and wayward child to the State Industrial School); *People v. Lewis*, 238 N.Y.S.2d 792, 798 (1962) ("[A]n alleged delinquent should be amenable to the court's jurisdiction with a minimum of legal technicalities."); *Holmes*, 109 A.2d at 605..

29. *In re Gault*, 387 U.S. 1 (1967). The facts of *Gault* illustrate how theories of juvenile justice and *parens patriae* often lead to unjust results. Gerald Gault, a boy of fifteen, was arrested for making obscene phone calls with his friend. His parents were not notified of his arrest and he was permitted to be questioned by the police outside the presence of his parents. At a hearing to determine his sentence, the arresting officer filed a petition with the court stating that "said minor is under the age of eighteen years, and is in need of the protection of this Honorable Court." The arresting officer failed to make reference to any factual basis for the initiated judicial

influential decision, the *Gault* court specifically addressed the appalling lack of due process given to juveniles and concluded that “. . . neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.”<sup>30</sup> Additionally, the court attacked the use of *parens patriae* as a justification for depriving juveniles of constitutional safeguards when it stated:

The Latin phrase proved to be a great help to those who sought to rationalize the exclusion of juveniles from the constitutional scheme; but its meaning is murky and its historic credentials are of dubious relevance. The phrase was taken from chancery practice, where, however, it was used to describe the power of the state to act in loco parentis for the purpose of protecting the property interests and the person of the child. But there is no trace of the doctrine in the history of criminal jurisprudence.<sup>31</sup>

Although the *Gault* decision signaled the development of a new trend that recognized the constitutional rights of children,<sup>32</sup> the beneficiaries of *Gault* have proven to be only criminal youths.<sup>33</sup>

In the last thirty years, juvenile justice has afforded juvenile delinquents almost all of the protections of adults in criminal proceedings.<sup>34</sup> Similar protections, however, are not always provided to status offenders. Because their actions are not criminal, the push to afford

action. At the hearing, the complainant was not there, no one was sworn in, no transcript or recording was made, no record of the substance of the proceedings was prepared. At the conclusion of the hearing, the judge committed Gerald as a juvenile delinquent to the State Industrial School until the age of 21. The sentence for an adult found to have made similar phone calls would have been fifty dollars or imprisonment not to exceed two months. *Id.* at 4-9.

30. *Id.* at 13.

31. *Id.* at 16. *Cf. Kent*, 383 U.S. at 555 (holding that “the State is *parens patriae* rather than prosecuting attorney and judge. But the admonition to function in a ‘parental’ relationship is not an invitation to procedural arbitrariness.”).

32. *See, e.g., In re Winship*, 397 U.S. 358, 366 (1970) (holding that civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile courts. Also, all elements of a crime need to be established beyond a reasonable doubt); *Breed v. Jones*, 421 U.S. 519, 529 (1975) (determining the applicability of constitutional rights in juvenile proceedings requires that courts eschew the “civil” label of convenience which has been attached to juvenile proceedings).

33. Erin M. Smith, *In a Child's Best Interest: Juvenile Status Offenders Deserve Procedural Due Process*, 10 LAW & INEQ. J. 253, 257 (1992) (asserting that because status offenders were not included in the *Gault* decision, *parens patriae* has continued to be a basis for providing them fewer protections); Rayna Hardee Bomar, *The Incarceration of the Status Offender*, 18 MEM. ST. U. L. REV. 713, 717 (1988) (asserting that status offenders are still subject to the unbridled discretion of the juvenile court).

34. Juveniles in criminal proceedings are entitled to all due process protections except the right to a public trial or a trial by jury, *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971), the right to bail, or the right to indictment by a grand jury, *Kent v. United States*, 383 U.S. 541, 555 (1966).

the status offender due process rights has not been as strong. There is still a prevailing sense that the status offender is a different breed than the criminal offender.<sup>35</sup> As a result of lingering "child-saving" theories that deal with status offenders, certain constitutional protections have been held inapplicable to status offenders.<sup>36</sup>

### C. *The Juvenile Justice and Delinquency Prevention Act*

While the revolution to recognize protections for status offenders has not progressed as rapidly as for criminal juveniles, their situation has not gone completely unnoticed. In reaction to states' tendency to lock up truants, runaways and incorrigibles who had committed no crime, Congress passed the Juvenile Justice and Delinquency Prevention Act (JJDP Act) in 1974.<sup>37</sup>

Passage of the JJDP Act was prompted by national concern over widespread abuses and deficiencies in state juvenile justice systems.<sup>38</sup> Specifically, Congress found a widespread practice of using state and local correctional agencies and institutions to confine juveniles accused of noncriminal offenses.<sup>39</sup> In 1974, the National Advisory Commission on Criminal Justice Standards and Goals observed that at least fifty percent of detention populations were juveniles who had committed no crime, but were held in secure facilities under deplorable conditions.<sup>40</sup> The appointed Commission further found that as a

35. See Evelyn C. Knauerhase, *The Federal Circle Game: The Precarious Constitutional Status of Status Offenders*, 7 COOLEY L. REV. 31, 32 (1990) (suggesting that status offenders are often unfairly trapped in a circle of changing policies by Congress, the Supreme Court, and the Office of Juvenile Justice and Delinquency prevention); *In re Ronald S.*, 138 Cal. Rptr. 387, 390 (Cal. Ct. App. 1977) (The status offender "was a judicial nightmare. He resented being in court. He had violated no law. He usually just did not get along with his parents and, when one met the parents, this was often completely understandable.").

36. See, e.g., *In re Cindy Ann Spalding*, 332 A.2d 246 (Md. 1975). The juvenile in the *Spalding* case was found to be a "Child in Need of Supervision" because she engaged in acts of sexual intercourse. She attempted to assert her right against self-incrimination but was denied that right because the proceedings in which she was charged would not have been criminal if she had been an adult. *Id.*

37. Juvenile Justice and Delinquency Prevention Act, Pub. L. No. 93-415, 88 Stat. 1112 (1974) (codified at 42 U.S.C. §§ 5601-39 (1995)).

38. 42 U.S.C. § 5601 (1995) (addressing the congressional findings regarding the nation's juvenile justice programs).

39. For a discussion of what led to the JJDP Act's passage, see Jan C. Costello and Nancy L. Worthington, *Incarcerating Status Offenders: Attempts to Circumvent the Juvenile Justice and Delinquency Prevention Act*, 16 HARV. C.R.-C.L. L. REV. 41, 50-58 (1981).

40. KATHLEEN KOSITZKY CRANK, THE JJDP ACT MANDATES: RATIONALE AND SUMMARY, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, FACT SHEET #22 (JAN. 1995).



result of jail or lockup experience, juveniles often learned antisocial behavior.<sup>41</sup>

A major objective of the JJDP Act was to ensure that noncriminal youths not be incarcerated and that community-based voluntary services be used in the place of detention and lockups. Congress made federal funding for state juvenile justice programs contingent upon meeting the mandates of the JJDP Act.<sup>42</sup> Specifically, with regard to status offenders, Congress required that each state "provide within three years after submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult . . . shall not be placed in secure detention facilities or secure correctional facilities."<sup>43</sup> Thus, in order to receive federal monies through the formula grants program aimed at correcting the deprivation of status offenders' liberties, the state must show compliance with the JJDP Act's mandates.<sup>44</sup>

### III. WASHINGTON'S TREATMENT OF STATUS OFFENDERS

#### A. *From 1891 to the Present*

While concern for and punishment of status offenders has existed since biblical times,<sup>45</sup> Washington, like many states, has never quite decided to what extent court intervention into the lives of these unruly yet noncriminal juveniles is appropriate. Washington laws allowing for intervention have changed over the years. Many of the changes have been consistent with national trends in juvenile justice.<sup>46</sup>

The first status offense law in Washington was simply worded, authorizing the commitment of "incorrigible," "mendicant" and

41. *Id.* at 2.

42. 42 U.S.C. § 5633(a)(12)(A) (1995).

43. *Id.* The provision, as amended in 1980, does make an exception for a noncriminal youth who is in violation of a valid court order. Juvenile Justice Amendments of 1980, Pub. L. No. 96-509, 94 Stat. 2750 (1980) (codified at 42 U.S.C. § 5633 (1995)). See also INSTITUTE OF JUDICIAL ADMINISTRATION & AMERICAN BAR ASSOCIATION, JOINT COMMISSION ON JUVENILE JUSTICE STANDARDS, STANDARDS RELATING TO NONCRIMINAL MISBEHAVIOR (recommending not only the deinstitutionalization of status offenders, but complete lack of juvenile court jurisdiction over them).

44. 28 C.F.R. § 31.303 (1995).

45. If a man have a stubborn and rebellious son, who will not obey the voice of his father or the voice of his mother, and, though they chastise him, will not give heed to them, then his father and his mother shall take hold of him and bring him out to the elders of his city at the gate of the place where he lives . . . . Then all the men of the city shall stone him to death. . . .

*Deuteronomy* 21:18-21.

46. See *supra* notes 4-36 and accompanying text.

"vagrant" children to state institutions.<sup>47</sup> In 1905, consistent with the child-saving movement,<sup>48</sup> Washington extended its status offense jurisdiction to include an extensive array of undesirable youthful activity.<sup>49</sup> In 1913, the list of prohibited acts was further expanded.<sup>50</sup> Any child deemed to be in violation of these statutes would fall under the jurisdiction of the juvenile court. In 1961, the Legislature amended the scope and severity of the 1913 legislation, but kept eight status offenses on the books.<sup>51</sup> All of these early statutes, in keeping with the national trend of *parens patriae*, allowed for secure detention of juveniles found in violation.<sup>52</sup>

The most sweeping reform in Washington's juvenile justice system came in 1977, following the *Gault* decision and the enactment of the JJDP Act. Washington became a leader among states in implementing laws to deinstitutionalize the status offender.<sup>53</sup> The new legislation emphasized voluntary services coordinated through the

47. Act of March 7, 1891, ch. 103, 1891 Wash. Laws 195 (no longer in effect).

48. See generally Platt, *supra* note 4.

49. The legislation permitted the institutionalization of a child under age 17, who is incorrigible [sic]; or who knowingly associates or lives with thieves, vicious, immoral or disreputable persons; or who is growing up in idleness or crime; or habitually begs or receives alms; or who is found living in any house of ill fame; or who knowingly visits or enters a house of ill repute; or who knowingly patronizes or visits any policy shop or place where any gambling device is or shall be operated; or who patronizes or visits any saloon or dram shop where intoxicating liquors are sold; or who patronizes or visits any public pool room or bucket shop; or who wanders about the streets in the night time without being on any lawful business or occupation; or who habitually wanders about any railroad yards or tracks, or jumps or hooks onto any moving train, or enters any car or engine without any lawful authority; or who habitually uses vile, obscene, vulgar, profane or indecent language; or is guilty of immoral conduct in any public place, or about any school house; and any child under the age of eight years who is found peddling or selling any articles; or singing or playing any musical instrument upon the street, or giving any public entertainment.

Act of Feb. 15, 1905, ch. 18, § 1, 1905 Wash. Laws 34 (repealed 1909).

50. Act of Mar. 2, 1913, ch. 160, 1913 Wash. Laws 520 (amended 1961). Some of the new categories included "incorrigibility" and being "in danger of growing up to lead an idle, dissolute or immoral life." §§ 1(12), 1(16).

51. Juvenile Court Law, ch. 302, 1961 Wash. Laws 2473 (repealed 1977).

52. The 1891 law permitted detainment in the state reform school until the age of 18. Act of Mar. 7, 1891, ch. 103, § 7, 1891 Wash. Laws. 197 (no longer in effect). The 1961 law permitted detention for up to 72 hours, excluding Sundays and holidays, without a court order, and unlimited detention with a court order. Juvenile Court Law, ch. 302, § 2, 1961 Wash. Laws 2473 (amending 1913 Wash. Laws, ch. 160, § 8).

For an extensive discussion of Washington's status offense law evolution, see Thomas Neville, *Washington's Juvenile Status Offense Laws*, 2 U. PUGET SOUND L. REV. 170 (1978).

53. Neville, *supra* note 52, at 195.

Department of Social and Health Services (DSHS) and released status offenders from lockup facilities.<sup>54</sup>

DSHS was given the responsibility and authority to provide services to the runaway population through a voluntary system of community-based social services centered around nonsecure Crisis Residential Centers (CRCs).<sup>55</sup> With the 1977 changes in juvenile legislation, Washington was in full compliance with the JJDP Act, and was able to receive money through the formula grants program.<sup>56</sup> Although the 1977 changes were hailed as moving in a positive direction for the treatment of status offenders, its implementation left many citizens and lawmakers disappointed.<sup>57</sup>

### B. *The Need For a Change*

In 1994, Governor Mike Lowry appointed the Council on Families, Youth and Justice to conduct a comprehensive review of the 1977 Juvenile Justice Act.<sup>58</sup> The Council analyzed the 1977 laws in terms of original goals and results to date, and proposed recommendations for changes.<sup>59</sup> The Council's report saw the problems with the 1977 legislation as: a lack of CRC facilities, the ineffectiveness of Family Reconciliation Services because of their voluntary nature, and a lack of secure placement alternatives to improve the effectiveness of the process.<sup>60</sup> The Council recommended the use of a Child in Need of Services designation for runaway youth, as well as court authority to order services to families in need.<sup>61</sup>

In addition to the Council's recommendations, another catalyst for the change in legislation were vocal parental rights groups. Parents

54. See generally Family Reconciliation Act, WASH. REV. CODE § 13.32A (1993), amended by WASH. REV. CODE § 13.32A (Supp. 1995).

55. CRCs were to be nonsecure and adhere to the mandates of the JJDP Act. See WASH. REV. CODE § 13.32A.030 (1993), amended by WASH. REV. CODE § 13.32A (Supp. 1995).

56. Letter from John J. Wilson, Deputy Administrator, U.S. Department of Justice, to Rosalie McHale, Program Coordinator, Juvenile Justice Section, Department of Social and Health Services (May 2, 1995) (on file with the *Seattle University Law Review*).

57. *Revising Procedures for Non-offender At-Risk Youth and Their Families*, 1995: *Senate Floor Debates on SB 5439*, 54th Leg. (1995). "All of us have heard about the breakdown of the family in this nation . . . laws can contribute to that problem . . . and the 1977 Juvenile Justice Act contributed to that problem." *Id.* (statement of Senator Hargrove).

58. COUNCIL ON FAMILIES, YOUTH AND JUSTICE, FINAL RECOMMENDATIONS (1994).

59. *Id.* at 6. The council was divided up into four work-groups: The Dependency Work Group, the Youth in Crisis Work Group, the Juvenile Offenders Work Group, and the Prevention Strategies Work Group. The Youth in Crisis Work Group was responsible for evaluating the current provisions for dealing with at-risk youth and runaways. *Id.*

60. *Id.* at 23-31.

61. *Id.* at 25-36.

were frustrated with a perceived lack of power over their runaway teens, and wanted those teens to be subject to stricter laws and incarceration periods for running away.<sup>62</sup> When the 1995 legislative session began, five bills were on the table, each a variation on the theme of the Council's recommendation.<sup>63</sup> The Becca Bill, the one eventually passed and signed, is outlined below.

### C. *The Becca Bill*

The reach of the Becca Bill is extensive. Most of the Bill's provisions amend the "Family Reconciliation Act."<sup>64</sup> Additionally, the Bill amends certain sections of titles 71 and 28A of the Revised Code of Washington, providing for strict enforcement of truancy laws and allowing for the involuntary commitment of minors to drug, alcohol, and mental health treatment.<sup>65</sup> While the truancy and involuntary commitment sections are quite controversial, this section on the Bill's main provisions will deal only with revisions to the "Family Reconciliation Act," specifically addressing the lockup provision now available to incarcerate runaways, as well as court petitions created to give parents "tools" to control their children.<sup>66</sup>

62. A form letter distributed by one concerned parent to the Legislature and the Attorney General's office stated:

I am angry that the law does not give the parent the right to protect their children. I'm angry that there are no consequences for the runaway, such as fines . . . detention, or truancy officer. . . . I'm angry that lock up treatment is not available in Washington. I'm angry because I make phone calls every day to our hired help in Olympia and it's very rare I even get a call back, so I've decided to try sending a letter.

Letter from Kristi Vanselow to The Office of the Attorney General (Feb. 21, 1994) (on file with the *Seattle University Law Review*).

63. The five alternative bills were Senate Bill 5439, Senate Bill 5480, Senate Bill 5649, Senate Bill 5191, and House Bill 1417; 54th Leg., Reg. Sess. (Wash. 1995).

64. WASH. REV. CODE § 13.32A (1993), amended by WASH. REV. CODE § 13.32A (Supp. 1995).

65. See, e.g., WASH. REV. CODE § 70.96A.095 (Supp. 1995) (providing that "the parent of any minor child may apply to an approved treatment program for the admission of his or her minor child for purposes authorized in this chapter. The consent of the minor child shall not be required for the application or admission."); WASH. REV. CODE § 28A.225.030 (Supp. 1995) (providing that "upon the fifth unexcused absence by a child within any month during the current school year, the school district shall file a petition with the juvenile alleging a violation of RCW 28A.225.010 . . .").

66. The Becca Bill as enacted in 1995 was further amended by the 1996 Legislature. Becca Too Bill, ch. 133, 1996 Wash. Laws 426. This section will discuss the Becca Bill as the legislation was amended by the 1996 session.

### 1. The Statement of Legislative Intent

The intent provision of the new law recognizes the needs of families facing the problems of an out-of-control or runaway youth. The Legislature found that there was a need for a system to assist children and parents in conflict, and that parents were not sufficiently informed of their rights regarding their children.<sup>67</sup> Furthermore, because chronic runaways put themselves at serious risk, the Legislature concluded that secure facilities must be provided to help parents protect their children and to aid children in protecting themselves.<sup>68</sup> Overall, the Legislature determined that the new law should protect, treat and stabilize children and empower parents by providing them with the assistance they need to raise their children.<sup>69</sup> The following sections detail how the Legislature envisioned these goals would be carried out.

### 2. Police Intervention and Secure CRCs

One of the most controversial aspects of the Becca Bill, differentiating it from the old law, is the provision which permits detention of status offenders in secure CRCs. The Becca Bill authorizes a police officer to take a child into custody if the officer is told by a parent, an agency in charge of caring for the child, or the juvenile court that he or she is absent from home or placement without consent or in violation of court order.<sup>70</sup> A police officer may also act on his or her own volition to take a child into custody if the police officer reasonably believes the child is in danger, taking into account the time of day and location of the child.<sup>71</sup> The duration of police custody, in both the old and new provisions, is limited to the amount of time necessary to transport the child from the place picked up to a destination authorized by law.<sup>72</sup>

The Becca Bill also re-prioritizes what police options are regarding where the police may take the child. Under the new provision, the police officer is required to take a runaway child back to his or her parents' home or their place of employment as a first alternative.<sup>73</sup> If the parents do not wish the child to remain in the home, they may

---

67. WASH. REV. CODE § 13.32A.010 (Supp. 1995).

68. *Id.*

69. *Id.*

70. WASH. REV. CODE § 13.32A.050(1)(a),(c),(d).

71. WASH. REV. CODE § 13.32A.050(1)(b).

72. WASH. REV. CODE § 13.32A.050(2).

73. WASH. REV. CODE § 13.32A.060(1)(a).

request the officer to place the child with a relative, responsible adult, or at a licensed youth shelter.<sup>74</sup>

The officer must take the child to a secure CRC under this section<sup>75</sup> if the child is either afraid to go home (indicating abuse),<sup>76</sup> if it is not practical to take the child home, or if there is no parent available to accept custody of the child.<sup>77</sup> Secure CRCs are defined by the Becca Bill as "a crisis residential center, or portion thereof, that has locking doors, locking windows, or a secured perimeter, designed and operated to prevent a child from leaving without permission of the facility staff."<sup>78</sup> Secure CRCs are intended to increase the safety of children and provide assessment and treatment of children in an atmosphere of concern, care, and respect for children in the CRC and their parents.<sup>79</sup> Officers must make a written report to the CRC within twenty-four hours after taking a child to a CRC, describing the reasons the officer took the child into custody.<sup>80</sup>

When the child is admitted to a secure CRC, the administrator is required to hold the child there for at least twenty-four hours, but not for more than five days.<sup>81</sup> The CRC administrator is required to notify the parent and the department of the child's placement in the CRC.<sup>82</sup> A child may be removed at any time from the secure CRC if a parent comes to pick him or her up.<sup>83</sup>

Upon the arrival of each child at the CRC, the administrator is required to conduct an assessment.<sup>84</sup> The assessment is designed to determine if the child needs to remain in the secure facility or can be transferred to a semisecure facility, based on a variety of factors.<sup>85</sup>

---

74. *Id.*

75. WASH. REV. CODE § 13.32A.060(2).

76. The Becca Bill contains several provisions to ensure that abused children are not handled under its guidelines, but under the dependency statutes as intended. See, e.g., WASH. REV. CODE § 13.32A.010.

77. WASH. REV. CODE § 13.32A.060(1)(b)(ii)-(iii).

78. WASH. REV. CODE § 13.32A.030(12).

79. WASH. REV. CODE § 13.32A.010.

80. WASH. REV. CODE § 13.32A.050(3).

81. WASH. REV. CODE § 13.32A.130(1).

82. WASH. REV. CODE § 13.32A.090(2)(a).

83. WASH. REV. CODE § 13.32A.130(5).

84. WASH. REV. CODE § 13.32A.130(2)(a)(i).

85. The factors to be considered are the age and maturity of the child; the condition of the child on arrival at the center; the circumstances that led to the child being taken to the center; whether the child's behavior endangers the health, safety or welfare of the child or another; the child's history of running away which has endangered the health, safety, and welfare of the child; and the child's willingness to cooperate in conducting the assessment. WASH. REV. CODE § 13.32A.130(2)(a)(ii)(A)-(F) (1996).

The administrator must notify DSHS of the child's placement<sup>86</sup> and, regardless of transfers between secure and semisecure facilities, the total time of placement is not to exceed five days.<sup>87</sup> If a child runs away from a CRC, whether secure or semisecure, the administrator must notify the parents and the appropriate law enforcement agency immediately.<sup>88</sup>

The focus of the CRC stay is treatment, not punishment. A multidisciplinary team, whose purpose is to assist in a coordinated referral of the family to available social and health-related services,<sup>89</sup> may be convened by the administrator of the CRC, if she has reason to believe the child is in need of services.<sup>90</sup> In summary, the CRC, police intervention procedures and the secure detention facilities are designed to create a window of opportunity during which the parent and child may reestablish contact and agree upon a place where the child will live. The emphasis at this stage is on voluntary services and reconciliation. Court intervention is still viewed as a last resort.

### 3. Children in Need of Services and At-Risk Youths

Even though intervention is designed to encourage voluntary reconciliation, the Legislature created tools to be used if voluntary reconciliation is not possible. Child in Need of Services (CHINS) petitions and At-Risk Youth (ARY) petitions are those tools.<sup>91</sup> A CHINS is defined as a juvenile:

(a) Who is beyond the control of his or her parent such that the child's behavior endangers the health, safety, or welfare of the child or other person;

(b) Who has been reported to law enforcement as absent without consent for at least twenty-four consecutive hours from the parent's home, a crisis residential center, an out-of-home placement, or a court-ordered placement on two or more separate occasions; and

(i) Has exhibited a substance abuse problem; or

(ii) Has exhibited behaviors that create a serious risk of harm to the health, safety, or welfare of the child or any other person; or

---

86. *Id.*

87. WASH. REV. CODE § 13.32A.130(1).

88. WASH. REV. CODE § 13.32A.095.

89. WASH. REV. CODE § 13.32A.044(1).

90. WASH. REV. CODE § 13.32A.042(b). The parent of the child, however, has the power to disband a multidisciplinary team unless a Child in Need of Services petition has been filed on that child by DSHS. WASH. REV. CODE § 13.32A.042(c).

91. WASH. REV. CODE § 13.32A.030(3).

(c) (i) Who is in need of necessary services, including food, shelter, health care, clothing, educational, or services designed to maintain or reunite the family;

(ii) Who lacks access, or has declined, to utilize these services; and

(iii) Whose parents have evidenced continuing but unsuccessful efforts to maintain the family structure or are unable or unwilling to continue efforts to maintain the family structure.<sup>92</sup>

An ARY is defined as:

a juvenile:

(a) who is absent from home for at least seventy-two consecutive hours without consent of his or her parent;

(b) who is beyond the control of his or her parent such that the child's behavior endangers the health, safety, or welfare of the child or any person; or

(c) who has a substance abuse problem for which there are no pending criminal charges related to the substance abuse.<sup>93</sup>

A child, parent or DSHS may file a CHINS petition alleging that a child is a CHINS.<sup>94</sup> ARY petitions may only be filed by a parent.<sup>95</sup>

Pursuant to the determination that a child is a CHINS, the court may enter an order requiring the child to reside in out-of-home placement for up to ninety days.<sup>96</sup> Pursuant to the determination that a child is an ARY, the court orders the child to reside in the home.<sup>97</sup> Once a child is adjudicated a CHINS or an ARY, the court may enter a dispositional plan which will require the child to complete services aimed at assisting the family in resolving the conflict, require school attendance, and require the child to refrain from running away from court ordered placement.<sup>98</sup> A child may be held in contempt of court for failing to abide by the dispositional order of his or her CHINS or

92. *Id.*

93. WASH. REV. CODE § 13.32A.030(1). At-risk youths were actually designated by the Legislature in 1990. Family Reconciliation Act, ch. 276, § 3, 1990 Wash. Laws 1579 (1990) (amended 1995).

94. WASH. REV. CODE §§ 13.32A.140, 150 (1995).

95. WASH. REV. CODE § 13.32A.191.

96. WASH. REV. CODE § 13.32A.179(3).

97. WASH. REV. CODE § 13.32A.192(2). This statute does allow for out of home placement as well, but only if agreed upon by the parents. *Id.*

98. WASH. REV. CODE § 13.32A.179(2); WASH. REV. CODE ANN. § 13.32A.196(2)(a)-(e).



ARY petition.<sup>99</sup> The remedy for such contempt is a fine or imprisonment for up to seven days in a juvenile detention facility.<sup>100</sup>

One final provision of the Bill, which may strengthen the Becca Bill's effectiveness, is a new section which provides that no court may decline to accept a properly filed ARY petition or CHINS petition.<sup>101</sup> Therefore, even though ARY petitions were made available as a parental tool in 1990,<sup>102</sup> most counties had refused to hear them because of scarce resources and crowded courts.<sup>103</sup> Under the current law, nobody who files an ARY or a CHINS petition will be turned away.

In sum, the most controversial change from the law prior to the Becca Bill is the allowance for five days of secure detainment. The lack of a longer lockup provision is attributable to Governor Lowry's veto of a large portion of the Bill. Governor Lowry's vetoes are addressed in the next section.

#### 4. The 180-day Lockup For Habitual Runaways

The version of the Becca Bill which was eventually passed was not the only version before the Legislature. The controversy over the runaway issue in Washington prompted five different proposals in both the House and the Senate.<sup>104</sup> The most controversial of Senate Bill 5439's (the Becca Bill) competitors was House Bill 1417. House Bill 1417 advocated a "habitual runaway" provision which allowed for the detention of a juvenile for up to six months in a secure facility.<sup>105</sup>

99. WASH. REV. CODE § 13.32A.250 dictates that a child or a parent who fails to abide by the court order will be subject to contempt proceedings.

100. WASH. REV. CODE ANN. § 13.32A.250(3).

101. WASH. REV. CODE ANN. § 13.32A.205.

102. Family Reconciliation Act, ch. 276 § 3, 1990 Wash. Laws 1579 (1990) (amended 1995).

103. Interview with Deborah Lippold, attorney, Pierce County Department of Assigned Counsel, in Tacoma, Washington (July 3, 1996).

104. S. 5439, S. 5480, S. 5191, S. 5649, H.R. 1417, 54th Leg., Reg. Sess. (Wash. 1995).

The four Senate bills differed only slightly from each other, varying for example on the definition of a secure CRC or the number of days a child could be held in a secure CRC. House bill 1417 was significantly more severe and advocated up to a year detention for chronic runaways.

105. H.R. 1417, 54th Leg., Reg. Sess. § 12 (1995) provides:

If a child has run away from his or her parent's home three times in a twelve month period, the court shall enter a finding that the child is at risk and the court on its own motion shall detain the child in a secure facility or other court ordered treatment program for a period not to exceed six months. The department shall develop a program for of education and services for the child and family to address the cause of the child's behavior.

House Bill 1417 also made no provision for CHINS, despite the urging of the Attorney General's office.<sup>106</sup>

The portion of the House Bill pertaining to the habitual runaway provision was incorporated into Senate Bill 5439 and was passed by the Legislature as a compilation of the two bills. Upon arriving at Governor Lowry's desk, however, the habitual runaway provision was vetoed because the Governor had numerous concerns about the provision's potential effects upon the juvenile justice system.<sup>107</sup>

First, the Governor expressed concern that due process would be violated by finding that a child is a habitual runaway without requiring this allegation to be pled and proved during a fact-finding hearing.<sup>108</sup> Second, Governor Lowry was bothered by the fact that the habitual runaway provision gave courts almost unlimited discretion.<sup>109</sup> Third, the Governor was dissatisfied with the habitual runaway portion of the Becca Bill because the Bill appeared too punishment-oriented, in contrast to the overall treatment-oriented focus of the legislation.<sup>110</sup> Fourth, Governor Lowry was troubled by how much this provision would cost the State of Washington, stating that the funds would be put to better use by targeting the Bill's more treatment-oriented

---

106. Letter from Christine Gregoire, Attorney General of Washington, to Representatives Carrell, Cooke, and Thibaudeau (Feb. 13, 1995) (on file with the *Seattle University Law Review*).

107. Veto Message from Governor Mike Lowry, May 10, 1995, at 2.

Actually, the Governor vetoed several sections of the bill. Among those vetoed were Section 9, which provided for parental contribution of \$50 per day to the CRC where their child is placed; Section 31, which required the suspension of a driver's license for any child designated an habitual runaway (vetoed because the habitual runaway portion was vetoed); Section 33, which required permanency placement evaluations to be completed pursuant to out of home placements under CHINS petitions; Section 35, which would have made it a misdemeanor for a CRC administrator not to notify the child's parent, police or DSHS within eight hours of the child's placement; Section 38, which would have required CRC administrators to request from DSHS names of any siblings of the youth admitted who are under the jurisdiction of the juvenile rehabilitation administration or who are the subject of a dependency proceeding (declaring this to be too great an intrusion on the child's privacy); Section 50, which required that treatment providers notify parents within 48 hours that their minor child has voluntarily requested substance abuse treatment (declaring that this provision violated the confidentiality of alcohol and drug abuse records); Sections 51 and 57, which stated that school district personnel were not permitted to refer minors to drug treatment unless they notified the minor's parents; Section 55, which required treatment providers to notify parents that their child has voluntarily sought outpatient mental health treatment (declaring that it will deter children from seeking help); Section 59, technical changes in WASH. REV. CODE § 64 (1994), which disallowed for the use of specialized foster homes as CRCs (semisecure); and Sections 76-80, which revoked driving privileges to students who have substantially failed to carry out their attendance responsibilities.

108. Veto Message, *supra* note 107, at 3.

109. *Id.*

110. *Id.* Governor Lowry stated, "By locking up young people as a sanction for running away from home, this section essentially recriminalizes this conduct. Such an effect is clearly contrary to the intent of treating troubled youth, and not punishing runaways." *Id.*

provisions.<sup>111</sup> Finally, Governor Lowry asserted that the habitual runaway provision was unnecessary in light of other parental tools contained within the Bill. The Governor felt that the five-day holding period in a secure CRC was sufficient and that the habitual runaway six month detention was not necessary.<sup>112</sup>

The Legislature was unable to get the votes it needed to override Governor Lowry's veto. What was left of the Bill after the veto is accused of satisfying no one. On the one hand, advocates for parental authority and maximum child detention are frustrated that they do not have the peace of mind associated with the provision for long term detention under the habitual runaway portion. On the other hand, juvenile rights advocates, who feel strongly that status offenders should be completely free from secure detention, must contend with the five-day lockup provision.<sup>113</sup> The parental advocacy groups and the senators who support their causes vowed to return with the proposal for the 180-day lockup provision again in the 1996 legislative session, but failed to do so.<sup>114</sup>

#### IV. PROBLEMS WITH THE BECCA BILL

Although there are many controversial issues which arise when discussing policies of juvenile justice, the remainder of this Comment addresses three major problems that Washington is facing in imple-

---

111. Veto Message, *supra* note 107, at 3.

112. *Id.* "This brief 'hold' period provides parents with the opportunity to reestablish contact with their runaway child (where such contact is not inappropriate) and to obtain services or other assistance that might be helpful in resolving the family conflict." *Id.*

113. Parental rights groups were among those opposed to Lowry's veto. Children's rights groups and community service providers were frustrated with even the five-day lockup provision. For instance, the Washington Council on Crime and Delinquency expressed opposition to the five-day lockup in a letter to Senator Hargrove and members of the committee responsible for the bill's drafting. The letter stated, in part,

The [Washington Council on Crime and Delinquency] has recently reaffirmed our longstanding general position in opposition to recriminalizing status offenses and recommends that such behaviors as running away and truancy be addressed through enforcement of current statutes and improved services.

Letter from Larry M. Fehr, Executive Director, Washington Council on Crime and Delinquency, to Senator Hargrove and members of the Committee (Feb. 1, 1995) (on file with the *Seattle University Law Review*).

114. The proposed bill before the 1996 legislature, to amend the 1995 Becca Bill, did not contain an habitual runaway provision despite promises to the contrary. Perhaps sensing Governor Lowry's opposition to such a provision, Senator Mike Carrell has decided to wait until a more favorable political climate exists in Washington before revitalizing it. Senator Mike Carrell (R-Lakewood), in reference to his plan to push the 180-day lockup rule again, stated: "We have tried to address [Lowry's] concerns—and I personally feel that they are bogus—about due process." *Key Issues Confronting the 1996 Session*, TACOMA NEWS TRIBUNE, January 7, 1996, at A12.

menting the Becca Bill. Those three issues are: (1) complaints that the law has thus far accomplished none of its goals; (2) the potential loss of federal funds for JJDP Act violations; and (3) the potential for great increases in contempt of court proceedings for juveniles who disregard their CHINS or ARY dispositional orders.

A. *One Year on the Books: How is the Becca Bill Working?*

Despite its popular support in both the House and the Senate,<sup>115</sup> implementation of the Becca Bill has fallen short of lawmakers' expectations. This section explores how the Bill has been working, based primarily on statements from practitioners in Pierce County, Washington.

The Becca Bill was intended to give parents the tools to regain control of their teenagers, whether runaway or not. However, there are complaints that the Bill is not accomplishing the goals it set out to achieve.<sup>116</sup> The tool of choice since the passage of the Becca Bill has been the ARY petition.<sup>117</sup> Intended for parents who desire to control their child under their own roof,<sup>118</sup> ARY petitions have had their effectiveness tested in court over the past year.<sup>119</sup>

DSHS social workers have found that while they have seen a few success stories with the filing of ARY petitions, often times dragging

---

115. The Becca Bill was passed by a vote of 90-6 in the House and 45-1 in the Senate. Certificate of Enrollment, Engrossed Second Substitute Senate Bill 5439, 54th Leg. Reg. Sess. (1995).

116. C.R. Roberts, *Mother Finds Becca Bill of No Help in Getting Runaway Daughter Home*, TACOMA NEWS TRIBUNE, March 3, 1996, at B1. A mother, faced with a runaway daughter "tells the story of a week filled with nightmares, of a week spent discovering that this thing called the Becca Bill offers nowhere near the solutions proponents proclaim." *Id.*

117. While the ARY petition was available before the passage of the Becca Bill, many county courts in Washington were not hearing them because of a lack of resources. Interview with Lippold, *supra* note 103.

There is now a provision which states that no county may decline to hear a properly filed ARY petition, so all county courts are again hearing them. WASH. REV. CODE § 13.32A.205.

118. While out of home placement is available under the dispositional plan for ARYs, most people who use the petition want the child in the house, obeying the rules. If a parent does not want the child in the house, a voluntary placement agreement which provides for out of home placement has always been an option for parents. CHINS petitions, filed much less often than ARYs, have been used when the child is on the run and the parents have indicated a lack of interest in the child. While CHINS can be filed by the parents, they are more often filed by the department, or the child when it is clear that the child has no place to go. Interview with Ann Kaluzny, Lori McDonald, and Bill Bendixen, social workers for Family Reconciliation Services, in Tacoma, Washington (July 1, 1996).

119. Filings in the juvenile courts of Washington for noncriminal proceedings increased by 41.7% in 1995, due in part by an increase in filings of ARY and CHINS petitions. CASELOADS OF THE COURTS OF WASHINGTON 1995, 37 (Office of the Administrator of the Courts ed., 1996).

the family into court has caused situations to worsen.<sup>120</sup> By pitting child against parent in an adversarial forum, the focus becomes not what the child needs, but who is the winner and who is the loser in an ongoing power struggle.<sup>121</sup> Additionally, few, if any, ARY petitions are ever denied,<sup>122</sup> causing the child to feel trapped and persecuted. Furthermore, dispositional orders pursuant to ARY petitions often end up being extensive lists of what the parents want from the child while the child lives under their roof.<sup>123</sup> The focus is more on ordering the child to follow the rules than on providing services to remedy the problem.<sup>124</sup> While practitioners in the field have been sympathetic to parents' utter frustration in trying to maintain a normal child-parent relationship, there is a sense that creating a parent out of the court is not the answer.<sup>125</sup>

Additionally, the juvenile court commissioners have required social workers from DSHS to be present in court for the families' dispositional plan following approval of the ARY petition,<sup>126</sup> as well as at all review hearings and contempt proceedings for noncompliance. This causes DSHS social workers to be in court more than they are in the office helping families, thereby burdening scarce resources.<sup>127</sup> It has also placed an extra party into an already tense situation.<sup>128</sup>

Another complaint is that the Bill is too confusing and ambiguous to be effective.<sup>129</sup> Presented as a compromise between competing interests, the Becca Bill is criticized as being a politically popular move

---

120. Interview with Kaluzny, McDonald, Bendixen, *supra* note 118.

121. *Id.* Ms. McDonald stated, "It is really a frustrating place to be when you're trying honestly to be helpful to families. To get into an arena where there is a win-lose atmosphere . . . we don't win or lose with families. You mediate, you negotiate, you compromise." *Id.*

122. Interview with Lippold, *supra* note 103; interview with Kaluzny, McDonald, Bendixen *supra* note 118.

123. Interview with Lippold, *supra* note 103. Some typical orders on an ARY dispositional order may include no profane language, no incoming calls, and no drug use.

124. Interview with Lippold, *supra* note 103. Ms. Lippold states, "I personally think the statute is bad . . . the parents can't control the kid and so the court is supposed to?" *Id.*

125. Interview with Lippold, *supra* note 103. "You often times get a sense of the parents' frustration. They truly are at their wits end. . . . I think this gives parents a false sense that this is going to fix things and it doesn't. The cases I've been involved in, it makes it worse." *Id.*

126. Interview with Kaluzny, McDonald, Bendixen, *supra* note 118.

127. *Id.* Ms. Kaluzny stated, "Now half my unit is in court on Thursday mornings. That's a lot of time and a lot of resources in court." *Id.* Ms. McDonald added, "We serve between 130 and 150 families per year. If you're in court two or three times a week, you're not helping families." *Id.*

128. Interview with Kaluzny, McDonald, Bendixen, *supra* note 118.

129. *Id.*; C.R. Roberts, *supra* note 116, at B1 (quoting Seattle Attorney Yvonne Ward, "The Becca Bill is over 100 pages long. It's an octopus . . .").

with no practical benefits.<sup>130</sup> In addition, parents are often entirely misinformed as to the Bill's provisions, causing frustration and confusion.<sup>131</sup>

The most controversial of the Becca Bill's provisions, the secure detainment in CRCs, has not yet been tested. Secure CRCs are not yet available, even after a year on the books.<sup>132</sup> Funding for secure CRCs has only recently been made available, and their construction is now underway.<sup>133</sup> A common consensus among practitioners is that when locked facilities are available, things will only get worse.<sup>134</sup> Currently, all children utilizing the nonsecure CRCs run by DSHS are offered a wide range of voluntary services.<sup>135</sup> Reaching a child, and by association, a family, often occurs in the CRC when the child acknowledges that the workers there can offer something that he or she needs.<sup>136</sup> Social workers believe it is less likely that children will acknowledge that the CRC has the services it needs if they see bars on the windows.<sup>137</sup> One practitioner noted that legislators "fail to appreciate the message of a locked door."<sup>138</sup>

Social workers also fear that the lockup provision will discourage runaways from seeking the voluntary services they need out of a fear of being detained against their will. Immediately after the Becca Bill's passage, shelters experienced a substantial decrease in runaways seeking voluntary services, due in part to a commonly-held belief that the five-day lockups were to be effective immediately.<sup>139</sup>

130. Roberts, *supra* note 116. "[The Becca Bill] is a joke. It was a politically correct bill, and I think it makes false promises . . ." *Id.* (quoting Bonnie Kenigson, Vice Principal at Puyallup's E.B. Walker High School).

131. Interview with Kaluzny, McDonald, Bendixen, *supra* note 118. Family Reconciliation Services has had parents calling the intake line inquiring about when they can lock up their teenagers. *Id.*

132. Elaine Williams, *Out of Bounds' Becca Bill's Provisions Opening New Avenues for Bringing Wayward Teens In-Bounds, but Lack of Crisis Centers, Legal Issues Threaten Effectiveness*, LEWISTON MORNING TRIBUNE, May 19, 1996, at 1A.

133. Interview with Kaluzny, McDonald, Bendixen, *supra* note 118.

134. *Id.* Ms. McDonald stated, "all the lockup will do is set up more challenges for these kids." *Id.*

135. Interview with Kaluzny, McDonald, Bendixen, *supra* note 118.

136. *Id.*

137. *Id.*

138. Telephone interview with Mary Ann Murphy, manager, Center for Child Abuse and Neglect (July 29, 1996).

139. Kery Murakami, *New Law Keeping Runaways From Help—Shelters Report Fewer Kids Coming For Aid*, SEATTLE TIMES, July 28, 1995, at B1. "You tend to think of street kids as defiant. If you force them into a situation, you could see them become even more defiant." *Id.* "I can tell you that right after the Bill was signed in this area at least, all of the service providers noticed a quick drop in the number of kids seeking service." Nancy Amidei of Partnership for Youth, *The News Hour with Jim Lehrer* (television broadcast, May 14, 1996).

A final concern over the Becca Bill is that counties do not have the resources to implement it.<sup>140</sup> With the ARY petitions, CHINS petitions, and truancy proceedings, court resources have been pushed to the limit.<sup>141</sup> While practitioners have seen the rare case where a child, when faced with an ARY or CHINS petition, realizes that he or she is out of control and needs help, it has been the exception rather than the rule.<sup>142</sup>

### B. *The Juvenile Justice and Delinquency Prevention Act*

A large concern voiced before the Becca Bill's passage was whether or not Washington was exceeding its authority under the JJDP Act of 1974.<sup>143</sup> As discussed above,<sup>144</sup> the JJDP Act conditions receipt of monies for juvenile justice programs on compliance with its mandates.<sup>145</sup>

The portion of the JJDP Act relevant to the passage of the Becca Bill is the mandate requiring the deinstitutionalization of the status offender. The JJDP Act mandates that no status offender may be held in a secure detention facility.<sup>146</sup> There is, however, a temporary hold exception to the JJDP Act. This exception allows status offenders to be held for up to twenty-four hours, excluding weekends and holidays,

---

Senator Mike Carrell, one of the main sponsors of the Bill, asserts that if some youths choose not to seek help because of the law, "that's life." Kery Murakami, *New Law Keeping Runaways from Help—Shelters Report Fewer Kids Coming For Aid*, SEATTLE TIMES, July 28, 1995, at B1.

140. Many of the complaints about difficulties in implementing the Becca Bill have been related to the truancy reporting requirements. Judith Billings, state superintendent of public schools, was reported as saying, "our low estimate (for implementing the Becca Bill) was \$12 million a year, based on the number of truanancies districts normally reported." Debbie Cafazzo, *Districts Squeezed to Fund Projects Mandated by Federal and State Laws*, TACOMA NEWS TRIBUNE, Jan. 28, 1996, at A10.

141. Susan Byrnes, *County's Juvenile Services Squeezed*, SEATTLE TIMES, May 1, 1996, at B1; Debbie Cafazzo, *Districts Squeezed to Fund Projects Mandated by Federal and State Laws*, TACOMA NEWS TRIBUNE, Jan. 28, 1996, at A10. Pierce County has seen about 75 ARY and CHINS petitions between September, 1995 and June, 1996 and their frequency has been escalating. Interview with Lippold, *supra* note 103. Cf. CASELOADS OF THE COURTS OF WASHINGTON, *supra* note 119, at 37 (indicating a substantial rise in juvenile court caseloads due in part to an increase in ARY petitions).

142. Interview with Kaluzny, McDonald, Bendixen, *supra* note 118. Ms. McDonald stated, "It's the bright, strong-willed kids that you want to use all of your clinical power to steer them in the right way and it's those kids that say, 'I'm not going to do this. . . . those kids can be really neat kids if you approach them in a different way. But any . . . teenager that you present with a power struggle is probably going to take you up on it.'" *Id.*

143. 42 U.S.C. §§ 5601-5633 (1995).

144. See *supra* Part II.C.

145. 42 U.S.C. § 5633.

146. 42 U.S.C. § 5633(a)(12)(A).

for purposes of identification, investigation, release to parents, or transfer to a nonsecure program.<sup>147</sup>

Another exception to the JJDP Act's no lockup rule is that a status offender may be held in a juvenile detention facility longer than twenty-four hours if a status offender is found to violate a valid court order.<sup>148</sup> In order for a state to invoke this exception, the juvenile must have received all constitutional due process protections at the initial adjudication and must be afforded a detention hearing within twenty-four hours. In addition, prior to a dispositional commitment to secure placement, a public agency other than a court or law enforcement agency must have reviewed the juvenile's behavior and possible alternatives to secure placement, and submitted a written report to the court.<sup>149</sup>

Washington came into compliance with the JJDP Act beginning in 1975, soon after the Act was passed.<sup>150</sup> The State currently receives approximately 1.8 million dollars per year through the Act's formula grants program.<sup>151</sup> According to the United States Department of Justice, until 1995, Washington had successfully implemented each of the two original core requirements to deinstitutionalize status offenders.<sup>152</sup>

However, in a recent letter from the Department of Justice to Washington's DSHS program coordinator,<sup>153</sup> a warning was given which notified Washington that it would lose all federal funding under the JJDP Act if the Becca Bill was enacted as passed.<sup>154</sup> The Department of Justice asserted that if the provisions of the Becca Bill were signed into law by Governor Lowry, "past accomplishments, current efforts, and future resources awarded to the State and its local units of government to provide appropriate prevention and intervention services would be jeopardized."<sup>155</sup> In light of the Bill's habitual runaway 180-day lockup section (which was vetoed subsequent to the letter) and

---

147. 28 C.F.R. § 31.303 (1995).

148. 42 U.S.C. § 5633(a)(12)(A).

149. 28 C.F.R. § 31.303(f)(2)(iv).

150. Letter from John J. Wilson, Deputy Administrator, U.S. Department of Justice to Rosalie McHale, Program Coordinator, Juvenile Justice Section, Department of Social and Health Services 2 (May 2, 1995) (on file with the *Seattle University Law Review*).

151. Telephone interview with Murphy, *supra* note 138.

152. Letter from Wilson, *supra* note 56, at 1.

153. *Id.* at 3.

154. *Id.* At the time of the letter, the bill was in its form as passed by the Legislature which included a 180-day lockup provision for habitual runaways. This portion was vetoed by Governor Lowry so the only lockup provision that remains is the maximum five-day secure facility assessment period. Veto Message, *supra* note 107, at 3.

155. Letter from Wilson, *supra* note 56, at 3.



the five day temporary holding provision in a secure CRC, the Department of Justice stated that it found it "reasonable to anticipate that Washington will not be able to demonstrate full compliance with the deinstitutionalization provision . . . of the JJDP Act, if [the Becca Bill] is enacted and implemented."<sup>156</sup> The Department of Justice recommended that instead of allowing for a five day secure lockup provision, Washington should limit the time in detention to the permitted twenty-four hours for the purposes of identification, investigation, release to parents, or transfer to a nonsecure facility.<sup>157</sup> The Department of Justice also encouraged Washington to utilize the "valid court order" exception to deal with chronic runaways through contempt of court findings that would afford the juvenile all due process rights.<sup>158</sup>

Despite the Department of Justice's contentions, Christine Gregoire, Attorney General of Washington, applauds Washington's efforts to pass the Becca Bill<sup>159</sup> and maintains that Washington remains in compliance with the JJDP Act.<sup>160</sup> Attorney General Gregoire maintains that the Bill does not violate the JJDP Act because Governor Lowry vetoed the habitual runaway portion and because of the legislation's treatment-oriented approach. Attorney General Gregoire asserts that the secure CRCs do not constitute juvenile detention facilities and "the federal law . . . cited has never been a barrier to assessment of children for chemical dependency or mental health problems, even in secure settings if necessary."<sup>161</sup>

Attorney General Gregoire also indicated that Washington was fully prepared to litigate an action brought by the Department of Justice to repeal federal funds, but hoped a resolution could be reached in a less litigious manner.<sup>162</sup> Because the CRCs which provide for the secure detainment have not yet been built, the Federal Act has not officially been violated. At last report, the state had agreed to accept

---

156. *Id.*

157. *Id.*

158. *Id.*

159. Letter from Christine Gregoire, Attorney General of Washington to John J. Wilson, Deputy Administrator, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice 3 (July 21, 1995) (on file with the *Seattle University Law Review*) (stating that "[the Becca Bill] represents a considered and rational attempt to reflect the level of dangerousness on the streets, and the true needs of the child and family").

160. *Id.*

161. *Id.*

162. *Id.*

technical assistance from the Department of Justice to implement the Bill so as not to violate the JJDP Act.<sup>163</sup>

Without the 180-day habitual runaway provision, Washington does stand a better chance of retaining federal funding. However, it is difficult to accept Attorney General Gregoire's claim that the lockup provision as it stands does not violate the JJDP Act. The Act provides that no status offender can be held in a secure detention or confinement.<sup>164</sup> The locking doors and windows on the CRCs are fairly characterized as confinement. Although the articulated legislative purpose behind detention in the secure CRCs is not punishment, but assessment and treatment, this purpose does not counter the fact that juveniles are locked up. Characterizing incarceration as treatment rather than punishment has been criticized before, in the post "child-saving" era.<sup>165</sup>

Due to the approximate ten million dollar cost of implementing the Bill,<sup>166</sup> the State should be very careful about placing an even greater burden on taxpayers by violating the JJDP Act. The JJDP Act does allow for temporary confinement for up to twenty-four hours. It is, therefore, not clear why Washington would instead insist on a five-day detention at the risk of losing federal funds. Since, under the Bill, an assessment must be made when the child is first brought into the CRC,<sup>167</sup> the State could amend the Becca Bill to require only a twenty-four hour detainment in order to comply with the JJDP Act. However, with the State's insistence on the five-day provision, Washington is jeopardizing federal funding for a minimal amount of time gained in lockup facilities.

### C. *Contempt of Court and the Status Offender: The Becca Bill Makes Bootstrapping Easier*

One of the most interesting aspects of status offense jurisdiction in Washington is the juvenile court's authority over juveniles through contempt of court provisions. The juvenile court has always had authority to exercise its contempt provisions to force juveniles under its jurisdiction into compliance with placement, school attendance, or

---

163. Telephone interview with Murphy, *supra* note 138.

164. 42 U.S.C. § 5633(a)(12)(A).

165. *See Gault*, 387 U.S. at 26.

166. COMMITTEE FILE, COSTS OF MAJOR FEATURES OF THE BILL. The estimated cost under the bill as originally passed, which included the 180-day lockup for habitual runaways, was estimated at about 40 million dollars. *Id.*

167. WASH. REV. CODE § 13.32A.130(2)(a)(i).

other court orders.<sup>168</sup> While the contempt power will be exercised more frequently since the passage of the Becca Bill,<sup>169</sup> it is not a new authority of the court under the 1995 law.<sup>170</sup>

After the 1974 JJDP Act was passed, states that were part of the Act's formula grants program did not have the power to incarcerate status offenders through contempt proceedings.<sup>171</sup> In 1980, in spite of opposition from many youth advocacy and services groups, the Act was amended to permit secure detention of status offenders who violate valid court orders.<sup>172</sup>

Through a contempt proceeding, a status offender, formerly a noncriminal minor, can be "bootstrapped" into a juvenile delinquent by being held in criminal contempt.<sup>173</sup> The following is an example of how the contempt proceeding operates under the Becca Bill: A child is taken to a secure CRC for the five-day holding period by police-initiated action or by a report from the parents that the child is missing. If the parents wish to order the child to remain in the home, or if DSHS would like to place the child outside the home, a CHINS or an ARY petition may be filed on that child. If the child is adjudicated a CHINS or an ARY, then the court, based on a social worker's recommendation, enters a dispositional order. The order may

168. WASH. REV. CODE § 13.32A.250. The statute states:

(1) In all child in need of services proceedings and at-risk youth proceedings, the court shall verbally notify the parents and the child of the possibility of a finding of contempt for failure to comply with the terms of a court order entered pursuant to this chapter. The court shall treat the parents and the child equally for the purposes of applying contempt of court processes and penalties under this section.

*Id.*

The power of a court to exercise its contempt power is not a new one. Historically, courts have been allowed great discretion in the utilizing of contempt powers against one "whose conduct tends to bring the authority and administration of the law into disrespect or disregard. . . ." 17 AM. JUR. 2D *Contempt* § 2 (1990); *see also* Wood v. Georgia, 370 U.S. 375, 383 (1962):

We start with the premise that the right of courts to conduct their business in an untrammelled way lies at the foundation of our system of government and that courts necessarily must possess the means of punishing for contempt when conduct tends directly to prevent the discharge of their functions.

169. Pursuant to WASH. REV. CODE 13.32A.205, courts cannot decline to hear CHINS or ARY petitions. This, combined with the hysteria over runaways, will probably result in more juveniles coming under the jurisdiction of the court, which will logically produce more court orders to be violated.

170. Contempt proceedings have been available since 1981, coinciding with the valid court order exception to the JJDP Act.

171. Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1112 (1974) (amended 1980).

172. 42 U.S.C. § 5633(a)(12)(A) (1995).

173. *See generally* Jan C. Costello and Nancy L. Worthington, *Incarcerating Status Offenders: Attempts to Circumvent the Juvenile Justice and Delinquency Prevention Act*, 16 HARV. C.R.-C.L. L. Rev. 41 (1981).

require the child to remain in placement or in the home, to attend school, to go to counseling, and to comply with other rules deemed necessary by the parents or DSHS. If the child runs from home or placement, the parent or DSHS can bring a show cause order<sup>174</sup> alleging the child to be in contempt. The child, after a finding of contempt, can be placed in a juvenile detention facility for seven days.<sup>175</sup> Then the child will be released to the home or the placement. If the child runs away again, the cycle is perpetuated and the lockups continue.

The potential for unlimited contempt power casts serious doubt on Washington's commitment to confining juveniles only for "treatment purposes." Although the five-day detention in a secure CRC is controversial, it does not deserve as much attention as the potential for misuse of the court's contempt power through the seven day incarcerations. The practice of bootstrapping, which has been used since 1980, has already been exercised more liberally under the Becca Bill.<sup>176</sup>

The struggle with the proper role of contempt in a court's jurisdiction over the status offender is not an isolated one. California also has grappled with the issue of respecting the inherent contempt power of the juvenile court while still maintaining a commitment to the deinstitutionalization of the status offender. In the case of *In re Ronald S.*,<sup>177</sup> a minor was adjudged a status offender.<sup>178</sup> The juvenile court judge ordered Ronald S. to remain in nonsecure placement, and when he ran, reclassified him as a juvenile delinquent and held him in contempt of court.<sup>179</sup> He was detained in a secure juvenile detention facility.<sup>180</sup> Because California law prohibited secure detention of runaways, this practice was the only means the judge had of incarcerating him.<sup>181</sup> The child petitioned for habeas corpus and it was

---

174. Under WASH. REV. CODE § 7.21.030(1), a contemnor must be afforded notice and hearing of charges. A show cause order provides notice to the alleged contemnor of the allegation and allows him an opportunity to be heard. *Burlingame v. Consolidated Mines and Smelting Co., Ltd.*, 106 Wash. 2d 328, 335, 722 P.2d 67, 71 (1986).

175. WASH. REV. CODE 13.32A.250(3).

176. Interview with Lippold, *supra* note 103.

177. 138 Cal. Rptr. 387 (Cal. Ct. App. 1977).

178. California's status offenders are classified as "601 Wards" since the relevant statute is CAL. WELF. & INST. CODE § 601 (1996). A 601 ward falls under the jurisdiction of the juvenile court if he "persistently or habitually refuses to obey the reasonable and proper orders or directions of his or her parents . . . or . . . is beyond the control [of his parents] . . . ." *Id.* at § 601(a).

179. *Ronald S.*, 138 Cal. Rptr. at 392.

180. *Id.*

181. *Id.*

granted.<sup>182</sup> The California Court of Appeals criticized the juvenile court's decision to change a status offender into a juvenile delinquent simply because he walked out of a foster home.<sup>183</sup> The court found that the juvenile court's actions made California's provisions aimed at deinstitutionalizing the status offender meaningless.<sup>184</sup> Therefore, the court held that the criminal contempt power was inapplicable to juvenile status offense proceedings.<sup>185</sup>

A few years after the *Ronald S.* opinion, a California court reconsidered the broad holding of the case in *In re Michael G.*<sup>186</sup> The *Michael G.* court, in modifying the *Ronald S.* decision, found that the court's contempt power lay in a more general contempt provision, and existed independently of a statute disallowing secure detention for status offenders.<sup>187</sup> The *Michael G.* court concluded that the reclassification of the status offender as a delinquent through the contempt process was the only thing that was objectionable.<sup>188</sup> Otherwise, the court held:

there is nothing in [the] history which specifically indicates that the Legislature intended to prohibit a juvenile court from enforcing obedience to a court order through a contempt sanction that does not alter the status of the ward.<sup>189</sup>

When faced with the issue, other states have generally supported a court's inherent power of contempt.<sup>190</sup> For example, Colorado has held that it is a violation of the separation of powers doctrine for the

182. *Id.* at 393.

183. *Id.* at 392.

184. The *Ronald S.* court held that by exercising its contempt power in this way, "[t]he court would be doing by indirection that which cannot be done directly. As the law now stands, the Legislature has said that if a [Section] 601 [ward] wants to run, let him run. While this may be maddening, baffling and annoying to the juvenile court judge, ours is not to question the wisdom of the Legislature." *Id.*

185. *Id.*

186. 747 P.2d 1152 (Cal. 1988).

187. *Id.* at 1159.

188. *Id.* at 1158.

189. *Id.* at 1159. The court also questioned whether the Legislature could so severely limit the inherent contempt power of the court. The *Michael G.* court found authority for their position from the JJDP Act's valid court order amendment, passed in 1980, which had not existed at the time of the *Ronald S.* decision. *Id.* at 1160-61.

190. See, e.g., *L.A.M. v. State*, 547 P.2d 827 (Alaska 1976); *Interest of D.L.D.*, 327 N.W.2d 682 (Wis. 1983); *Interest of Darlene C.*, 301 S.E.2d 136 (S.C. 1983); *Baker v. Baker*, 376 N.E.2d 1005 (Ill. 1978); *In re G.B.* 430 N.E.2d 1096 (Ill. 1981).

A minority of states have disapproved the practice. See, e.g., *W.M. v. State*, 437 N.E.2d 1028 (Ind. 1982); *Interest of Tasseing H.*, 422 A.2d 530 (Pa. 1980); *A.A. v. State*, 604 So. 2d 813 (Fla. 1991).

legislature to disallow a court to use its contempt power.<sup>191</sup> On the other hand, Florida is a leader in respecting the rights of the juvenile over the court's contempt power. In the case of *A.A. v. State of Florida*,<sup>192</sup> the court stated:

. . . [c]hildren in need of services are not criminals . . . the acts of contempt committed by the dependent children in this case constituted running away from home and refusing to go to school. These acts are ones that the legislature deems a sign of children in need of services, not children in need of punishment.<sup>193</sup>

In contrast, what little Washington law exists on the subject honors the court's contempt power at the expense of the status offender's freedom.<sup>194</sup> Washington, however, agrees with California in dictating that a status offender cannot be relabeled a "delinquent" through a court's contempt power.<sup>195</sup>

Although it is difficult to imagine how a court would encourage compliance with an order without its contempt power, it is hypocritical of Washington to emphasize the treatment-oriented aspects of the five-day lockup in secure CRCs, while at the same time allowing courts to incarcerate children who are trapped in a cyclical contempt of court process. The fact that those children are not officially labeled delinquents is of little comfort, considering the punishment-oriented approach to their behavior. The Becca Bill deals with runaway children. Runaway children are bound to violate placement orders. Practitioners who have been dealing with the increase of contempt provisions since the passage of the Bill have found that most of the

191. *In the Interest of J.E.S.*, 817 P.2d 508, 512 (Colo. 1991). The *J.E.S.* court stated: [W]hile the legislature may reasonably regulate the procedures the judiciary employs when exercising the contempt power, it may not unduly limit the sanctions for contemptuous conduct so as to seriously impair or destroy the courts' contempt power. *Id.* *But see A.A.*, 604 So. 2d at 815 (holding that the courts have an inherent power to make a finding of contempt, but the power may be properly limited by statute).

192. 604 So. 2d 813 (Fla. 1992).

193. *Id.* at 818.

194. *State v. Norlund*, 31 Wash. App. 725, 728, 644 P.2d 724, 726 (1982). The *Norlund* court upheld the contempt power over status offenders, even though the status offense laws in Washington at the time were among the most liberally deinstitutionalized in the country. It should be noted, though, that the *Norlund* court cautioned that the use of contempt should be exercised only in the most egregious of circumstances. The record, in other words, must demonstrate that less restrictive alternatives to incarceration have failed. *Id.*

The less restrictive alternatives position has been used in other jurisdictions, see, e.g., *In re Ann M.*, 525 A.2d 1054 (Md. 1987).

195. *Id.* at 729. *Accord In re V.G.*, 11 Wis. 2d 647, 647 (1982) ("a juvenile court is without jurisdiction to adjudge a child delinquent solely because she is in contempt of court").

time, an ARY or a CHINS will violate a court order.<sup>196</sup> The secure detention which results from contempt can often result in more family disharmony and more behavior problems by the child.<sup>197</sup>

In Pierce County, Washington, the court's use of its contempt power through ARY petitions has resulted in the incarceration of juveniles for consecutive seven-day sentences for each section of a court order violated.<sup>198</sup> That is, if a child was brought up on contempt charges for (1) not staying in placement, (2) not going to school, and (3) not attending court-ordered counseling, Pierce County juvenile courts have been imposing twenty-one-day contempt sentences in juvenile detention facilities.<sup>199</sup> Such excessive incarceration flies in the face of the treatment goals the Becca Bill was intended to achieve.<sup>200</sup>

Florida has the right idea in refusing to create a cycle of lockups for these already troubled youth. The five-day lockup provision already creates sufficient reason for juveniles to believe the system is against them. The contempt cycle will only exasperate this belief, and cause runaways to feel trapped in the system.

While it is unlikely that Washington will undermine the court's inherent contempt power anytime soon, youth advocates should be wary of how that power is used. As a result of the current attitude towards controlling wayward youth, few restrictions are placed on judges' power to incarcerate juveniles. It is important that judges actually attempt less restrictive alternatives before resorting to their incarceration powers.

---

196. *Id.*; Interview with Lippold, *supra* note 118. Mr. Bendixen noted that the availability of the contempt process is essentially turning parents into probation officers. *Id.*

197. Interview with McDonald, Kaluzny, Bendixen, *supra* note 118. Interview with Lippold, *supra* note 103. Ms. Lippold noticed that children who were not exhibiting serious runaway behavior began running longer and farther after encountering contempt incarcerations in the juvenile detention centers. *Id.*

198. Interview with Lippold, *supra* note 103.

199. *Id.* A parent advocating for such excessive lockup time in the treatment of his ARY child has petitioned the Supreme Court of Washington for review of a superior court's determination that these lockups are excessive. Ms. Lippold predicts that a decision from the Washington high courts will occur within the year. *Id.* Ms. McDonald, a social worker, commented that "a juvenile could get prosecuted for three shopliftings and a car theft" and never see the inside of a detention facility. Yet children are being incarcerated, sometimes as long as 49 days, for not attending school. Interview with Kaluzny, McDonald, Bendixen, *supra* note 115. Ms. Lippold noted that at times the order violated was something as minor as using profane language, or receiving incoming calls in the home. Interview with Lippold, *supra* note 103.

200. Practitioners have noted that the contempt cycle is unlikely to coerce desired behavior out of the child. *Id.*

## V. CONCLUSION

Historically, status offenders have been subject to the tug-of-war between the state's exercise of its right as *parens patriae*, and the child's right to be free from incarceration and court intervention for noncriminal acts. While jurisdiction over status offenders is nothing new, the Becca Bill, with its provision for a five-day lockup, moves Washington out of the progressive deinstitutionalization track of the 1977 legislation and back to the failed turn-of-the-century "child-saving" approach to juvenile justice.

Even more disturbing than the Becca Bill as implemented is the movement toward the warehousing of juveniles and the power given to parents through the jurisdiction of the juvenile court. Not only does the Becca Bill raise issues for the State regarding financial penalties and practical inefficiencies, but it raises questions about the future of Washington's status offense laws and the possible passage of a 180-day lockup provision.

Youth advocates and taxpayers should be indignant about the potential cost of implementing the Bill, which includes the price tag on secure CRCs and the potential loss of federal funding. Advocates for juvenile rights also should be distressed about the effect the five-day secure lockup will have on our state's juvenile population. And the activism should not stop there. Perhaps more shocking than the five-day lockup is the juvenile court's unlimited power to use of contempt of court provisions. Such contempt actions need to be kept in greater check than they have been to date. Similarly, effort needs to be placed in lobbying efforts to block the passage of a stronger bill, which would bring Washington full circle back to the archaic turn-of-the-century approach to juvenile justice.

Would the Becca Bill have saved Becca? No one will ever know for sure. What is apparent, however, is that the Becca Bill has not provided the answer for families with severe problems, like the Hedmans. The lockup provision may have helped the Hedmans to reestablish contact with Becca; however, that again would have been a temporary remedy, likely to cause resentment and fear in the mind of an already seriously troubled child. Indeed, one wonders if the Legislature has truly acted in the best interest of troubled children such as Becca, or, instead, has merely jumped on the political bandwagon to endear itself to parents.