

TREATING RUNAWAY YOUTH AS CRIMINALS: WRONGFULLY SILENCING THEIR VOICES AND ISSUING ARREST WARRANTS

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I. INTRODUCTION

After three weeks in a cell, sixteen-year-old Nevayah found herself in handcuffs and leg irons while being led through the airport because she was declared a runaway by the Administration for Children’s Services in New York (“ACS”), an agency that is contracted by the City to protect the safety and wellbeing of youth in NYC by providing support to families in need and investigating neglect and abuse allegations.¹ As a foster care youth, Nevayah’s decision on where to live was no longer a simple decision, as she was under the care of ACS and was subject to what ACS planned for her. Nevayah informed her caseworker that she wanted to live with her mother in Ohio, as she was not being placed in Lesbian, Gay, Bi-sexual, Trans, and Queer (“LGBTQ”) friendly housing. After informing ACS of her wishes, she took a bus to Ohio so she could start school promptly while living with her mother.² Even though ACS was aware that Nevayah was safely with her mother in Ohio, the agency sought an arrest warrant from family court to return her to its care in New York, as she was not lawfully in Ohio because she was under the custody of ACS and did not have permission to leave the City.³ Nevayah was held in a jail cell for three weeks, and ultimately agreed to return to New York, although she wished to remain in Ohio.⁴ Regardless of Nevayah’s coerced consent to return to New York, Nevayah was placed in handcuffs and leg irons for the duration of her journey. Nevayah’s three-week detention in Ohio was a result of her leaving ACS’s care in New York—not committing an actual crime, yet she was treated as if she was a criminal.⁵

Nevayah’s crime was running away from foster care placement under ACS’ supervision. As a sixteen-year-old, Nevayah did not have the right to leave her living situation, regardless of her wishes. A minor is generally deemed a runaway when they leave the home of their parent or legal

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¹ Ali Watkins, *She Ran Away From Foster Care. She Ended Up in Handcuffs and Leg Irons*, N.Y. TIMES (Dec. 6, 2018), <https://www.nytimes.com/2018/12/06/nyregion/foster-children-arrest-warrants-nyc.html>; *Mission and Organization*, NYC ADMINISTRATION FOR CHILDREN’S SERVICES, <https://www1.nyc.gov/site/acs/about/mission-organization.page#:~:text=The%20Administration%20for%20Children’s%20Services,early%20care%20and%20education%20services> (last visited Nov. 21, 2020).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

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guardian without permission and do not return within a “reasonable length of time,” an arbitrary standard.⁶ Specifically, if a fourteen year old or younger youth chooses not to come home when expected to, or if a fifteen year old or older youth chooses not to return home for at least two nights, the youth can be declared a runaway regardless of why they refused to return home.⁷

According to the Office of Juvenile Justice and Delinquency Prevention (“OJJDP”), which focuses on improving the juvenile justice system by supporting states and local communities in developing effective programs for juveniles, there were 93,400 juvenile arrests for running away nationally in 2009.⁸ In 2010, runaway youth made up sixteen percent of status offenders in detention facilities.⁹ The majority of youths who find themselves in court for running away are girls between the ages of thirteen and seventeen; African American youth are three times more likely than white youth to run away.¹⁰

Running away is considered a status offense: a criminal act only because the individual is a minor.¹¹ The following are examples of other status offenses: running away from home, failing to abide to a legal curfew, being truant, and consuming alcohol.¹² A youth leaving his or her home without permission from his or her legal guardian could be a crime, thus limiting the youth’s liberty and potential safety. Running away is a status offense in eleven states, regardless of the reason why the youth left his or her home.¹³ Depending on the state the youth is in, a person who assists the youth might be committing a crime for harboring a runaway, thus limiting whom the youth can seek out for help.¹⁴

Runaway youth have a higher chance of being assigned to out-of-home placements, including foster care or facility placements, than any

⁶ *Running Away: Finding Solutions That Work for Youth and Their Communities*, EMERGING ISSUES POLICY SERIES (Coalition for juvenile Justice, Washington, D.C.), no. 3, at 2.

⁷ *Conceptualizing the Problem*, NISMART, (Oct. 2002), <https://www.ncjrs.gov/html/ojjdp/nismart/04/ns2.html>.

⁸ *About OJJDP*, OFFICE OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION, <https://ojjdp.ojp.gov/about> (last visited Nov. 21, 2020); Charles Puzzanchera and Benjamin Adams, *Juvenile Arrests 2009*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION 4 (Dec. 2011), <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/236477.pdf>.

⁹ *Running Away*, *supra* note 6, at 2.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 1.

¹² *Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities*, in NAT’L LAW CENTER ON HOMELESSNESS & POVERTY 48 (Dec. 2019), <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>.

¹³ *Id.*

¹⁴ *Id.*

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other young person who commits a different status offense.¹⁵ However, youth often run away from these placements made by ACS, which is what Nevayah did.¹⁶ ACS can enter a family's life based on suspicion of neglect and abuse.¹⁷ Specifically, ACS can remove a minor from their parents or persons legally responsible if an ACS caseworker determines that (1) actual or imminent danger to the child exists, (2) the person responsible for the child fails to provide a minimum degree of care, and (3) there is a connection between the actual or imminent danger to the child and the parent's failure to provide adequate care.¹⁸

Ultimately, the removal of a child from a family can be based on limited information that over-polices low-income individuals and minorities.¹⁹ In 2018, 3,633 children were removed from their homes by ACS, and the majority of the children were from black and brown families.²⁰ Half of these children removed, were removed using ACS's emergency power either because the court was closed or the ACS worker believed there is "imminent danger to the child's life or health."²¹ More specifically, in 2018, 87% of children removed by ACS under the emergency power were Black and Latino children and 2% were Asian

¹⁵ *Running Away*, *supra* note 6, at 2.

¹⁶ *See* Watkins, *supra* note 1.

¹⁷ N.Y. FAM. CT. ACT § 1012 (McKinney 2019).

¹⁸ *See* Nicholson v. Scoppetta, 820 N.E.2d 840, 843-44 (N.Y. 2004).

¹⁹ DOROTHY E. ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE 7 (2009).

²⁰ Yasmeen Khan, *Family Separations in Our Midst*, WNYC (April 17, 2019), <https://www.wnyc.org/story/child-removals-emergency-powers/>.

²¹ *Id.*; N.Y. FAM. CT. ACT § 1024 (McKinney 2009); *see also* THE BRONX DEFENDERS, NEW YORK CITY COUNCIL'S CHILD WELFARE PACKAGE, HEARING ON CITY COUNCIL INT. NO. 1716 AND INT. NO. 1727 (2019) (written testimony by the Bronx Defenders explaining the different ways a child can be removed from his or her home: "Part 2 of article 10 of the Family Court Act sets forth three ways in which a child may be separated from their family in response to an allegation of child maltreatment and pending the outcome of a child protection case: (1) a preliminary order of the court after a petition for neglect or abuse is filed under FCA 1027; (2) a preliminary order of the court before a petition is filed; and (3) emergency removal of a child from their parent without a court order and before a petition for neglect or abuse is filed in family court. The statute creates a continuum of consent and urgency and mandates a hierarchy of required review before a child is separated from his or her family. Under the first scenario, a child is not removed immediately upon investigation of a report of suspected maltreatment. Rather, ACS files a petition alleging the neglect or abuse of the child and seeks a hearing under FCA 1027 for the removal of the child from the home. At this hearing, the parent appears and is represented by counsel. If ACS determines there is not enough time to file a petition, the next step is not an emergency removal, but the second scenario: an ex parte removal by court order under FCA 1022. In order for an ex parte removal to be justified the parent must be absent or have refused to consent to the removal, and the parent must have been informed of ACS's intent to remove the child. In addition, there must be insufficient time to file a petition and hold a preliminary hearing. The purpose of these sections is to avoid a premature unnecessary removal of a child from his home by establishing procedures for early judicial oversight and determination.").

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children.²² Upon removal, a child can be placed in foster care or out-of-home placements, which children often run away from, and by targeting low-income families it further pushes youth into the court system.

While family conflict and challenging family dynamics are usually reported as the main reasons why youth run away²³, arrest warrants have been used to force the return of runaway youth.²⁴ In 2016, ACS attained 48 arrest warrants, but then there was an increase in 2017 with ACS being granted 69 arrest warrants for children.²⁵ These arrest warrants are civil arrest warrants that are “executed like traditional arrest warrants, with handcuffs and lockups” even though “the fine print states that handcuffs should not be used — except in extreme circumstances — advocates and foster children have said almost every warrant case involves the use of handcuffs.”²⁶ The arrest warrants are executed by police²⁷ which itself can be traumatizing to the runaway youth. Ultimately, a runaway youth is treated as if they are a criminal rather than someone in need of the state to utilize its status as *Parens Patriae* to act as a guardian.²⁸

In Part I, I will provide an overview of status offenses and how the treatment of youth has changed over time. I will also discuss how one is determined to be a runaway. In Part II, I will provide an overview of New York’s statutory scheme regarding runaway youth and the use of arrest warrants with youth who have run away from placements or other living situations. I will also discuss the Juvenile Justice and Delinquency Prevention Act (“JJDP”) in New York and the Person in Need of Supervision (“PINS”) program. To understand how New York might amend its law, in Part III, I will discuss Connecticut’s statutory framework regarding runaway youth and how it has reformed its treatment for runaway youth significantly over the past few years in order to better serve the youth. Lastly, in Part IV, I will advocate for New York to improve its treatment of runaway youth. Specifically, I will argue that New York’s runaway statute should include a consent clause to ensure that the youth are involved in the decision-making process of what happens to them, provide

²² Khan, *supra* note 20.

²³ *Running Away*, *supra* note 6, at 6.

²⁴ Watkins, *supra* note 1.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Parens Patriae*, LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/parens_patriae (last visited Oct. 2019) (defining *parens patriae* as “the power of the state to act as guardian for those who are unable to care for themselves, such as children or disabled individuals. For example, under this doctrine a judge may change custody, child support, or other rulings affecting a child’s well-being, regardless of what the parents may have agreed to.”)

more training to police on how to interact with runaway youth, improve services for runaway youth, and eliminate court involvement with the PINS program. Youth need to be supported and not chased after as if they are criminals who have arrest warrants because they committed a crime.

This Note will argue that New York's runaway laws should prohibit the use of arrest warrants for any youth who runs away, whether the youth runs away from an ACS-sanctioned foster care placement or their own home. It is imperative to prohibit the use of arrest warrants because they traumatize runaway youth and increase the chances of affected youth running away again, and prevents them from seeking critical help. New York should also include a consent clause to limit the discretion of the police officer or peace officer when detaining the runaway youth, but more importantly, to allow the youth be part of the discussion in determining what is best for them. With a consent clause, the youth would be part of the decision-making to determine where they are placed and what services they would partake in.

II. BACKGROUND

A. History of Status Offenders & the Juvenile Justice and Delinquency Prevention Act of 1974

Each state has grappled with different mechanisms on how to handle youth who have committed criminal acts, as well as youth who appear to be misbehaving in a manner that does not rise to the level of a criminal offense.²⁹ In 2013, about 55,000 youth were incarcerated daily in the United States and eighty-seven percent of those incarcerated were detained for non-violent offenses.³⁰ A status offense is “a noncriminal act that is considered a law violation only because of a youth's status as a minor.”³¹ Status offenses can include, but are not limited to running away from home, being truant, violating curfew, and being ungovernable. States identify status offenders as delinquents, neglected or abused dependents, or as their

²⁹ National Research Council and Institute of Medicine, *Juvenile Crime, Juvenile Justice* 155 (2001), <https://www.nap.edu/catalog/9747/juvenile-crime-juvenile-justice>.

³⁰ LAURA RIDOLFI & TRACY BENSON, *DECRIMINALIZING CHILDHOOD FOR YOUTH OF COLOR* 1 (Micere Keels, 2016), <https://burnsinstitute.org/wp-content/uploads/2020/09/Decriminalizing-Childhood-for-Youth-of-Color-Policy-Framework-.pdf>, (citing Sickmund et al., *Easy Access to the Census of Juveniles in Residential Placement*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (2015), www.ojjdp.gov/ojstatbb/ezacjrp/ (stating that “nonviolent offenses include status offenses such as running away or underage drinking, and technical violations once a child is under the supervision of the justice system.”).

³¹ OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, DEP'T OF JUSTICE, *STATUS OFFENDERS LITERATURE REVIEW IN THE MODEL PROGRAM GUIDE 1* (2015).

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own distinct legislative group.³² How a state defines a status offense impacts the services and treatment provided to the youth, thus resulting in various treatment of youth based on the state in which the youth committed a status offense.

In response to varying treatment of juveniles involved in the criminal justice system and concern over how juveniles are treated nationally, the Office of Juvenile Justice and Delinquency Prevention (“OJJDP”) passed the Juvenile Justice and Delinquency Prevention Act (“JJDP”) in 1974.³³ The act established a federal-state partnership “to provide a comprehensive coordinated approach to the problem of juvenile delinquency,”³⁴ as well as a juvenile justice planning system that would span across all states. OJJDP supports and provides federal funding to states to implement delinquency prevention programs.³⁵

Under the JJDP, the deinstitutionalization of status offenders (“DSO”) was a core requirement that could be circumvented with the valid court order exception. The JJDP prohibits states from placing status offenders in secure detention or locked confinement, but allows out-of-home placements.³⁶ The deinstitutionalization of status offenders requirement aims to “ensure that youth who have not committed a delinquent or criminal offense are not held with those who have and instead, receive the family-and community-based services needed to address and ameliorate the root causes of their behavior.”³⁷ Within the DSO requirement, the valid court order (“VCO”) exception, however, allows judges to detain adjudicated status offenders if they violate a court order.³⁸ For example, if a youth is ordered to “stop running away,” and then the youth runs away again, the judge can order the youth to be placed in a locked detention center for committing a delinquent act. Inevitably, “violations of a VCO provide an avenue to detention for status offenders, as allowed by state law,” and further pushes a status offender into the criminal system because “when a status offender violates a court order and is

³² *Id.* at 1.

³³ Juvenile Justice Reform Act of 2018, Pub. L. No. 115-385, §101, 132 Stat. 5123, 5123 (2018).

³⁴ Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109, 1109. (1974).

³⁵ *Juvenile Justice and Delinquency Prevention Act*, COAL. FOR JUVENILE JUSTICE, <http://www.juvjustice.org/federal-policy/juvenile-justice-and-delinquency-prevention-act> (last visited Feb. 24, 2021).

³⁶ OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *supra* note 31, at 1.

³⁷ *Deinstitutionalization of Status Offenders (DSO) Facts and Resources*, COAL. FOR JUVENILE JUSTICE, 3 (2011), www.juvjustice.org/sites/default/files/resource-files/DSO%20Fact%20Sheet%202014.pdf (last updated Jan. 2014).

³⁸ *Id.*

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incarcerated, his or her offense is then considered a delinquent act and is no longer protected under the DSO requirement of the JJDP. ”³⁹ While the DSO attempts to prevent youth from being put into detention, the VCO undermines the purpose of the DSO requirement, as it allows for runaway youth to be deemed as delinquent, inevitably swallowing the protections set forth in the DSO requirement.

Furthermore, youth of color are more likely to encounter the juvenile justice system even if they are following the law while their fellow white youth can remain untouched by the justice system for committing the same action.⁴⁰ The JJDP was enacted to improve the treatment of youth when they encounter the juvenile justice system by providing regulation on how runaway youth are treated and mechanisms to decrease the disparate treatment of youth of color in the juvenile justice system.⁴¹ More specifically, in addition to the DSO requirement, states are mandated to address racial and ethnic disparities in the juvenile justice system.⁴² States must establish a committee to reduce racial and ethnic disparities, identify and analyze the causes of racial and ethnic disparities in the juvenile justice system through data analysis, establish a plan to address the racial and ethnic disparities, and include a tribal representative on the State Advisory Groups if available.⁴³ The purpose of this requirement is to limit the disparate treatment of youth of color.

B. Who is a Runaway?

Runaway youth are often stigmatized as unruly and uncontrollable, rather than youth who need guidance and support services. Several studies have estimated that 1.6 to 2.8 million youth experience running away or being kicked out of their homes annually.⁴⁴ More specifically, “one in five youth run away before reaching age eighteen, and half run away two or

³⁹ OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *supra* note 30, at 2.

⁴⁰ Jose Olivares, *Fewer Youths Incarcerated, But Gap Between Blacks And Whites Worsens* (Sept. 27, 2017), <https://www.npr.org/2017/09/27/551864016/fewer-youths-incarcerated-but-gap-between-blacks-and-whites-worsens>.

⁴¹ BURNS INSTITUTE AND CENTER FOR CHILDREN’S LAW AND POLICY, *Core Protections: Racial and Ethnic Disparities*, ACT 4 JUVENILE JUSTICE (Feb. 2019) <http://www.act4jj.org/sites/default/files/resource-files/Racial%20and%20Ethnic%20Disparities%20Fact%20Sheet.pdf>

⁴² *Id.*

⁴³ *Id.*

⁴⁴ MIKE PERGAMIT, ON THE LIFETIME PREVALENCE OF RUNNING AWAY FROM HOME, 2, (2010), <https://www.urban.org/sites/default/files/publication/28616/412087-On-the-Prevalence-of-Running-Away-from-Home.PDF>; Xiaojin Chen et al., *Precursors of running away during adolescence: Do peers matter?*, 22 J. OF RESEARCH ON ADOLESCENCE, 487–497 (2012).

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more times.”⁴⁵ Youth who runaway are at greater risk of not graduating from high school with a 10% decrease of likelihood of graduating if they runaway once and an 18% decrease of likelihood of completing high school if runaway multiple times.⁴⁶ For system involved youth, over 30% of youth in foster care have run away while only 8.1% of youth not in foster care have run away.⁴⁷ Youth who runaway are at a 51% greater risk of being suicidal as an adult and have a 44% increase in the likelihood of having health issues that prevent them from doing certain activities.⁴⁸ Regarding criminal activity, runaways are two and a half times more likely to be arrested as adults than one who never ran away from home.⁴⁹

While states define who is a runaway differently, generally a juvenile is deemed a runaway when they leave home overnight without permission by their guardian.⁵⁰ They often face charges from the police or court for running away even when they have been forced out of their home—which may be better described as being “thrown away.”⁵¹ Youth who run away or are thrown out of their homes express family conflicts as the most reported reason for running away.⁵² Youth have reported numerous reasons for running away from home, including: 1) family conflict that resulted in the youth running away 2) parent throwing the child out of the home 3) parent’s failure of accepting a LGBTQ+ child, resulting in the child being kicked out of the home.⁵³ Runaway youth are a vulnerable population, as they often are left to fend for themselves. After being thrown out of their homes or leaving their homes for safety concerns, they often have nowhere to turn, making them easy “prey.” Some youth have little recourse and turn to participating in survival crimes, crimes committed to stay alive, such as stealing food or sleeping in public places, which are against the law.⁵⁴

⁴⁵ *Id.*

⁴⁶ Yumiko Aratani & Janice L. Cooper, *The Effects of Runaway-Homeless Episodes on High School Dropout*, 47 *YOUTH & SOCIETY* 173, 11 (2015).

⁴⁷ JENNIFER BENOIT-BRYAN, *THE RUNAWAY YOUTH LONGITUDINAL STUDY* 3 (2011).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ PERGAMIT, *supra* note 44, at 10.

⁵¹ Mahsa Jafarian & Vidhya Ananthakrishnan, *Just Kids: When Misbehaving Is a Crime*, VERA INSTITUTE (Aug. 2017), <https://www.vera.org/when-misbehaving-is-a-crime#decriminalizing-adolescent-behavior>.

⁵² NATIONAL RUNAWAY SAFELINE, NATIONAL TRENDS ON YOUTH IN CRISIS IN THE UNITED STATES 27 (2018), https://www.1800runaway.org/wp-content/uploads/2018/11/NRS-2018-Trend-Report_Final.pdf (explaining “family dynamics (33%) continued to be the most commonly raised issue among youth in crisis connecting to NRS in 2017. Abuse as a combined category (including emotional or verbal abuse, sexual abuse, physical abuse, and neglect) made up the second most common issue (24%) raised by youth in crisis.”).

⁵³ *Id.* at 8.

⁵⁴ *Id.* at 25 (highlighting that youth might engage in the sex industry for survival).

C. Trauma and Consequences of Arrest

After being handcuffed, a youth explained that her self-esteem was destroyed.⁵⁵ The youth testified:

the dehumanizing experience shaped not only how others saw me, but how I saw myself for many years... I felt as though everyone was seeing me as a criminal, and that I would be nothing to them but a lifelong offender. Those experiences also made me think of myself as a criminal, and my expectation was that it would happen again because if they could it to me once, they would do it again. I figured that this was who I was, not just something I did.⁵⁶

Jasmine, another youth, had an arrest warrant out for her for failing to return to her foster home, even though she continued to attend her internship with ACS almost daily from 1 PM to 4 PM.⁵⁷ ACS obtained a warrant when Jasmine stopped returning to the foster home, even though she continued to attend her internship with the agency. Jasmine explicitly stated that the warrant pushed her farther away from seeking help and she quickly found herself “caught in a prostitution ring and had left her foster home to live with her pimp,” feeling that she had nowhere to turn.⁵⁸ The warrant made Jasmine feel that “[they] do not come to me like I’m an actual person. You come to me like I’m a criminal. I’m not a criminal.”⁵⁹

Youth who are arrested for non-criminal acts feel that they are not welcome in society as they find themselves being treated as “criminals when they have neither committed a crime nor been accused of having committed a crime ‘sends a signal to them that they are bad’—a label that brings about stigma and negative self-esteem.”⁶⁰ Criminalizing youth for acting like kids “that pose little to no risk to public safety and may punish them for developmental changes and service needs that are beyond their control” creates detrimental collateral consequences.⁶¹ It further pushes youth towards the criminal justice system and “court involvement—and the incarceration that follows—increases kids’ risk of engaging future

⁵⁵ Skye Gosselin, *Handcuffs, Shackles on Juveniles Rob Kids of Their Self-Esteem*, CENTRALMAINE.COM (May 2, 2015), <https://www.centralmaine.com/2015/05/02/handcuffs-shackles-on-juveniles-rob-kids-of-their-self-esteem/>.

⁵⁶ *Id.*

⁵⁷ See Watkins, *supra* note 1.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Brief on Behalf of Amici Curiae, Law. For Child. & the Child.’s L. Ctr. at 12, Matter of Zavion O. (Donna O.), 101 N.Y.S.3d 282 (App. Div.) (No. L-2512/17).

⁶¹ Jafarian & Ananthakrishnan, *supra* note 51.

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delinquent (criminal) behaviors and moving deeper into the system.”⁶² At every stage of interaction with the police or the process of being arrested, youth have reported feeling unsafe.⁶³ When youth have interactions with the police and the court system, there is an immediate negative impact on their emotional well-being.

While arrest warrants occasionally will explicitly permit the use of handcuffs if needed for public safety, this restriction often is not enough to protect youth from being shackled.⁶⁴ It is not enough because “the broad discretion afforded to the arresting officers is so vague as to be virtually meaningless. And, officers who apply handcuffs as a matter of course when executing an arrest warrant often use their standard operating procedure when arresting children—regardless of what is written on the warrant.”⁶⁵ Police officers have a great amount of discretion in regard to the methods used to capture a runaway youth. Specifically, the use of “punishment and displays of authority are not effective to prevent youth from running away.”⁶⁶ For runaway youth, not only do they feel isolated from their families, but also fear seeking help from police who are supposed to be there for society which puts them at a greater risk of harm.

In addition to the discretion of using handcuffs or shackles, police officers rely on their own determination of whether a youth appears to be a runaway, allowing the officers to approach youth without a warrant. In a system that reflects societal values and “has a long and unconscionable tradition of using policing and incarceration as a form of social control for children of color. It is imperative that we protect their right to childhood by reforming the justice system in ways that strive for structural racial equity.”⁶⁷ Policing should not be based on racial profiling, but rather based on providing society with necessary support. Specifically, police should be approaching youth with extra care and consideration, as they might just be

⁶² *Id.*

⁶³ See Meredith Dank, Lilly Yu, Jennifer Yahner, Elizabeth Pelletier, Mitchell More, and Brendan Conner, *Locked In: Interactions with the Criminal Justice and Child Welfare Systems for LGBTQ Youth, YMSM, and YWSW Who Engage in Survival Sex*, URBAN INSTITUTE 2 (September 2015) (explaining that “throughout the process of arrest, booking, and prearrest detention, at least one-third of the youth reported feeling unsafe, which included experiencing a high degree of violence and abuse from police. This abuse consisted of verbal harassment, physical assault such as beating and choking, sexual assault including being propositioned for sex in exchange for release from custody and rape, denial of help when reporting a crime against police, and destruction or theft of personal property. In addition to physical injury, youth identified police violence as leading to psychological injury, including posttraumatic stress disorder.”).

⁶⁴ See *Zavion O.*, 173 A.D.3d, *supra* note 60, at 14.

⁶⁵ *Id.* at 15.

⁶⁶ *Id.* at 4.

⁶⁷ RIDOLFI & BENSON, *supra* note 30, at 1.

showing signs of typical childhood behavior or are unaware that they are acting in a manner that could be deemed criminal.

III. STATUTORY SCHEME IN NEW YORK

A. Runaway Statute

New York Family Court Act Section 718, also known as the “Runaway Statute,” authorizes a peace officer, a civil officer who ensures peace⁶⁸, or a police officer to return a runaway youth to a person legally responsible for them or an authorized agency. It explicitly allows a peace officer or a police officer to return a youth who ran away from home “without just cause or who, in the reasonable conclusion of the officer, appears to have run away from home without just cause.”⁶⁹

The officer can bring a runaway youth to an agency approved by the Office of Children and Family Services if the officer is unable or it is unsafe to return the youth to the custody of the person legally responsible for them.⁷⁰ Once the youth is brought to a facility, “any such facility receiving a youth shall inform a parent or other person responsible for such youth’s care.”⁷¹ Requiring that the person legally responsible for the youth be informed of the youth’s location can risk the youth’s safety and prevent the youth from not running away from the agency. In addition to the youth’s location being given to the person they most likely ran away from, if a youth runs away from the custody of a commissioner of social services or an authorized agency, an officer can “[re]apprehend, restrain, and return such child to such location...and it shall be the duty of any such officer to assist...to take into custody any such child upon the request of such representative.”⁷² Once again, the youth has little control over where they are brought and thus can be traumatized by officers requiring them to go to a specific program or forcing them to return to the program.

An officer can deem a youth a runaway if a youth refuses to give their name to the officer or if the officer does not believe that the contact information for the person legally responsible for them is accurate.⁷³ The officer has great discretion in who to approach and how to determine whether a youth is indeed a runaway. If the officer can reasonably show that

⁶⁸ Peace officer, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/peace%20office> (last visited Nov. 22, 2020).

⁶⁹ N.Y. FAM. CT. ACT § 718 (McKinney 2009).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

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they believed the juvenile was a runaway, then the detention of the youth will be deemed constitutional under NY Family Ct Act Section 718.⁷⁴ More specifically, if the officer's belief is reasonably supported by believing that the youth might be a runaway then the detention of the juvenile will be found justified.⁷⁵ It has been further held "section 718, instead, sets out specific criteria to be used by a police officer in determining a "reasonable opinion" that a given juvenile is a runaway [and] [w]hile the statute allows a certain limited element of discretion in the officer's determination, that element is circumscribed and far from the sort of untrammelled individualism that would in fact render the provision unreviewable."⁷⁶

In New York City, specifically, officers are often found to have reasonable judgement in taking youth into custody at the Port Authority Bus Terminal that they deem to be runaways, as it is known to be a central hub for runaway youth.⁷⁷ The bus terminal is known as the "national center for runaway children" and "notorious for its high incidence of criminal activity by armed juvenile runaways," and thus officers can easily deem a youth a runaway, without a warrant, if they are found spending time in the Port Authority Bus Terminal.⁷⁸ With the effort to protect youth, it was held in *In re Marrhonda G* that a port authority police officer had probable cause for believing that a young girl was a runaway as she was in the terminal alone for hours with a large backpack, without identification, and could not provide any contact information for any adult that would be waiting for her.⁷⁹ More specifically, the officer was permitted to detain a thirteen-year-old girl who purchased a bus ticket and was standing in the correct line to board the bus, but was unable to provide any contact information for the relative she was meeting at her destination and she appeared nervous.⁸⁰ While the officer must have reasonable belief that a juvenile is a runaway, an officer's discretion can be quite broad as an officer can simply stop and question any juvenile that they believe might be a runaway.⁸¹

Under the Runaway Statute, it has been established that an officer may conduct a pat-down search of the youth without a warrant.⁸² To conduct the search without a warrant, an officer must have reasonable belief that the

⁷⁴ See *Matter of Marrhonda G.*, 81 N.Y.2d 942 (N.Y. 1993) (the officer detained a juvenile that was deemed valid due to the officer's "reasonable opinion" that the youth was a runaway).

⁷⁵ *Id.* at 942.

⁷⁶ *Matter of Terrence G.*, 109 A.D.2d 440, 448 (N.Y. App. Div. 1st Dep't 1985).

⁷⁷ *Matter of James J.*, 228 A.D.2d 167, 167 (N.Y. App. Div. 1st Dep't 1996).

⁷⁸ *James J.*, 228 A.D.2d at 172.

⁷⁹ *Marrhonda G.*, 81 N.Y.2d at 944.

⁸⁰ *Id.* at 944.

⁸¹ *James J.*, 228 A.D.2d at 167.

⁸² § 718.

juvenile is a runaway and will be taken into custody.⁸³ Furthermore, in *In re Jamel J.*, an officer's pat down of a runaway youth was justified as the search was conducted in connection with the "full custodial arrest."⁸⁴ However, it was declared that while NY Family Ct Act Section § 718 permits an officer to detain a runaway child for temporary custody, it does not amount to the level of an arrest, "rather, the temporary custodial detention contemplated by § 718 is civil in nature, in contrast to the heightened coercive custody manifested in a criminal arrest."⁸⁵

Ultimately, NY Family Ct Act Section § 718 places some limitations on how an officer can take a runaway youth into custody, as it is a civil arrest. While an officer may take a runaway youth into custody and even conduct a search of the person, the New York State Court of Appeals has established that if a youth resists the officer's action, the case does not transform into a juvenile delinquency case and the punishment, whether it be detention or placement, cannot be increased.⁸⁶ It remains a custodial detention and does not escalate into a criminal arrest. When a youth is detained for regularly running away, the judiciary can only utilize harsher methods in detaining the youth if there are independent grounds for arrest, otherwise family court judges often face "the frustration...while attempting to compel recalcitrant PINS to comply."⁸⁷ Since the use of the runaway statute is civil in nature and the purpose is not to punish, "this provision [NY Family Ct Act § 718] addressed to PINS runaways also cannot be the basis for an arrest warrant by a statutory sleight of hand."⁸⁸

B. Use of Warrants to Compel Attendance

Pursuant to New York Family Court Act Section ("FCA") 153, "the family court may issue a subpoena or in a proper case a warrant or other process to secure or compel the attendance of...child...whose testimony or presence at a hearing or proceeding is deemed by the court to be necessary." Under this section, the use of a warrant is used to compel a child's presence to provide testimony or to be present for the court proceeding. The family court's authority to issue a warrant is limited for the purpose of the trial,

⁸³ See *James J.*, 228 A.D.2d at 167.

⁸⁴ See *In re Jamel J.*, 246 A.D.2d 388 (N.Y. App. Div. 1st Dep't 1998); See also *In re Sharon T.*, 248 A.D.2d 131 (N.Y. App. Div. 1st Dep't 1998); see also *In re Shamel C.*, 254 A.D.2d 87 (N.Y. App. Div. 1st Dep't 1998).

⁸⁵ *Matter of Bernard G.*, 247 A.D.2d 91 (N.Y. App. Div. 1st Dep't 1998); See *Matter of Zavion O. v. Administration for Children's Services*, 173 A.D.3d 28, 34 (N.Y. App. Div. 1st Dep't 2019).

⁸⁶ *Matter of Gabriella A.*, 23 N.Y.3d 155, 163 (2014); see also *Matter of Zavion O.*, 173 A.D.3d at 34.

⁸⁷ *Matter of Jennifer G.*, 26 A.D.3d 437, 438 (N.Y. App. Div. 2d Dep't 2006).

⁸⁸ *Zavion O.*, 173 A.D.3d at 34.

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and does not force youth to appear in court for any other reason.⁸⁹ This section does not grant the court nor ACS the authority to issue an arrest warrant for runaway youth.⁹⁰

In May 2019, the Supreme Court of New York, Appellate Division, First Department held that family courts lack the necessary authority to issue an arrest warrant under FCA Section 153 to ensure the return of the runaway out of safety concerns. In *Zavion O.*, the two youths, Zavion and Serenity, ran away from their foster care placement after their legal guardians voluntarily placed them under ACS's control because they were unable to control the youths' behavior. The Family Court of New York, utilizing FCA Section 153, issued warrants for their arrest out of concern for their safety. The Family Court of New York Referee explained that it "cannot allow the absence of any specific authority to paralyze it from acting in the best interests of the child."⁹¹ The use of the warrants violated the statute, as neither of the youth needed to be present at court to provide testimony, and thus issuing them as protective measures extended beyond the scope of the statute. The appellate court emphasized that

while the record for these particular cases amply demonstrates the need for a valid and binding legal instrument to secure the subject children, keep them off the streets, in a manner of speaking, for their own health and safety, and to provide a means for the children to be continually provided regular medical treatment and other services, no statutory device seems to fit the need in either of these cases.⁹²

Ultimately, FCA Section 153 is not supposed to be used to ensure the return of a runaway, but rather only if the youth's presence is necessary in court.

C. JJDPA in New York

The purpose of the JJDPA was to protect and ensure better treatment of youth interacting with the juvenile justice system, as each state responded to juveniles differently. New York, in addition to the FCA, follows the JJDPA to determine how to treat youth that commit status offenses. In abiding by the JJDPA, New York has reported zero uses of the valid court order exception under the deinstitutionalization of status offenders core requirement.⁹³ New York has gone further than recommended by the JJDPA and prohibits "secure detention for violations

⁸⁹ *Id.*; see also *Matter of Jennifer R. (Tanya M.)*, 978 N.Y.S.2d 605 (N.Y. Fam. Ct. 2013).

⁹⁰ See *Zavion O.*, 173 A.D.3d at 32.

⁹¹ *Id.*

⁹² *Id.* at 33.

⁹³ *Deinstitutionalization of Status Offenders (DSO) Facts and Resources*, *supra* note 37, at 3.

of valid court orders entered for person-in-need-of-supervision proceedings.”⁹⁴ Specifically, by 2006, status offenders being placed in non-secure detention placements decreased by thirty-nine percent and out-of-home placements fell by twenty-eight percent.⁹⁵ In addition to the protections granted to status offenders under the JJDPA, the FCA has also ordered “most status offenses (with the exception of runaways who have been arrested pursuant to a warrant) to diversion services and to exhaust those services prior to issuing a petition with the family court.”⁹⁶ Both the JJDPA and FCA serve to protect youth, and especially respond to the treatment of runaway youth.

D. Persons in Need of Supervision

With the passage of the Family Court Act in 1962, juveniles who committed status offenses became known as Person in Need of Supervision (“PINS”) and were no longer labeled juvenile delinquents.⁹⁷ A PINS is a youth younger than 18 years of age who fails to “attend school in accordance with the provisions of part one of article sixty-five of the education law, or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of a parent or other person legally responsible for such child’s care, or other lawful authority.”⁹⁸ New York enacted the PINS system to provide parents with support when they have nowhere else to turn too. Notably, one episode of running away from home does not qualify the youth to be labeled incorrigible, ungovernable, or habitually disobedient, and thus cannot be declared a PINS.⁹⁹

For a parent to file a PINS petition to receive assistance in getting their youth under control, one must visit the probation department, which serves as the gatekeeper to the system.¹⁰⁰ The probation officer determines whether the child’s behavior fits under the definition of a person in need of supervision, and if so, an official interview will be scheduled to conduct the intake process.¹⁰¹ Ultimately, once a family becomes involved with the

⁹⁴ Patricia J. Artichurt & Regina Waugh, *Status Offenses and the Juvenile Justice and Delinquency Prevention Act: The Exception that Swallowed the Rule* 557, 7 SEATTLE J. FOR SOC. JUST. 555, 557 (2009).

⁹⁵ *Deinstitutionalization of Status Offenders (DSO) Facts and Resources*, *supra* note 37, at 4.

⁹⁶ Artichurt & Waugh, *supra* note 94, at 566; *see also* N.Y. FAM. CT. ACT § 735 (McKinney 2009).

⁹⁷ JESSE SOUWEINE & AJAY KHASHU, CHANGING THE PINS SYSTEM IN NEW YORK: A STUDY OF THE IMPLICATIONS OF RAISING THE AGE LIMIT FOR PERSONS IN NEED OF SUPERVISION (PINS) 11 (Vera Inst. of Just. ed., 11th ed. 2001).

⁹⁸ N.Y. FAM. CT. ACT § 712(a) (McKinney 2009).

⁹⁹ *In re L.*, 418 N.Y.S.2d 859, 861 (N.Y. Fam. Ct. 1979).

¹⁰⁰ § 735(a).

¹⁰¹ § 735(b).

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PINS System, the family is either assessed for and provided with referrals to community-based services by the probation department or they find themselves in front of a family court judge based off a combination of the probation department referral and the parent's wishes.¹⁰²

Families that choose to pursue the diversion services instead of opting for court involvement, which is their decision, will not be impacted by court interference if the services are successful.¹⁰³ However, for families that appear in front of a judge, the judge can either (a) send the youth to a family member's home, (b) place the youth on probation, (c) award custody to the state or a treatment facility or (d) fines or restitution.¹⁰⁴

For those who utilize the court avenue, the result can be quite detrimental to the youth.¹⁰⁵ With the use of a warrant through the PINS program, a youth is brought to family court and is typically sent to foster care group homes during the pendency of their case, disappointing both the youth and his or her family, expecting to receive support from the court rather than their family be torn apart.¹⁰⁶ Additionally, for families that seek assistance through the court system in lieu of receiving a needs assessment, the children are more likely to be remanded to foster care even after the pendency of the case—especially if a parent utilized a warrant to pressure the child to come home.¹⁰⁷

IV. MODEL RUNAWAY STATUTE: CONNECTICUT

While many states have responded to youth that were deemed “uncontrollable” with a punitive approach, Connecticut has altered its approach to better serve runaways and their families in their time of need. Originally, youth who committed a status offense in Connecticut often found themselves placed on court-ordered probation supervision, and if they violated the terms of their probation, they were often removed from their home and placed in detention centers.¹⁰⁸ Connecticut's Department of Children and Families and the Judicial Branch's Court Support Services

¹⁰² § 735.

¹⁰³ § 735(g)(i).

¹⁰⁴ NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, *ALONE WITHOUT A HOME: A NATIONAL REVIEW OF STATE LAWS AFFECTING UNACCOMPANIED YOUTH* 57 (2019), <http://nlchp.org/wp-content/uploads/2019/04/AWAH-report.pdf>.

¹⁰⁵ SOUWEINE & KHASHU, *supra* note 97 at 7.

¹⁰⁶ *Id.* at 26 (Further explaining that “group home care is the most expensive aspect of the PINS system, costing much more than community-based services.”).

¹⁰⁷ *Id.* at 11.

¹⁰⁸ JUSTICE POLICY INST., *JUVENILE JUSTICE REFORM IN CONNECTICUT: HOW COLLABORATION AND COMMITMENT HAVE IMPROVED PUBLIC SAFETY AND OUTCOMES FOR YOUTH* 7, http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi_juvenile_justice_reform_in_ct.pdf.

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Division failed to offer any programs specifically geared towards status-offending youth and families,¹⁰⁹ resulting in youth violating their probation or committing actual crimes.¹¹⁰ However, starting in 2002, Connecticut recognized that treating runaway youth in the court system is unsuccessful, and thus it established a treatment system that provides support to almost all status offenders without the intervention of the court system.¹¹¹ Connecticut's current system is ideal, as it ensures status offenders receive necessary support rather than be treated like criminals or pushed into the criminal justice system.

Conn. Gen. Stat. § 17a-185, Connecticut's runaway statute, emphasizes that the purpose of transporting a runaway to a facility is for "safeguarding the interests and welfare of such person," rather than to punish the youth for running away.¹¹² To assist a runaway youth, a police officer can "transport, with the sole written consent of the person transported, any person over sixteen years of age and less than eighteen years of age who appears to be away from home without permission of such person's parents or guardian...to any public or private facility," only for the safety of the youth.¹¹³ Because the statute requires law enforcement to comply with the youth's desires, "the statute recognizes the complex circumstances of such youth and the importance of the young person's own sense of their best interest."¹¹⁴ The Connecticut statute ensures that the youth has a voice in determining what happens to them. Furthermore, if a youth is deemed to have run away without just cause, the family might be identified to be a family with service needs.¹¹⁵ The safety, rights, and needs of the runaway youth is at the center of how Connecticut responds to runaway youth. Rather than labeling a runaway as a status offender, the state ensures that runaway youth are not placed in detention facilities that can expose them to the criminal justice system.

Recognizing that punishing youth for committing status offenses with detainment or court intervention resulted in harsh treatment that was ineffective, Connecticut began diverting status offending youth from the court system to Family Support Centers.¹¹⁶ In 2005, the state specifically

¹⁰⁹ *Id.* at 13.

¹¹⁰ *Id.* at 12.

¹¹¹ JUSTICE POLICY INST., *supra* note 108, at 11-18.

¹¹² CONN. GEN. STAT. § 17a-185 (2018).

¹¹³ *Id.*

¹¹⁴ See NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, *supra* note 104, at 28.

¹¹⁵ CONN. GEN. STAT. § 46b-120(3) (2019).

¹¹⁶ JUSTICE POLICY INST., JUVENILE JUSTICE REFORM IN CONNECTICUT: HOW COLLABORATION AND COMMITMENT HAVE IMPROVED PUBLIC SAFETY AND OUTCOMES FOR YOUTH 2,

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prohibited status offenders to be placed in prisons.¹¹⁷ The youth also may not be detained in the Department of Correction or local police detention facilities nor can they supervised by the probation department.¹¹⁸ Connecticut established family support centers that provide community-based services and treatment to status-offending youth and their families.¹¹⁹ Since reconfiguring its treatment of runaway youth, youth and families have been able to receive critical services through the Family Support Centers rather than engaging with the family court or criminal court system. The changes resulted in a drop from four hundred and ninety-three youth being detained for a status offense in 2006 to seventy-seven youth in 2008.¹²⁰ More specifically, status offense referrals have fallen to 4.5 percent of all status offenders.¹²¹ It is also critical to highlight that 70 percent fewer status offenders were arrested for a subsequent offense in 2008 and it was reported that their lives have improved both at school and at home.¹²²

V. PROPOSAL

New York needs to prohibit the use of arrest warrants for runaway youth as well as eliminate court involvement in PINS cases. While New York refuses to utilize the valid court exception of the JJDPA, it still falls short of fully de-criminalizing the act of running away, which is how Connecticut responded. The response to youth who run away should stray from being a criminal transaction into one that is transformative like Connecticut's statute. New York needs to stop treating youth who run away as if they are criminals, and instead provide them with necessary support and guidance they need to become productive citizens of society.¹²³ The use

http://www.justicepolicy.org/uploads/justicepolicy/documents/juvenile_justice_reform_in_ctexecutive_summary.pdf.

¹¹⁷ See *Deinstitutionalization of Status Offenders (DSO) Facts and Resources*, *supra* note 37, at 4 (explaining Connecticut's process of implementing the changes for treating status offenders).

¹¹⁸ See JUSTICE POLICY INST., *supra* note 108, at 2.

¹¹⁹ *Deinstitutionalization of Status Offenders (DSO) Facts and Resources*, *supra* note 37, at 4 (stating "in 2007 and based on guidance from the FWSN Advisory Board, Connecticut revised its state code again to mandate juvenile court diversion for youth charged with status offenses. Instead, these youth are referred to Family Support Centers (FSC) where they have access to immediate family- and community-based services, including non-secure respite care for youth. Only if a family experiences repeated crisis after FSC intervention can a formal petition be filed with the courts.").

¹²⁰ JUSTICE POLICY INST., *supra* note 108, at 18.

¹²¹ *Id.*

¹²² *Id.*

¹²³ SHAENA M. FAZAL, YOUTH ADVOCATE PROGRAMS, INC., SAFELY HOME (June 2014), <http://safelyhomecampaign.org/Safely-HomeReport>; See also RIDOLFI & BENSON, *supra* note 30, at 2 (stating "whereas punitive justice system responses to youthful misbehavior consistently fail, recent research confirms what common sense suggests: kids who have positive role models, education, and

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of arrest warrants, whether they are requested by ACS or family members through the PINS system, harshly criminalizes a youth for running away and has long lasting collateral consequences. Even ACS acknowledges that “the execution of a warrant can have unintended negative consequences to the child or youth that is absent from care. As such...ACS will be seeking warrants only when specific special factors are present which render a warrant necessary to ensure the safety of the missing child or youth.”¹²⁴

Under the New York runaway statute, police or peace officers have the power to take a youth into custody without obtaining consent from the youth, inevitably allowing the officer to ignore the youth’s rights. By allowing youth to be treated as if they committed a crime, youth are deterred from seeking out officials for help due to the fear that they will be stripped of their autonomy or forced to return to where they ran away from. New York should especially prohibit a youth from being returned home against their wishes if there is any expression of fear that results in suspecting abuse. While the involvement of law enforcement can be necessary to ensure the safety of a runaway youth, the use of warrants and lack of consent treats the youth as a criminal resulting in “suspicion and hostility between young people and law enforcement and can dissuade youth from seeking out available services...for the many young people who have fled abusive homes, the policy of returning them directly to their homes without considering the youth’s wishes could be dangerous or even fatal.”¹²⁵ With runaway or throw-away youth reporting that they suffered from different forms of abuse or fear further abuse if they were to return home, the structure must provide more space for the youth’s voice to be heard and respected.¹²⁶

access to the resources they need commit fewer crimes than those who are removed from their support structures and forced into confinement.”).

¹²⁴ ACS Provider Bulletin, NYC ADMINISTRATION FOR CHILDREN’S SERVICES (Mar. 2015), https://www1.nyc.gov/assets/acs/pdf/provider-bulletin/2015/3_18_15_ACS_Provider_Bulletin.pdf.

¹²⁵ See NAT’L LAW CTR. ON HOMELESSNESS & POVERTY, *supra* note 104, at 28.

¹²⁶ MALIKA SAADA SAAR ET AL., GEORGETOWN LAW CENTER ON POVERTY AND INEQUALITY, THE SEXUAL ABUSE TO PRISON PIPELINE: THE GIRLS’ STORY (2015), <https://perma.cc/R26S-HE6P>; NATIONAL CONFERENCE OF STATE LEGISLATURES, HOMELESS AND RUNAWAY YOUTH (2016), <https://perma.cc/DS44-VZ37>.; See also RUNAWAY SAFELINE, NATIONAL TRENDS ON YOUTH IN CRISIS IN THE UNITED STATES 17 (2018), https://www.1800runaway.org/wp-content/uploads/2018/11/NRS-2018-Trend-Report_Final.pdf (highlighting youth suggestions to improve the diversion services: “Be honest and direct. Do not be insistent, making your suggestions sound like something they must do. This is a turn-off to teens. Be sensitive to emotional situations and what youth are going through as it affects their behavior. Reduce “processing” requirements and ask for less information – youth on the street have trust issues. Better referral process. A long chain of phone calls trying to find the right people to help is not helpful. Make clear youth will not be turned over to parents/authorities.”).

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When a youth runs away, they do so because of different reasons, and these reasons should be taken into consideration when determining on how to best serve them.¹²⁷ Whether it is because they are simply misbehaving or running away from violence at home, they should have a voice in what happens to them. Under the New York Runaway Statute, police officers decide whether to return a youth to a person legally responsible for them or to an authorized agency without being required to listen to the youth.¹²⁸ Even when a youth is brought to an authorized agency, such as ACS, the services are often focused on reuniting them with their family, and if that is not possible then services try to provide opportunities for the youth to go to foster care or be adopted. However, it is imperative that the youth's voice is heard in determining whether the youth should be reunited with their family to ensure the best outcome for all parties involved.

In aiding a runaway youth, it is imperative to address the underlying cause of why the youth is running away from their home or placement. By failing to recognize the reason for why a youth is running away and assuming that the act is simply a behavioral problem, places unfair blame on the youth and further negatively impacts the youth. It also labels runaway youth as "delinquents or deviants" when they are often running away from violence at home or poor living situations.¹²⁹

Furthermore, youth who run away deserve to be treated with respect and dignity. Runaway youth have suggested the following tips on how to interact with them in trying to assist them: (1) treat youth with respect, (2) be honest and forward, (3) be sensitive and understanding for what the youth is experiencing, (4) have an individualized approach for each youth, and (5) ask for less information, as youth who runaway tend to have trust issues.¹³⁰ By treating the youth with respect when trying to help them while they are running away, they will be more responsive to services, and thus will be at less of a risk of engaging in criminal activity or other dangerous situations.¹³¹ It will also help to bridge the gap between youth and adults, as many youth who run away are untrustworthy of adults. In providing support

¹²⁷ Susan M. Snyder et al., *Homeless Youth, Strain, and Justice System Involvement: An Application of General Strain Theory*, 62 *CHILD. & YOUTH SERVS. REV.* 90, 90-91 (2016) (explaining different reasons why youth runaway and become homeless).

¹²⁸ § 718.

¹²⁹ Jordan Blair Woods, *Article: Unaccompanied Youth and Private-Public Order Failures*, 103 *IOWA L. REV.* 1639, 1658 (May 2018).

¹³⁰ MICHAEL R. PERGAMIT & MICHELLE ERNST, NATIONAL RUNAWAY SWITCHBOARD, *RUNAWAY YOUTH'S KNOWLEDGE AND ACCESS OF SERVICES* 80 (Apr. 2010), <https://www.1800runaway.org/wp-content/uploads/2015/05/PART-A-Youth-on-Streets.pdf>.

¹³¹ *Id.*

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or guidance to youth who runaway it is even more imperative to listen to their needs and concerns, as

for many unaccompanied youth, this sense of agency and independence becomes stronger once they separate from their families. After being kicked out, pushed out, or running away from home, many unaccompanied youth - out of necessity - have had to exercise control over their lives by learning how to survive on their own. While doing so, many unaccompanied youth develop a sense of pride in becoming resilient and self-reliant in spite of the hardships that they may endure while living on the streets or in other unstable living arrangements.¹³²

Overall, New York should ensure that the youth's voice is heard in all stages of the case, including when the officer originally approaches the runaway youth.

B. Eliminate the Use of Arrest Warrants for all Runaway Youth

Under *Zavion O.*, the First Department declared that ACS cannot utilize arrest warrants to locate and capture youth who run away from ACS' care.¹³³ The court held that the use of arrest warrants "must proceed from explicit statutory authority," and not stem from a wrongly applied statute.¹³⁴ It further highlighted that the statute does not permit arrest warrants to be issued for protective measures rather than as a tool to require the presence of a youth at a hearing.¹³⁵ This should be expanded to prohibit arrest warrants for youth who run away from their homes, and not just for youth who run away from ACS placement.

Currently, if a parent seeks help from the police for a child that ran away, the police may inform them that the parent needs to file a PINS petition and attain a warrant permitting them to pick up the child.¹³⁶ However, the police do not need a warrant to pick up a youth that is deemed to be a runaway by their parents or the police.¹³⁷ Ultimately, the legislature must finalize that the use of arrest warrants for protective measures is not the best method, especially if the officers utilize handcuffs or leg irons in restraining a runaway youth.

¹³² See Woods, *supra* note 129.

¹³³ See *Zavion O.*, 173 A.D.3d at 82.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ See SOUWEINE & KHASHU, *supra* note 97, at 11.

¹³⁷ N.Y. FAM. CT. ACT § 718 (McKinney 2009).

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According to a study conducted at the University of California, Los Angeles, law enforcement recognizes youth of color differently than white youth by assuming that black and Latino youth are much older than their actual age and more culpable than white youth.¹³⁸ Consequently, officers need to be given clear instructions and training on how to interact with youth. Pursuant to NY Family Ct Act § 718, when a law enforcement officer takes a runaway into custody, the officer must reasonably believe that the youth is a runaway whether it be with cause or without just cause. In determining whether a youth is a runaway, the officer is provided with the following guidelines:

police officer or peace officer may reasonably conclude that a child has run away from home when the child refuses to give his or her name or the name and address of a parent or other person legally responsible for such child's care or when the officer has reason to doubt that the name or address given are the actual name and address of the parent or other person legally responsible for the child's care.¹³⁹

These guidelines fail to provide officers with concrete tools in determining whether a youth is a runaway, just relying on whether a youth will not share an address with a stranger is not determinative of being a runaway. A youth might choose to withhold their address or name out of fear of the officer, and not because they are a runaway. A youth who is involuntarily approached “by police reported experiencing high rates of distress, perceived injustice, hopelessness, and dehumanization.”¹⁴⁰ Youth have reported that they were stopped and questioned weekly or daily by police due to their race, sexuality, and gender.¹⁴¹ Because police have the right to stop youth they assume to be a runaway, they must be provided with very

¹³⁸ P.A. Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, J. OF PERSONALITY AND SOCIAL PSYCHOLOGY, 106(4) (2014), www.apa.org/pubs/journals/releases/psp-a0035663.pdf.

¹³⁹ N.Y. FAM. CT. ACT § 718 (McKinney 2009).

¹⁴⁰ KIM GILHULY, ET AL., HUMAN IMPACT PARTNERS, REDUCING YOUTH ARRESTS KEEPS KIDS HEALTHY AND SUCCESSFUL: A HEALTH ANALYSIS OF YOUTH ARREST IN MICHIGAN (June 2017), https://humanimpact.org/wp-content/uploads/HIP_MIchYouthArrests_2017.06.pdf.

¹⁴¹ See MEREDITH DANK ET AL., LOCKED IN: INTERACTIONS WITH THE CRIMINAL JUSTICE AND CHILD WELFARE SYSTEMS FOR LGBTQ YOUTH, YMSM, AND YWSW WHO ENGAGE IN SURVIVAL SEX, (Urban Institute ed., 2015), explaining that “two-thirds of study respondents reported being stopped, questioned, and frisked at some point in their life. Nineteen percent stated that they had weekly, and sometime daily, run-ins with the police. Youth reported that many police encounters were initiated as a result of profiling on the basis of actual or perceived race, sexuality, and gender nonconformity.”

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detailed guidelines that require them to interact with a potential runaway youth in an appropriate manner that does not instill fear in the youth.

Police interact with youth while responding to family disputes, arresting youth for skipping school, or running away. According to a 2011 Justice Department survey, forty percent of police street stops are for youth.¹⁴² When police are interacting with youth, it is imperative for them to understand that youth are not fully developed intellectually and thus they typically have a fight or flight response.¹⁴³ However, “most departments offer no youth-specific training aside from the brief lessons in juvenile law taught during the academy, according to a report by the International Association of Chiefs of Police, an advocacy and research group. And they often don’t have funding to add much more.”¹⁴⁴ Thus, it is imperative that New York City Department of Probation’s cultural competency training be a required training in all New York police and probation offices so all police or peace officers can interact with youth in a culturally acceptable manner “that embraces an ‘acceptance’ of the community in which the [youth] resides,” and can promote better relations between youth and officers.¹⁴⁵

D. Improve Available Services for Runaway Youth

Rather than criminalizing youth who run away or forcing them to return home without their consent, placement services should be improved, like Connecticut did. Most youth who run away from placements explain that they run away from foster homes or group places because they are “unsafe, overcrowded, and highly restrictive,” and “foster parents or group home staff were often restrictive, cruel or abusive.”¹⁴⁶ It is also alarming that many youth under the age of sixteen only have the option “[to] leav[e] abusive home environments was either ACS custody or liv[e] on the streets,” thus “some reported lying to youth shelters about their age to gain access, and then b[e] returned to the custody of an abusive family upon discovery.”¹⁴⁷ Youth need to be able to trust services that are provided to them, and not feel like they will be at risk of being sent home or to the authorities for seeking help. It is imperative to have services that can

¹⁴² Sarah Childress, *Why Some Officers Are Policing Kids Differently*, PBS FRONTLINE (June 10, 2016), <https://www.pbs.org/wgbh/frontline/article/why-some-officers-are-policing-kids-differently/>.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Reducing Racial and Ethnic Disparities in Juvenile Justice Systems*, POL’Y UPDATE (Nat’l Juvenile Justice Network, Washington, D.C.) Sept. 2014, at 6, [\h](http://www.njjn.org/uploads/digital-library/RED-Policy-Update-0914-FINAL.pdf?phpMyAdmin=14730ab3483c51c94ca868bccffa06ef).

¹⁴⁶ See Dank, *supra* note 141, at 4.

¹⁴⁷ *Id.*

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adequately and safely care for runaway youth whether it is a temporary or permanent placement.

Youth who run away need support, and it is imperative for New York to expand its services. Specifically, New York should broaden access to services by expanding drop-in centers and increasing the age of access, rather than limiting it to a youth under the age of 21 years.¹⁴⁸ Additionally, there needs to be easier access to mental health providers to assist youth with dealing with trauma they have encountered.¹⁴⁹ The state should also establish one system that oversees the treatment of runaway youth, allowing youth to be able to navigate services when needed. Currently, “young people who participated in the study [by Chapin Hill, a child welfare research center at the University of Chicago] said that finding help can entail continuously recounting traumatic experiences as they seek services from different providers.”¹⁵⁰ What really needs to occur is for New York to create a system that is preventative rather than reactionary and punitive.

E. Person-in-need of Supervision Program should not be Connected to the Court System

The PINS system was established to provide needed support to parents who had nowhere else to turn to “control” their child. However, it has also resulted in more youth encountering the justice system as youth can be brought into family court or placed under probation. While there has been a decrease in the amount of PINS cases in the court system throughout New York, the option to seek a warrant and use the court system is still alive. The PINS program should not be integrated into family court, rather families and youth running away should have access to services that are reliable instead of needing to resort to court intervention.

It is nationally recognized that utilizing the justice system to respond to youth who run away fails to address the actual needs of the youth. Additionally, it often results in the youth engaging in future delinquent behaviors. The PINS system should no longer be under the jurisdiction of the Family Court, but rather focus on providing intensive individual and family services to address the root causes of why the youth ran away.¹⁵¹

¹⁴⁸ ANA OLIVERIA & JEANNE MULLGRAV, NYC COMMISSION ON LESBIAN, GAY, BISEXUAL, TRANSGENDER AND QUESTIONING RUNAWAY AND HOMELESS YOUTH, ALL OUR CHILDREN STRATEGIES TO PREVENT HOMELESSNESS, STRENGTHEN SERVICES AND BUILD SUPPORT FOR LGBTQ YOUTH 4 (2010).

¹⁴⁹ *Id.*

¹⁵⁰ Mara Silvers, *NYC Youth Homeless Services Have ‘Significant Gaps,’ New Report Finds*, WNYC NEWS, <https://www.wnyc.org/story/nyc-youth-homeless-services-significant-gaps-new-report-finds/> (last visited Nov. 22, 2020).

¹⁵¹ See Jafarian & Ananthakrishnan, *supra* note 51.

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There should be a distinct entity involving social workers, mental health therapists, and youth development specialists that oversees PINS that would not result in court involvement. Furthermore, parents should not be allowed to request arrest warrants for their child, as it inevitably pushes the child into the justice system.

Instead of relying on the court system, more counties in New York can adopt Orange County's (one-hour drive north of New York City) method of responding to PINS. Orange County used to have the typical PINS structure: a parent in need of help controlling their child would contact the Orange County Probation Department who would then assess the situation and develop a plan which could take over two months to receive services.¹⁵² Because of the delay in receiving services, family court intervention was quite common resulting in many youth being placed outside of their homes.¹⁵³ Overtime, Orange County established a new model "based on evidence suggesting that families in crisis respond best when they get help quickly and do not rely on the family court for support."¹⁵⁴ Individuals from social services, mental health organizations, and nonprofit organizations created the Family Keys Program which better serves youth in need.

Under Orange County's Family Keys Program, parents still contact the probation department, but after intake families are now sent to Family Keys immediately if it is found that services would be beneficial. The waiting-period for services has been eliminated as the "Family Keys sends a case worker to visit and interview the family within 48 hours of referral. In severe cases, a case worker may be dispatched within two hours," and then the caseworker has a maximum of three weeks to provide services for the family.¹⁵⁵ Of the 2,180 families who participated in the program, 2,136 children avoided being removed from their homes. These statistics demonstrate the success of the program.¹⁵⁶

While Orange County's system is a step in the right direction, New York should ultimately prohibit any court involvement in the PINS system. In 2005, New York amended the Family Court Act "to enhance diversion requirements for status offenders, discourage status offender petition filings, and narrow the circumstances under which PINS youth may lawfully be detained," but New York has yet to fully eliminate the option of

¹⁵² SARA MOGULESCU & GASPAR CARO, LOCAL PARTNERSHIPS, STATEWIDE IMPACT PINS REFORM IN NEW YORK, (Dec. 2008), https://www.vera.org/downloads/Publications/making-court-the-last-resort-a-new-focus-for-supporting-families-in-crisis/legacy_downloads/status_offender_finalPDF.pdf.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

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relying on the court system to control a child nor has it eliminated the option of filing for an arrest warrant for a runaway youth.¹⁵⁷

VI. CONCLUSION

Youth who run away from placements or their homes are at great risk of danger and being taken advantage of. Whether the youth resorts to living on the street or committing survival acts that could be found as criminal, it is critical to recognize that the treatment of runaway youth must empower them to want to improve their own lives and to feel safe in seeking out help. Specifically, “laws criminalizing homeless youth restrict their rights, limit their opportunities for education, housing, and employment, and often put further barriers between them and a safe and secure lifestyle.”¹⁵⁸ It is well-known that laws criminalizing homeless and runaway youth “entangle otherwise law-abiding youth with the juvenile and criminal justice systems,” thus it is imperative that “rather than punishing them for behavior they often cannot avoid, states and localities should find ways to divert homeless youth to social supports and services, minimize civil or criminal court involvement, and foster positive school climates to keep homeless youth safe at school.”¹⁵⁹ New York must ensure that runaway youth are responded to by systems that evaluate youth and family needs and have an array of services, such as mentoring and family therapy. New York must continue caring for runaway youth and highlighting that they are not criminals by eliminating the use of arrest warrants and court involvement in the PINS system. Runaway youth should have their voices heard and be treated as individuals who need support rather than be treated as *de facto* delinquents.

¹⁵⁷ *Id.*

¹⁵⁸ See NAT'L LAW CENTER ON HOMELESSNESS & POVERTY, *supra* note 12, at 49.

¹⁵⁹ *Id.* at 49.