Congress and the states zeroed in on abuse and neglect soon after Dr. C. Henry Kempe and his colleagues published their influential article, *The Battered Child Syndrome*, in 1962. Concern for maltreated children had grown ever since Missouri and other states began legislating in earnest against abuse and neglect late in the nineteenth century. Dr. Kempe's provocative title, invoking sympathetic images of battered innocents, received unprecedented attention from concerned policy makers and the media from coast to coast. Most states enacted laws permitting or requiring physicians to report suspected abuse and neglect to child welfare authorities or law enforcement.[33]

Missouri's first abuse and neglect reporting law, enacted in 1965, permitted (but did not require) physicians to report if they had reasonable cause to believe that a child under twelve had had "serious physical injury or injuries inflicted upon him other than by accidental means" by a parent or other caretaker. Physicians reporting in good faith were immune from civil or criminal liability, and the law abrogated the physician-patient and marital communications privileges in court proceedings arising from a report.[34]

All states had reporting laws by 1967, and most began adding other professionals to the list of reporters. In 1969, Missouri added an array of professionals likely to have contact with abused or neglected children, and likely to know about the reporting obligation. Missouri's law now included surgeons, dentists, chiropractors, podiatrists, Christian Science or other health practitioners, registered and school nurses, teachers, social workers, and "others with responsibility for care of children for financial remuneration." The 1969 legislation extended coverage to children under seventeen, and made the reporting obligation mandatory. It also required county welfare officers and juvenile officers to investigate reports, provide protective services, notify law enforcement where appropriate and send notice of reports to the central state welfare office in Jefferson City.[35]

In the Child Abuse Prevention and Treatment Act of 1974 (CAPTA), Congress provided states funding to develop services and programs to prevent, identify and treat child abuse and neglect. Funding was available only to states that significantly expanded the list of mandatory reporters, that created a statewide twenty-four-hour toll-free telephone hotline to receive reports, that enabled reports to be made by persons other than mandatory reporters, and that required appointment of lawyer or non-lawyer guardians ad litem for children in abuse and neglect cases.

CAPTA also required states to define "abuse" broadly to include mental injury and sexual abuse. In response, the General Assembly specified in 1975 that abuse includes "emotional abuse." Conduct such as shutting a child in a closet or other confined space, confining the child in the house for long periods, or tying up a child may qualify. Acts of physical violence toward the child,

including acts inflicted for discipline, may also support an emotional abuse finding. Persistent negative or belittling parental communications and interactions with children may also cross the line. Because emotional abuse petitions often require delicate line-drawing, Missouri courts stress that intervention should be based not on value judgments but on genuine risk to the child.[36]

By 1975, Missouri was one of only fifteen states that qualified for CAPTA funding. Legislation in 1975 mandated that the Division of Family Services investigate each abuse and neglect report to determine whether it could be substantiated. The DFS Director asserted that the 1975 legislation gave Missouri one of the two best abuse and neglect laws in the nation, and others backed him up. The General Assembly created a state abuse and neglect registry in 1975, and has periodically amended the state's reporting law ever since.[37]

The Juvenile Justice and Delinquency Prevention Act of 1974

The Juvenile Justice and Delinquency Prevention Act of 1974 enables state and local governments to secure federal funding for projects and programs related to juvenile justice and delinquency prevention. To secure these funds, a state must satisfy four mandates that profoundly affect juvenile court decisionmaking in delinquency and status offense cases.[38]

Separate Incapacitation of Juveniles and Adults

The first two mandates require that confined delinquents be separated from incarcerated adults. The "sight and sound separation" mandate provides that juveniles may not have regular contact with adults who are awaiting criminal trial or have been convicted. States must assure that juveniles and adults may not see each other and that conversation between them is impossible. The "jail and lockup removal" mandate requires that with minor exceptions, juveniles charged with delinquency not be "detained or confined in any institution in which they have contact with" adult inmates.[39]

These first two congressional mandates seek to prevent adult prisoners from committing assault (including sexual assault) on juveniles, to reduce risks of suicide among confined juveniles, and to prevent juveniles from being infected with the criminal culture of adult prisons. A 1989 study found that juveniles in adult prisons are five times more likely to be sexually attacked, twice as likely to be beaten by staff, and 50% more likely to be attacked with a weapon than juveniles in youth facilities. A 1997 study found that the suicide rate of juveniles in adult prisons was 7.7 times higher than the rate in juvenile facilities, and that the juvenile facility suicide rate was lower than the general population's suicide rate.[40]

Juvenile court acts had mandated separation of juvenile and adult inmates ever since the turn of the century, but separation had never been complete in any state. The 1971 National Jail Census reported that 7,800 juveniles were living in 4,037 jails nationwide on March 15, 1970. Congress finally acted because the number had grown to 12,744 juveniles by 1974. Surveys indicated that as many as a half a million juveniles were admitted each year to adult jails and lockups.[41]

The 1974 Act's federal mandates stimulated changes in Missouri, particularly in rural areas. Before the act, larger counties were required to have juvenile detention centers, but children in smaller counties could be detained in the county jail's "juvenile detention cell." Often there was no "sight and sound" separation between that cell and adult inmates. Hundreds of Missouri children were detained in rural county jails each year for lack of separate detention facilities and appropriate shelter and resident diagnostic programs. Some rural circuits used nearby detention facilities, while other rural circuits relied on judges and public and private child welfare agencies in larger communities to provide mental health and other specialized services unavailable locally.[42]

In 1972, the Missouri Law Enforcement Assistance Council (MLEAC) questioned the state's commitment to rehabilitating children prone to delinquency. The agency asserted that the juvenile courts lacked sufficient funding to operate effectively and that pre-hearing detention was "overused and abused." The Council also found that the array of services available in many rural counties continued to lag behind the array available in metropolitan areas, which had more private providers working with the juvenile court. In the early 1970s, St. Louis County circuit judge Robert G.J. Hoester filed a federal suit alleging that the General Assembly violated equal protection by failing to make sufficient appropriations to permit rural areas to create treatment options similar to options available in metropolitan areas. The suit was withdrawn before final resolution.[43]

The juvenile detention picture improved within ten years. In 1980, Missouri had only fourteen juvenile detention centers and twenty-five circuits said that they sometimes detained juveniles in county or municipal jails. By 1982, the state had twenty-two detention centers. Some circuits without their own center contracted with other counties for detention services, and only thirteen circuits used jails for juvenile detention. Several courts also maintained shelter programs or attendant care services for status offenders and abuse and neglect referrals.[44]

At the urging of the Missouri Juvenile Justice Association, the General Assembly in 1984 amended the juvenile court act to distinguish between "juvenile detention facilities" and "jails or other detention facilities." The amendment specified that the first may be located in the same building or on the

same grounds as the second, provided that the state maintains "spatial separation between the facilities which prevents haphazard or accidental contact between juvenile and adult detainees; . . . separation between juvenile and adult program activities; and . . . separate juvenile and adult staff other than specialized support staff who have infrequent contact with detainees." The legislation sought to bring the state into compliance with the 1974 Act mandates, but did not take effect for nearly a year and a half because some counties did not yet maintain facilities readily capable of assuring the mandated separation. Missouri achieved full compliance as of January 1986, and has been in full compliance ever since.[45]

Missouri took a giant step forward in 1990, when the state Supreme Court adopted rigorous "Standards For Operation of a Juvenile Detention Facility," which appear as an appendix in the Rules of Practice and Procedure in Juvenile Courts. The drafting process began in 1987, when the Missouri Juvenile Justice Association convened a committee of superintendents of juvenile court detention facilities to fashion minimum standards based on the American Corrections Association model. The standards regulate such matters as the quality of the facility's physical plant, training and staff development, family contact, rules and discipline, hygiene and sanitation, medical services, and food services. Section 7 provides a flavor of the standards by reciting these "Juvenile Rights":

> Essential Elements
>
> 7.1. Juveniles shall not be subject to discrimination based on race, color, national origin, sex, creed or handicap.
>
> 7.2. The provision of a safe and healthful environment includes:
>
> (a) Twenty-four (24) hour supervision by trained, professional staff and/or volunteers,
>
> (b) Clean and orderly surroundings,
>
> (c) Toilet, bathing, and hand washing facilities,
>
> (d) Lighting, ventilation, and heating, and
>
> (e) Clean clothing, bedding and mattresses.
>
> 7.3. Participation in educational and recreational activities.
>
> 7.4. Participation in religious services of the juvenile's choice on a voluntary basis, subject to the safety, security and control needs of the facility.
>
> 7.5. The right to determine the length and style of their own hair, including facial hair, if desired, except where such restrictions are deemed necessary for health or safety reasons.
>
> 7.6. Procedures for the possession and use of personal items.
>
> 7.7. Juveniles shall not be subject to corporal or unusual punishment, mental abuse, or the punitive restriction of daily living needs.
>
> 7.8. Procedures for the reporting of any allegation of child abuse or neglect

to the state child abuse/neglect hot line for the independent investigation of any such complaints.

7.9. Written grievance procedures provided to the juvenile upon admission to the facility.[46]

More work remained to be done. To help equalize services available in metropolitan and rural areas, the state assumed a greater role in funding the juvenile courts and their personnel. To enable smaller counties afford to construct and maintain detention facilities meeting these high standards, the Juvenile Court Improvement Act of 1998 authorized counties to enter into agreements to establish regional detention facilities. Regional facilities permit treatment of children near their homes, where their families can remain involved in their rehabilitation. Regional cooperation also frequently makes economic sense where the number of youths treated annually in individual counties remains relatively small.[47]

An important postscript warrants attention. The 1974 Act's first two mandates apply only to delinquents, and not to juveniles tried and sentenced as adults after transfer to criminal court. Pending trial or after conviction, some states routinely incarcerate transferred juveniles with adults in prison, despite lurking dangers to the youths' physical and emotional safety. Missouri rejects this approach. As a threshold matter, Missouri transfers only a few juveniles. The state then places most convicted juveniles in Division of Youth Services custody for treatment. Only a handful of juveniles land in Missouri's prison system, and state law requires placement in units separate from adults.[48]

Disproportionate Minority Confinement

The 1974 Act's third mandate—"disproportionate confinement of minority youth"—requires states to determine whether minority youth are detained or confined in secure detention facilities, secure correctional facilities, jails and lockups at rates exceeding the proportion of minority youth in the general population. If disproportionate minority confinement (DMC) exists, the state must demonstrate efforts to reduce minority overrepresentation in jurisdictions where it is found to exist. "Minority youth" means African Americans, Native Americans, Latinos and Asians. This mandate, the product of a 1992 amendment to the Act, has led states to reevaluate their juvenile justice processes while seeking to understand and redress imbalances that most empirical studies have found to exist.[49]

In 1995, a group of researchers concluded that minority overrepresentation in state juvenile justice systems may be partly related to differences in the rates

of offenses by white and minority youths, but that these differences alone "cannot explain the level of disparity." The researchers reported that about two-thirds of existing studies show that "racial and/or ethnic status did influence decisionmaking within the juvenile justice system."[50]

In 2000, the National Council on Crime and Delinquency found that "[m]inority youth are more likely than white youth to become involved in the [juvenile justice] system with their overrepresentation increasing at each stage of the process." The national report found that minority youth suffer "cumulative disadvantage" as they proceed through the system's critical decision point—arrest, intake, preventive detention, adjudication and disposition. "Research also suggests that disparity is most pronounced at the beginning stages of involvement with the juvenile justice system or, more specifically, at the intake and detention decision points. When racial/ethnic differences are found, they tend to accumulate as youth are processed through the system." (The term "overrepresentation" means that at a particular stage of the juvenile justice process, a group's proportion exceeds its proportion in the general population. The term "disparity" refers to a situation in which different groups have different probabilities that certain outcomes will occur. Disparity may lead to overrepresentation.)[51]

Missouri mirrors the national circumstance. In 1990, Professor Kimberly Kempf-Leonard and her colleagues studied seven circuits that accounted for more than 90% of all black youths processed by the state's juvenile courts. The study, done at the request of the Governor's Juvenile Justice Advisory Group, was one of the first in the nation to study DMC in juvenile justice. The study influenced other states seeking to explore and correct disparities, and gave Missouri a head start in funding projects to determine why disparity exists and how to solve the problem. All states have now done similar studies and have found similar disparities.[52]

Professor Kempf-Leonard and her colleagues found evidence that after youths were referred to the juvenile court in Missouri's rural and urban circuits alike, the court's decisionmaking processes were "systematically disadvantaging youths who are either black, female, or both." Black youths "receive harsher treatment at detention, have more petitions filed 'on their behalf,' and are more often removed from their family and friends at disposition."[53]

A 1997 Missouri study found substantial evidence of disproportionate minority confinement in prehearing detention. A study of all juvenile court cases processed between 1992 and 1997 found statewide racial disparity. The study found that the odds of out-of-home placement varied from circuit to circuit, but that "the fact that a case involves a black youth will increase the chance of out-of-home placement *regardless* of the court in which the case is processed."[54]

Identifying a problem is the first step toward solution, but one study explained that sophisticated and rigorous empirical research has "not explained the reasons" for DMC nationally. The Missouri Juvenile Justice Association has initiated steps to understand and correct imbalance. MJJA research has found that disproportionate minority confinement exists in forty Missouri counties. African Americans are the minority group primarily overrepresented. This research has led the MJJA to take several corrective steps. With a grant from the federal Office of Juvenile Justice and Delinquency Prevention, the MJJA has completed a Disproportionate Confinement Preliminary Report, which documents the levels of minority confinement in 112 Missouri counties. The MJJA has sought and received technical assistance from the W. Haywood Burns Institute, which provides localities ongoing, direct technical assistance to reduce minority overrepresentation in the juvenile justice system. To assist reduction efforts, the MJJA has established a DMC Governing Board that includes representatives from the Governor's Office, the state Supreme Court, juvenile and family courts, law enforcement, the Senate and House, the Office of State Courts Administrator and minority advocates.[55]

Missouri's DMC efforts are focused on the City of St. Louis, St. Louis County and Jackson County because these three jurisdictions have both high minority juvenile populations and high minority juvenile confinement rates. Each of the three has hired a DMC coordinator and created an advisory board to tackle the problem. St. Louis City has also contracted for a study to determine the nature and extent of DMC. St. Louis County has held a stakeholders meeting, and has begun evaluating its recent court statistics and demographics.[56]

"[F]or our generation and probably for the next," Chief Justice William Ray Price, Jr. said in 2000, "bridging racial, gender and cultural gaps has been and will be one of our greatest needs." Missouri's quest for solutions to disproportionate minority confinement recalls the noble words chiseled atop the United States Supreme Court Building's ornate entrance: "Equal Justice Under Law."[57]

Deinstitutionalization of Status Offenders

The 1974 Act's final mandate —"deinstitutionalization"—requires states to prohibit detention of status offenders (and also abused or neglected children) in secure detention facilities or secure correctional facilities. A status offense is non-criminal conduct sanctionable only when committed by a juvenile. The prime status offenses are truancy, running away from home, and incorrigibility (that is, that the juvenile habitually resists reasonable discipline from his or her parents and is beyond their control). A secure facility is one the juvenile may not leave without permission, such as a jail, police lockup or juvenile detention center.

The deinstitutionalization mandate, grounded in the premise that status offenders and abused or neglected children are accused of no crime, required juvenile courts to release these children to their parents or other caretakers before and after disposition. The mandate led the nation's juvenile courts to change their ways. In Missouri alone, a few thousand status offenders and nonoffenders were still held in secure detention each year from 1975 to 1978 as the state sought to achieve compliance with the federal mandate.[58]

The deinstitutionalization mandate thrust Congress into the national debate about the future of status offense jurisdiction. Ever since the early twentieth century, most state juvenile court acts had lengthy definitions of "delinquency" that included both criminal and noncriminal conduct. In the 1957 unified juvenile court act, Missouri became one of the first states to distinguish between delinquency (acts that would be crimes if committed by an adult) and status offenses. Statutory distinction enabled Missouri juvenile courts to treat hardened delinquents differently than more vulnerable status offenders, who were usually non-criminals running away from something, often abuse and neglect at home. Once *Gault* imposed constitutional constraints on delinquency proceedings, distinguishing between delinquency and status offenses enabled juvenile courts to confine the decision's direct holding to proceedings alleging criminal conduct. Courts retained greater latitude to deal separately with noncriminal conduct hurtful to the child.[59]

By rejecting the vision of the juvenile court as a purely rehabilitative tribunal not meting out punishment, *Gault* energized critics of status offense jurisdiction. Some critics argued that status offenders and their often dysfunctional families were treated most effectively by social services agencies and the school district, and not by juvenile court orders tagging the children as quasi-criminals. Some commentators decried secure confinement of children for acts that would not expose adults to sanction. Other commentators found status offense proceedings so steeped in discretion that they invited racial, ethnic and gender discrimination. Others complained that status offense jurisdiction often enabled parents to hide their own abuse and neglect by blaming the child for truancy, running away or incorrigibility. Still other critics argued that branding a child as a deviant for non-criminal conduct encouraged a self-fulfilling prophesy that left the child prone to future criminality.

In 1967, the Katzenbach Commission urged states to seriously consider "complete elimination" of status offense jurisdiction. In the meantime, the Commission recommended that the jurisdiction "be substantially circumscribed so that it . . . comprehends only acts that entail a real risk of long-range harm to the child." In the 1974 Act, however, Congress went no further than to mandate deinstitutionalization of status offenders. The future of status offense jurisdiction was left to the states, which rejected repeal but followed Missouri

by amending their juvenile court acts to distinguish that jurisdiction from delinquency.[60]

The national debate continued. In 1976, the National Council of Juvenile and Family Court Judges announced firm opposition to repeal of status offense jurisdiction. The National Council noted that juvenile courts already diverted most status offense cases to schools and other community service agencies, but argued that the courts needed to retain authority to order treatment for the relatively few truants, runaways and incorrigible children who refused to cooperate with these agencies. The National Advisory Committee for Juvenile Justice and Delinquency Prevention concurred that court dispositions in status offense cases should "be limited to the provision of services on a voluntary basis unless such services have been offered and unreasonably refused or have proven ineffective after a reasonable period of utilization."[61]

In 1979, the Missouri Judiciary Subcommittee on Juvenile Justice rejected calls to repeal status offense jurisdiction. At the same time, the subcommittee concluded that "[j]uvenile courts need a greater variety of alternatives to detention and incarceration. Mental health centers are needed to provide diagnosis and counseling. Runaway shelters should be maintained for youths who need temporary refuge from unacceptable home conditions. Schools should make less use of suspension and provide alternative programs when possible for students unable to adapt."[62]

In 1982, the Missouri Juvenile Justice Association's Juvenile Justice Review Committee supported retention of status offense jurisdiction, but recognized that juvenile courts treat status offenders most effectively when families and social agencies also participate actively. The Committee called for greater accountability by parents and school systems, greater care in juvenile court handling of status offenders, use of the least restrictive shelters and the least obtrusive services, and expanded community services.[63]

In a 1986 statewide survey conducted by the Missouri Children's Services Commission, juvenile justice professionals reported widespread frustration with the poor quality of most services, the lack of coordination between most services, and the lack of resources and services. The Commission's follow-up 1987 survey found improvement. In most circuits, juvenile courts were informally treating status offenders and their sometimes dysfunctional families unless the juvenile faced serious danger or made it clear after several referrals that he or she would not respond except to formal court order. Juvenile officers reported that they made every effort to spare children a formal court record, and to rely on family therapy and other services offered by local providers.[64]

Missouri is in full compliance with the federal deinstitutionalization mandate. A few circuits now maintain truancy courts, which operate in the high schools and middle schools and cooperate with educators to help children

attend classes and earn their diplomas. Missouri appears persuaded by the National Council of Juvenile and Family Court Judges, which in 1990 advocated a strong role for schools and community-based social service agencies in status offense cases. But the National Council also urged continuation of status offense jurisdiction for the " few children . . . who simply will not or cannot seek help on a voluntary basis, or who will continue a course of self destructive behavior unless and until forceful intervention occurs."[65]

In 1980, Congress tempered the deinstitutionalization mandate in light of national experience. Without necessarily arguing for a return to widespread secure detention of status offenders, several commentators argued that the rigid mandate had unintended effects inconsistent with its protective purpose. The U.S. Attorney General's Advisory Board on Missing Children, for example, charged that the mandate deprived police and juvenile courts of authority to confine runaways and homeless children, who could "walk out of police stations or runaway shelters and resume their flight," despite the real dangers of life on the streets. The Advisory Board recommended that Congress permit states to hold chronic runaways and homeless children in secure custody for their own protection, provided they were not confined with delinquents or adult criminals.[66]

The 1980 amendment permits states to authorize their juvenile courts to order secure confinement of status offenders who violate valid court orders. Missouri has authorized its juvenile courts to hold status offenders who have records of willful failure to appear at juvenile court proceedings, of violent conduct resulting in physical injury to themselves or others, or of leaving nonsecure court-ordered placements without permission. The aim is to protect these vulnerable children in a safe and secure environment while the juvenile court and social agencies provide treatment.[67]

The Indian Child Welfare Act of 1978

For decades, the United States Bureau of Indian Affairs encouraged removal of Native American children from their homes for foster or adoptive placement with non-Indian parents. By limiting removal of Native American children from their tribes, the Indian Child Welfare Act of 1978 reverses this longtime assimilation policy.

Under the federal Constitution's Supremacy Clause, the Act preempts the "best interests of the child" standard and other guidelines that normally control adoption and foster care decisionmaking in the nation's juvenile courts. In the absence of good cause for a contrary placement, courts deciding adoption petitions concerning an Indian child must give preference to (1) a member of the child's extended family, (2) other members of the Indian child's tribe or (3)