JUVENILE INCORRIGIBILITY PETITIONS - KEEPING NON DELINQUENTS OUT OF THE JUVENILE SYSTEM

George C. Jackson

S.C. Department of Juvenile Justice

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STATE DOCUMENTS

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PROBLEM STATEMENT

On January 27, 2009, House Bill H3315 (sponsored by House Representatives Kelly, Govan and Clemmons) was introduced to amend section 16-17-420, Code of Laws of South Carolina 1978, relating to the offense of Disturbing Schools. This amendment was introduced so as to expand the purview of the offense to include additional unlawful conduct on school grounds or property of a school or college and to increase the penalty for the offense.

The House Bill would also amend section 63-19-1020, relating to instituting proceedings against a child, so as to provide procedures before a referral to the Department of Juvenile Justice for the status offense of Incorrigibility and to require certain family and individual counseling for the child and the family.

Since January 27, 2009, House Bill H3315 has been residing in the House Committee on Judiciary.

Why the focus on Incorrigibility Petitions? First, what is an incorrigible child? A child who refuses to obey the reasonable and proper orders or direction of a parent or guardian and is considered "out of control" (talking back to the parent; not doing chores when asked; not getting up to get ready for school, fussing with siblings, etc.) would designate a child incorrigible.

Incorrigibles are, basically, children having emotional and social problems as they are maturing. Also incorrigibility could be the results of the need for family and individual counseling, mental health issues, or other problems. Incorrigibility falls under what is called a "status offense." A status offender would be a child (between the ages of 12 – 16

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years) adjudicated for **conduct** that would not be a **crime** if committed by an adult. Take note that the child is being adjudicated for **conduct** reasons, not that they have broken the law. **Incorrigibility is non-criminal behavior.** The petitions are generated by the parent in order to have the family court enforce their expectation of the child. These cases have contributed in backing up an already, over-burdened, family court docket and Department of Juvenile Justice (DJJ) case loads; additionally, the time that it takes law enforcement in processing the incorrigibility petition; the solicitor's office having to place the case on the family court docket (again, that is already backed up with criminal cases) are also effected.

An incorrigible adjudication will also result in the child having a juvenile record.

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DEMOGRAPHICS FOR INCORRIGIBLES: FISCAL YEAR 2007 – 2008 AND 2008 – 2009 (KERSHAW COUNTY)

Age:

From the referrals that were received in FY 2007 – 2008 and 2008 – 2009, there was a total of **thirty – one petitions.** Thirteen of the referrals were for juveniles fifteen years of age; nine referrals for fourteen years of age; four referrals for sixteen years of age; three referrals for thirteen years of age; two referrals for twelve years of age. Fifteen years of age appeared to be the age where most of the incorrigible offenses were reported.

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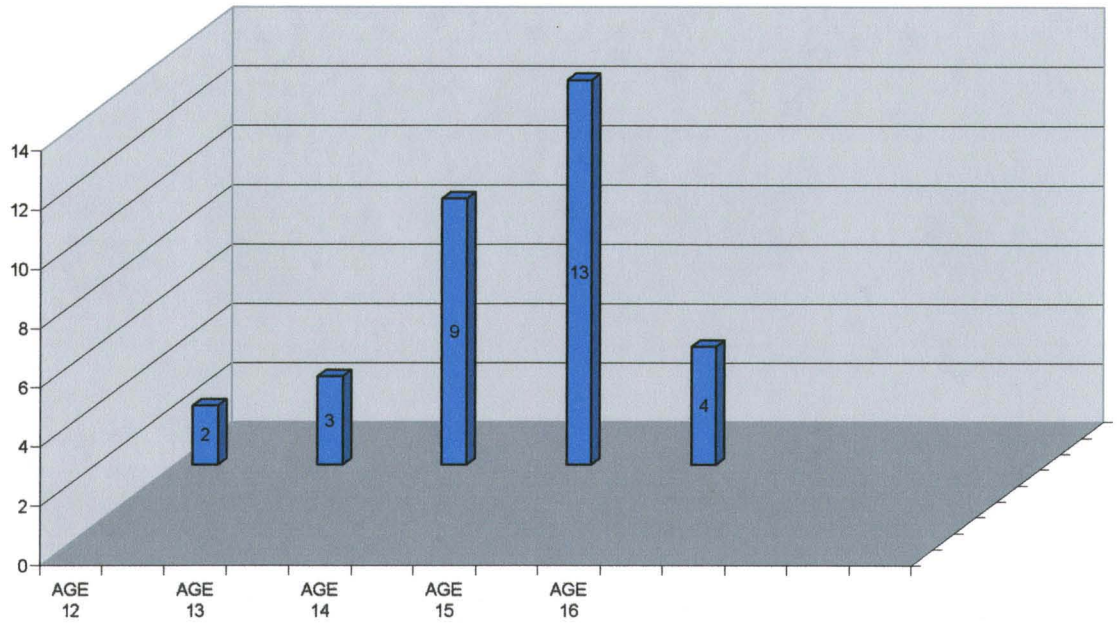
AGE OF REFERRALS FOR FY 07-08 AND 08-09



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Gender

From the incorrigible referrals that were received, there were more female referrals than male (twenty to eleven); however, there is no historical evidence that would give cause to conclude there would be more female referrals than male.

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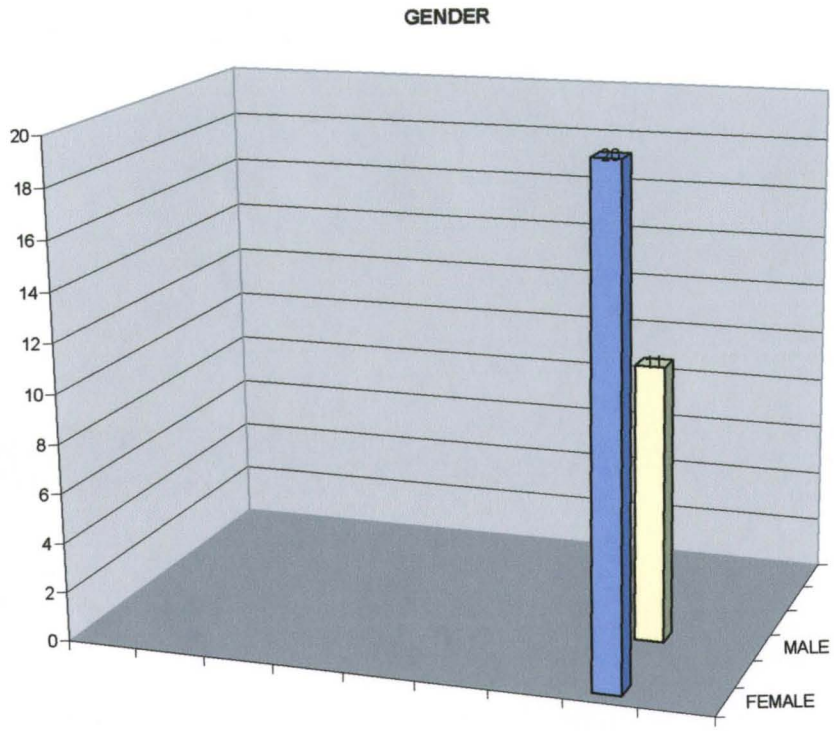

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Race

Twenty of the referrals received were for white juveniles, while eleven referrals were for African American juveniles. As with gender, there is no historical evidence that would give cause to conclude there would be more white than African American incorrigible referrals.

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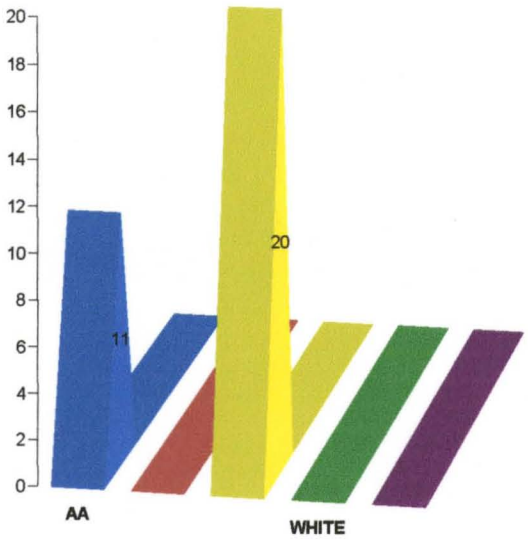
RACE



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Family Dynamics

Eighteen of the incorrigibility referrals reported a single family household with only the mother present. Four of the families were with the father only. Five of the households had both natural parents; while two households reported mother and stepfather and two with mother and live-in-boyfriend. As can be seen here, the majority of the referrals originated from a single family household with only the mother present. What should be of note, is that there were fewer referrals of incorrigibility reported with live-in-boyfriends and step fathers. During the probationary period (in these cases) it was still the mother taking a more active role. The juvenile had few complaints concerning a step father or the mother's live-in-boyfriend being present. This may be due to the natural fathers not having active involvement in the family set up (or never being in the household).

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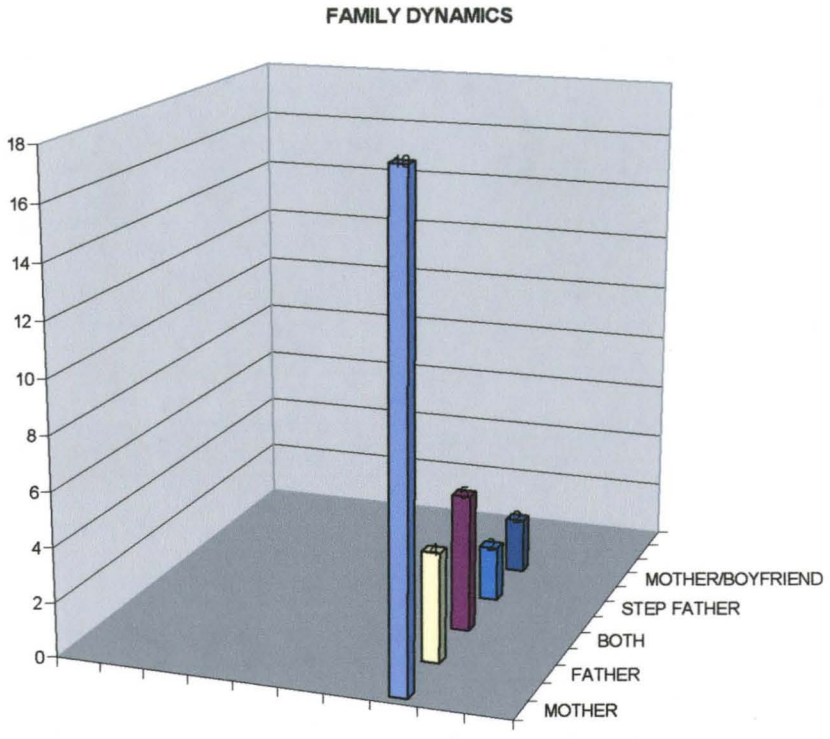

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Juvenile Education

In considering education with the referrals received, twenty three of the juveniles were enrolled in regular classes, while seven were listed as special education students and one was learning disabled. There was no information stating whether those juveniles in special education had/were receiving counseling, also, for incorrigibility.

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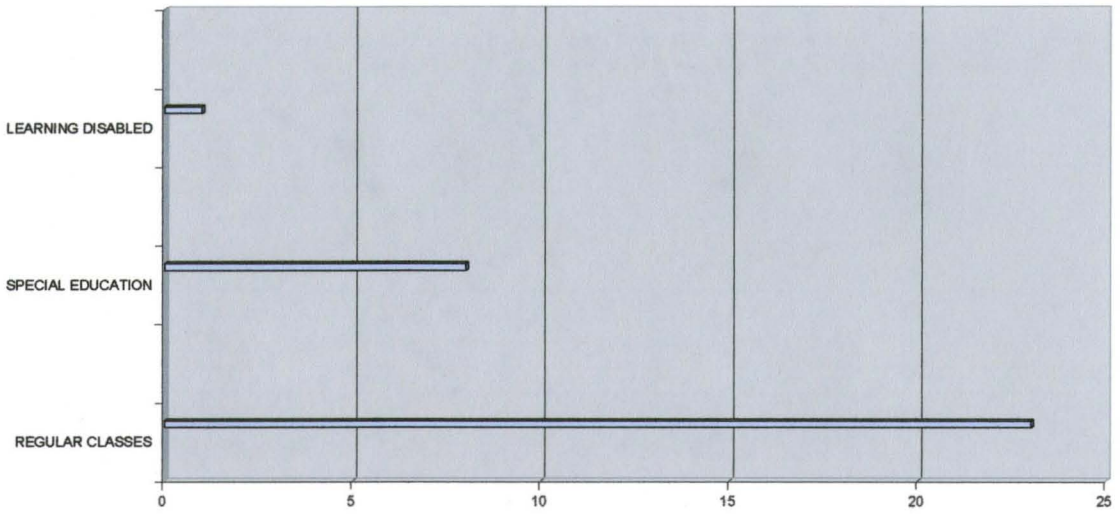
EDUCATION



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Substance Abuse

Twelve juveniles reported prior drug use, while nineteen reported no use of drugs. Since random drug testing was not required of the incorrigibles, there was no indication that the juveniles were using drugs. In the client assessment interviews (with both the juvenile and the parent present), the parents agreed with the juveniles, concerning the use/non use of drugs.

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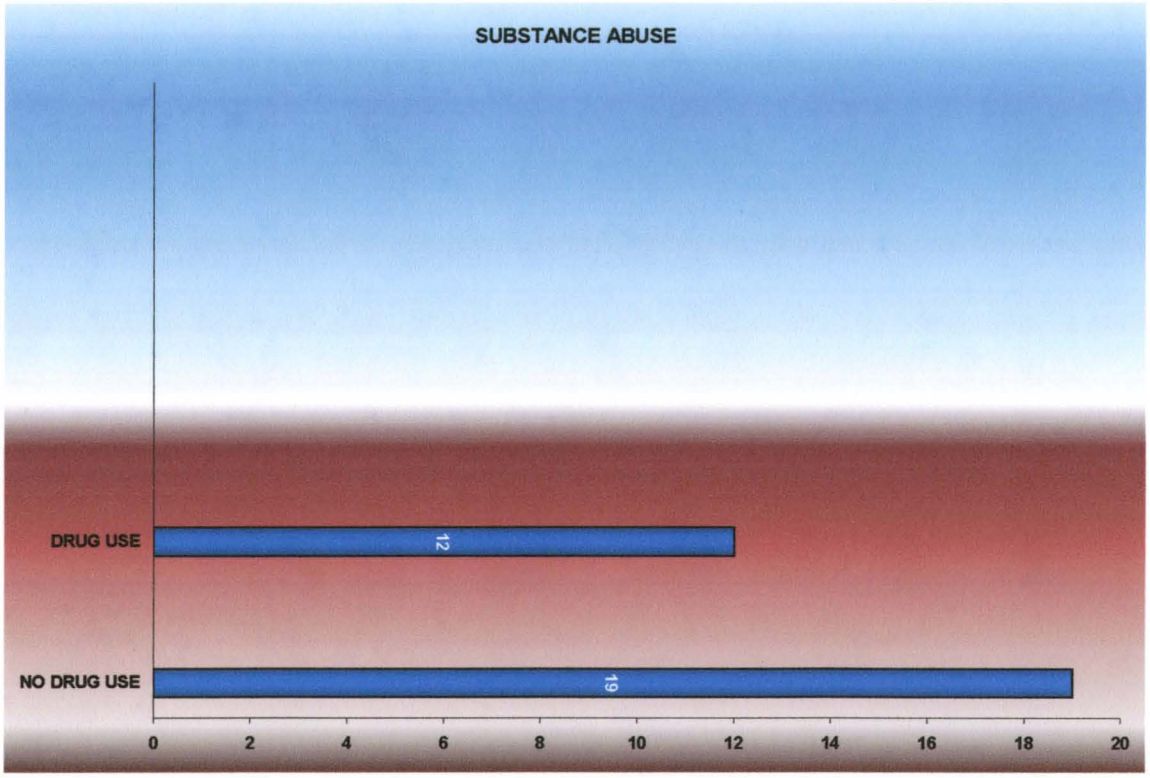

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Parent and Child Relationship

Five parents reported a **good relationship** with the child (keeping in mind that an incorrigible petition had been filed); while fourteen parents reported that the relationship was "**ok to fair.**" Eleven parents responded that the relationship with the child as "**bad to poor.**" One parent reported that there was a "**good relationship with the father and bad with the mother.**"

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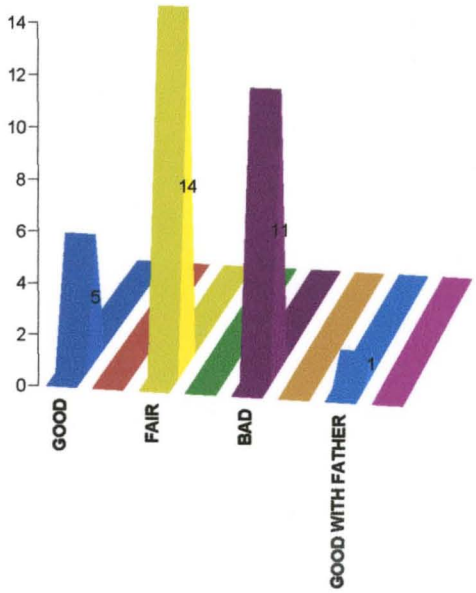
PARENT/CHILD RELATION



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Cost Incurred In Processing The Incorrigible Juvenile

In fiscal year (FY) 07/08 there were sixteen incorrigible petitions processed for court and fifteen incorrigible petitions processed for FY 08/09. Every petition has to go through the DJJ intake process prior to court. The intake process generally takes sixty minutes per offender. If an intake officer earns $32,000 per year (which equates to $16.41/hour, based on a 37.5 hour work week), then processing the sixteen incorrigible offenders takes sixteen hours costing $262.56 for FY 07/08.

At the same cost per hour, processing the fifteen incorrigible offenders for FY 08/09 would be $246.15. The total cost of processing the thirty-one non delinquent cases cost DJJ $508.71 for Kershaw County alone.

While this amount could appear to be insignificant, it should be kept in mind that this is an expense incurred on **non delinquent cases.**

We can go further and look at the incorrigible cases statewide for the same time period (as provided by the DJJ Department of Research and Statistics). The number of incorrigible cases for FY 07/08, statewide, was 682 cases. Using the same calculation, as used for Kershaw County, the cost would be $11,191.62. The number of incorrigible cases for FY 08/09 was 684. The cost for FY 08/09 would be $11,224.44. The total for this time period would be $22,416.06. Again, this expense is incurred on **non delinquent cases.**

It should also be kept in mind that the aforementioned cost only covers the initial intake/pre-court process. It does not cover the additional cost incurred by the probation officers that have to supervise the **non criminal delinquent.** If this cost appears

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minimal, let's consider the consequences of the "incorrigible/status offender" possibly being institutionalized due to not following the order of the court.

In 1974, the Juvenile Justice and Delinquency Prevention Act, provided states with **federal funds** if the states prohibited contact between juvenile and criminal offenders and ban the placement of status offenders in physically secure institutions (Jessica P. Kendall, Juvenile Status Offenses: Treatment and Early Intervention, page 2).

This 1974 mandate provided the family court judges with few dispositional options for status offenders (that did not, also have criminal charges). Without having some form of intervention program, for the status offender, the courts were basically denied the option of placing these offenders (like the delinquent juvenile) in detention facilities. Because of this, status offenders (that may have a need for more severe consequences) began to be "boot strapped" into the juvenile justice system when they violated a court order. The "boot strapping" resulted in the Valid Court Amendment to the Juvenile and Delinquency Prevention Act in 1980, allowing courts to place status offenders in secure confinement if they violated a court order (Juvenile Status Offenders – Constraints On Judicial Powers, page 2). **Now we have non delinquent juveniles as a part of the juvenile justice system.**

How Can The Needs Of The Incorrigible Be Addressed Outside Of The Court System?

Family and Individual Counseling:

In considering how to address the needs of the "alleged" incorrigible youth, there has to be an emphasis placed on the family (as well as the incorrigible juvenile) receiving

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intervention services. This would be done in hopes of fostering positive family dynamics and, in so doing, diverting any court involvement. The counseling may involve working with the family and juvenile to examine the behavior of the family unit and formulating a plan for any required change. The plan may be in addressing better communication skills, self-esteem, community issues and involvement with drugs as well as family issues. It is hoped that these efforts would consist of repeated contacts with a counselor over, at least, several months.

Diversion Programs:

One of the better diversion programs, in Kershaw County, is the Kershaw County Youth Court. This is a program for first time, non violent offenders. Youth Court is composed of juveniles, filling every facet of a regular court, with the exception of the judge (which is performed by local attorneys). The present system consists of petitions to the solicitor's office and DJJ. If the juvenile meets the qualifications for Youth Court, the juvenile and family are given the option of Youth Court versus a hearing before a family court judge. The juvenile is tried before a jury of their peers (trained volunteers from the local middle and high schools in the county) and must complete all sanctions imposed by the jury. If the juvenile is successful, their case is diverted. The program can be easily modified to eliminate any petitions. When local law enforcement receives a complaint for incorrigibility, they would refer the complaint to DJJ, which would forward the case to Youth Court, to be placed on the youth court docket. Again, this eliminates the incorrigibility petition.

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Mental Health Referrals:

Services should be provided to incorrigible juveniles, by not only DJJ, but through referrals to the Department of Mental Health. This would assist in determining the underlying stressors for the incorrigibility. The incorrigibility may be the result of family issues. These issues may be domestic violence, neglect, learning disabilities or peer pressure. As in the counseling option, the juvenile (as well as the family) should take part in the mental health therapy when appropriate.

Where Do We Go From Here

As of now, there has not been any known movement on House Bill H3315, since January 2009. The needs of the incorrigible and the family remain. As of now, the incorrigible youth and the family continue in a direction of unrest in the home and the possibility of the **non criminal youth** entering the juvenile system for a non criminal offense. The incorrigible juvenile and the parent are in constant conflict and in need of some form of intervention, outside of the family court/DJJ system in establishing an appropriate response to the status offense. We must keep in mind that these juvenile have not committed a **crime** but are entering the "system" due to **conduct** issues (which may have it's origin with family or mental health issues).

We must change our ways of dealing with the incorrigible youth. This should be done, not by the family court/juvenile justice system, but through the intervention of the social service agencies, education of the families and established guidelines in dealing with the incorrigible and the family. We must look for the legislators to move on the passage of House Bill H3315 (and amending section 63-19-1020). We must look for the legislators

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to identify the agencies that are responsible for treatment/intervention of the incorrigible and the family.

We must keep in mind the cost, to the state, in dealing with **non criminal offenders.** As previously mentioned, families of incorrigibles should be directed to agencies that deal with **counseling** of the family and the incorrigible; referred to **diversion programs;** referred to **Dept. of Mental Health** and not to family court. Whereas this would be the most preferred direction, we must also consider that these alternatives still may not be successful (due to non compliance of the juvenile or the family). In this event, guidelines must be established (and shared with the parents) on what would be expected before an incorrigibility petition can be filed; Some suggestions for guidelines are as follows:

COUNSELING: the parent must have made efforts to obtain counseling for the juvenile and the parent. These efforts must consist of more than one or two sessions with the counselor. There should be repeated contacts with one or more counselors or agencies over, at least, a three month period. To confirm that these attempts have been made, the parent must be able to provide a letter from the agency or counseling service verifying that counseling was provided, but not effective due to a lack of cooperation by the incorrigible juvenile. The letter would also state the degree of cooperation by the parent.

NARRATIVE: The parent is required to provide a written narrative of the events and circumstances that resulted in application for the incorrigible petition. The narrative would also include any attempts, on the parent's part, to resolve the issue through

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counseling (to include referral to Dept. of Mental Health). This narrative must be signed by the parent and notarized.

DEPARTMENT OF SOCIAL SERVICES: In the event that the juvenile is in the custody of the Department of Social Services, the juvenile must have been in two or three different placements before a petition would be considered. All request for incorrigible petitions would come from local law enforcement (as they are now). Law enforcement will provided a copy of the guidelines. Once the requirements, of the guidelines are met, law enforcement would generate the petition for family court on behalf of the parent.

While this process would continue to have some incorrigible juveniles referred to family court, it would greatly reduce the numbers that we are seeing now. It would, also, provide the opportunity to ensure that the cause of the problem is not the result of some other stressor (i.e. family issues, mental health concerns, etc.). The issue of the incorrigible juvenile becoming part of the juvenile justice system, remains an issue that many people (both professional and lay) need further knowledge in understanding. How do we address the problems/concerns of the incorrigible and the family? We must be kept mindful that **incorrigibility is non criminal behavior** and must be kept out of the court and juvenile system. We should also be mindful that processing a juvenile incorrigible could be a "self fulfilling prophecy." If the underlying issues of the incorrigible juvenile are not addressed, the "self fulfilling prophecy" could become reality. The juvenile justice system should be allowed to concentrate more on the delinquent juvenile and less on the non criminal incorrigible juvenile.

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If the aforementioned guidelines would be implemented and followed, we would be placing the responsibility of addressing the issue of the incorrigible/non delinquent juvenile where it belongs, **in the hands of the parent.**

It is hoped that with these guidelines spelled out for the parent, it will inform and educate the parent of their responsibility (and resources available) to respond to the child's non criminal actions without placing the child in the court/juvenile justice system.

It is believed that the incorrigible juvenile causes frustration in the parent. Without having established guidelines to follow, the parent may feel that the only choice that they have is to "scare" the child into accepting their expectations of how the child should behave. If guidelines are established, it is felt that the parent would follow it instead of subjecting the child (and the parent) to the court process.

In the meantime, it is important that our legislators would understand the importance of addressing House Bill H3315 (and amend section 63-19-1020) in order that we can keep these status offender out of the court/juvenile justice system.

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GLOSSARY OF TERMS:

ADJUDICATION - A trial in family court concerning a criminal charge. It is hearing at which the court determines whether or not the juvenile has committed the alleged crime.

BOOT STRAPPING - Family court allowed to place a status offender in secure confinement if the status offender violates the order of the court.

INCORRIGIBLE - A juvenile who refuses to obey the reasonable and proper orders or direction of a parent or guardian and is considered "out of control."

INCORRIGIBLE PETITION A formal request to a court to assume status offense jurisdiction over a child or family.

INTAKE - The DJJ process of interviewing the juvenile and parent in order to gather background information about the juvenile who is charged with an offense.

JUVENILE DELINQUENCY - A juvenile guilty of criminal behavior.

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JUVENILE - When used in the context of delinquency and criminal acts, a person who is under seventeen years of age.

STATUS OFFENSE - A child (between the ages of twelve – sixteen years of age) adjudicated for conduct that would not be a crime if committed by an adult.

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