

STATUS OFFENDERS IN MANITOBA  
HIDDEN SYSTEMS OF SOCIAL CONTROL

by

E. Jane Lothian

A thesis  
presented to the University of Manitoba  
in partial fulfillment of the  
requirements for the degree of  
Master of Arts  
in  
Sociology

Winnipeg, Manitoba

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E. JANE LOTHIAN

A thesis submitted to the Faculty of Graduate Studies of  
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## ACKNOWLEDGEMENTS

I would like to thank my committee members Rick Linden, Rod Kueneman, and Len Kaminski for their contribution of time, guidance, and knowledge. I would also like to acknowledge Tullio Caputo for providing the initial encouragement needed to begin this project.

Special thanks to Sebastian Sawh, Bruno Theoret and the staff at the Manitoba Provincial Archives for their willing assistance.

Finally, I would like to gratefully acknowledge the contributions of three very special individuals, my husband Craig, my father Robert, and my research assistant and son Jonathon. For your patience, encouragement and support, I thank you. To each of you I dedicate this thesis.

## ABSTRACT

The purpose of this study was to examine status offenders in the Province of Manitoba. Divestiture of status offenders occurred with the passage of the Young Offenders Act in 1984. However, there was little Canadian research on status offenders from which to assess the impact of this reform in juvenile law.

The research included a two part archival analysis of juvenile and family court dockets and individual court file data from 1940 to 1975. To supplement the information generated from the archival research, fourteen in-person interviews were conducted with professionals in child welfare, juvenile corrections, and adolescent mental health.

The findings of the archival analysis indicated that the population of status offenders changed dramatically between 1950 and 1975 in terms of the variables 'specific status offense', 'sex', and 'primary disposition.' The dispositions received by these youths remained consistent in terms of the 'non-punitive' nature of the judicial sanctions applied.

Findings from the in-person interviews indicated that the most significant reforms pertaining to the status offender population occurred in 1979 when status offenders were redefined as 'child welfare cases' and redistributed to the child welfare system. Similar to the status offender reform efforts in the United States, the processes of relabeling, system shifting and benign neglect were found to have occurred.

The conclusions of this study point to the importance of using an integrated approach in planning and evaluating changes in services for adolescents.



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## CHAPTER ONE

### THE RESEARCH PROBLEM

#### 1.1 INTRODUCTION

Early in Canada's history, the behavior of juveniles was largely controlled by informal mechanisms such as the family, church, and community (Rothman,1971). By the last decades of the 19th century, social and economic changes had begun to challenge the traditional norms and values of Canadian society. Specifically, several of the consequences of industrialization and urbanization, such as expanding slum areas, street crime and disease, foreign immigration and the passage of anti-child labour legislation, made primary control groups increasingly ineffective (West,1984). As a result, a more formal system was designed for recalcitrant youth with the mandate of maintaining legal conformity and social welfare:

The problems that had once been the province of family and community became the occasion for the construction of institutions, asylums,prisons. Those who could be 'saved' would be; those who could not would be restrained. In any case, society would be protected from the effects of deviant behavior (Zatz,1982:16).

Although the solutions devised by the Canadian child-saving movement took on a number of forms, the underlying objectives remained virtually constant: remove offenders from the streets, provide for the

neglected and dependant, and re-socialize potential young offenders (Leon,1977). Following a lengthy process of legislative debate, these objectives were finally reflected in the Juvenile Delinquents Act enacted in 1908.

The Juvenile Delinquents Act has been described as the product of a social reform movement dedicated to 'saving' or 'rescuing' children from what were perceived to be the undesirable aspects of life in an industrialized, urbanized nineteenth century society (Leon,1977). The historical evidence indicates that the social reformers of this era defined the state of delinquency elastically and inconsistently, sometimes by acts, often by attitudes and finally by tendencies. Houston cites the following example:

In the opinion of most respectable (emphasis added) Canadians, children who disregarded the authority of family and society were headed for a life of crime (1982:132).

Distinctions between acts which served as an indication of poverty, idleness, and neglect and acts which could be classified as crimes or delinquencies were not finely drawn. The category of status offenses included in the J.D.A. reflects this lack of distinction and definition.

This legislation treated as delinquent not only those youths who had violated the criminal law, but also those who ran away from home, were incorrigible, truant,

violated curfew regulations, and committed similar acts prohibited only for the young. These infractions were defined as "status offenses" due to the fact that they applied only to those of juvenile age (Kobrin et al., 1980). In contrast to the adult system, the mandate of the juvenile courts included the care, control, and treatment of those young individuals who demonstrated a proclivity toward further deviance (Boisvert & Wells, 1980).

The rationale for the control of juvenile misbehavior, mixed the need for the protection of others from children with the need for the protection of children from themselves (Zatz, 1982; West 1984). The issue was not merely individual rehabilitation but rather social reformation. The concern was not so much whether children should be held accountable for their behavior, but rather one of how to best socialize children to prevent them from becoming adult offenders. Subsequently, little or no distinction was made between status offenders and juvenile criminal offenders.

Although the legislation remained unchanged until 1984, societal beliefs regarding youth and crime began to change earlier. Status offenders were a concern of the deinstitutionalization movement of the 1960's. Based on empirical research from the United States and supported

by philosophical beliefs which conflicted with the principles outlined in the J.D.A., it was suggested that "subjecting a child to judicial sanction for a status offense- a juvenile victimless crime- helps neither the child nor society; instead, it often does considerable harm to both" (Boisvert and Wells,1980: 238). However, this belief did not precipitate immediate change due to a lack of consensus amongst various interest groups involved in drafting the legislative reforms (Griffiths & Verdun-Jones,1989).

Following consultation and debate lasting almost a quarter of a century, this philosophy was finally reflected in law in 1984. Status offenses have been eliminated under the Young Offenders Act on the grounds that acts such as running away from home and truancy are problems best addressed by social service agencies and therefore should not be classified as offenses. Specifically, supporters of divestiture of status offenses have espoused two major benefits:

First, that the volume of cases handled in the justice system would be substantially reduced, thus allowing more time for handling more serious cases; second that providing services to youth under the auspices of social service agencies rather than the juvenile court would diminish the potential for young people to be stigmatized by labels and experiences often thought to be associated with being processed by juvenile justice agencies (Hudson et al.,1988:179).



According to Judge Archambault, who was the Director of the federal Solicitor General's Young Offenders Policy Unit, the Young Offenders Act has jurisdiction which is:

limited to federal statutes and regulations only. The broader offense jurisdiction of the Juvenile Delinquents Act has resulted in discrimination against young persons who had been criminalized for behavior which is not illegal for adults and which more properly belongs to the domain of child protection and youth protection legislation (Archambault, 1983:4).

Although these reasons appear logical, the preponderance of empirical support for Archambault's comments has come from research on status offenders in the United States. Very little is known about status offenders in Canada. There are few statistics concerning these youth, few empirical studies and few interpretations of the limited information which does exist. It is difficult to attribute any positive change to the implementation of the Young Offenders Act without knowing how status offenders were dealt with prior to the legislative reforms. Were status offenders consistently discriminated against? Are other systems such as child welfare and mental health better equipped to deal with this category of problem youth? Where were Canada's status offenders prior to this legislative reform and where are they now? This research will provide answers to these questions by examining both historic and current information regarding the social policies,

processes, and actual practises directed at status offenders in the Province of Manitoba.

## 1.2 REVIEW OF THE LITERATURE

Historically, Canada has been 'behind the times' in terms of reformist strategies (Platt,1977;Leon,1977). However, if this is the case, it may in fact be the most advantageous position from which to plan, to evaluate, and to implement effective strategies based on the experiences of others. It has been suggested that the divestiture of status offenses be viewed as simply the 'intermediary' stage of a lengthy process of change in how we deal with 'emotionally and behaviorally' disturbed children. Rather than standing back and applauding the efforts of politicians and juvenile justice professionals, it is perhaps more prudent to shift our focus to the more difficult task of tracing the historical pattern of utilization of this category of deviance and the eventual elimination of status offenses from Canadian juvenile law. In order to do so it is necessary to first review the research and literature regarding status offenders and the reforms directed at these youth conducted elsewhere. Second, the literature pertaining to status offenders in Canada will be examined.

Although there has been limited substantive research on status offenders in Canada there has been a voluminous body of research on the subject in the United States subsequent to the deinstitutionalization movement. A thorough examination will include the rationales which supported the strategies, the impetus which provided the means, and the outcomes of this reform movement.

As was previously mentioned, the juvenile courts jurisdiction over status offenders has been the subject of controversy for over a quarter of a century. Two rationales have been presented in support of the status offender deinstitutionalization movement. As Kobrin et al (1980) outline, the first rationale addresses legal and human rights issues. It suggests that there can be no justification from a human rights perspective for subjecting those who commit noncriminal acts to the same deprivation of liberty as those youth guilty of criminal offenses. According to the National Council on Crime and Delinquency;

Imprisonment of a status offender serves no humanitarian or rehabilitative purpose. It is instead, unwarranted punishment, unjust because it is disproportionate to the harm done by the child's non-criminal behavior (N.C.C.D.,1975;3).

In short, regardless of whether criminal prosecution of status offenders deters or aggravates further deviance, it has been viewed as unwarranted, unnecessary and in some cases morally repugnant (Kobrin et al,1980). The

consensus of proponents of this point of view is that noncriminal conduct should be dealt with only by social agencies, not the courts.

The second rationale relies heavily on the theoretical implications of labelling theory (eg. Lemert, 1951; Scheff, 1966; Szasz, 1961; Becker, 1963). Labelling theorists propose that a deviant self identity becomes a fixed element of an individuals self concept as a result of being dealt with as deviant by social control agencies. As the National Council on Crime and Delinquency outlined:

Whether we label children status offenders or delinquents once introduced into the juvenile court process they become stigmatized. The benefits derived from such such classification for either the child or society appear to be nonexistent (N.C.C.D, 1975:4).

Status offenders who are arrested and processed officially through the court, come to view themselves as delinquents, however minor these offenses might have been (Becker, 1963).

In response to the evolution of cultural values and attitudes towards criminal justice and armed with the social scientific knowledge of a new era, proponents of deinstitutionalization set out to right the wrongs of an archaic judicial system. The strategies used to achieve this end can be divided into three categories (Kobrin

and Klein,1983; Handler and Zatz,1982; Schneider,1984).

1) Decarceration involved exercising control over juvenile justice officials by restricting or prohibiting secure confinement. Status offenders were processed similarly in that they could still be formally charged with status offenses. However, as a result of 1980 amendments to the Juvenile Justice and Delinquency Act, violation of probation orders, treatment recommendations or placement orders, may result in the charge of contempt of court and the option of detention or committment (Kobrin and Klein,1983). Consequently, the reduction of coercive control within the juvenile justice system resulting from this strategy was minimal.

2) Diversion strategies commonly utilized community based service alternatives (Handler and Zatz,1982). For status offenders diversion occurs upon initial contact in that police, schools, parents, and others are encouraged to bypass the juvenile justice system entirely and referrals are made to available community based services (Kobrin and Klein,1983). However, should the alternative provided prove unsuccessful, or should the alternatives be unavailable, the full range of dispositional options are still available. Thus the juvenile court remains the source of control of status offenders (Kobrin and Klein,1983).

3) Divestiture of juvenile court jurisdiction has been described as the most radical of non-interventionist approaches (Schneider,1984; Kobrin and Klein,1983). Most significantly, with this strategy the courts are unable to impose any official requirements on youths committing status offenses. Alternative services for status offenders are provided by health and welfare systems voluntarily, and independently of judicial controls.

Although reformist strategies vary, the objectives remain consistent in the literature. Zatz outlines these objectives as follows;

- 1) making existing ways of handling troubled youth more humane as well as more responsive to their needs;
- 2) decreasing the probability that status offenders will eventually become criminal offenders by separating them from youth who commit serious offenses;
- 3) focusing more resources on the problems of juveniles who commit crimes;
- 4) promoting recognition of the need for greater procedural and substantive regularity in state intervention in the lives of status offenders;
- 5) encouraging the diversion of such youth from the juvenile justice system;
- 6) promoting the growth and development of community based services for noncriminal offenders; and
- 7) reducing the cost of care, or at least holding them constant (1982:41).

Numerous studies have been conducted to evaluate the outcomes of various initiatives directed at achieving the objectives outlined above. In the United States the

strategies implemented focused primarily on decarceration and diversion although divestiture was tried in a few states (Schneider,1984; Kobrin and Klein, 1982). The Juvenile Justice and Delinquency Act of 1974 initiated a major federal effort in the United States to prohibit the incarceration of status offenders in institutional settings (Kobrin and Klein,1983). In its amended (1977) form, the Act states that status offenders "shall not be placed in juvenile detention or correctional facilities" (223(a)(12)(A) cited in Kobrin and Klein,1983:21) and provides for elimination of state funding should compliance fail to occur within the established timeframes. Furthermore, the Act mandated the use of the least restrictive alternatives in selecting services for status offenders (Kobrin and Klein, 1983:22). In an attempt to alleviate system shifting or transinstitutionalism (Warren,1981) the Act also prohibits nonsecure placement in other institutional settings.

Numerous studies have been conducted to evaluate these reform efforts. Typically, the literature reflects a large discrepancy between promise and practise. The reforms have repeatedly been challenged by claims of unsuccessful outcomes (Lerman,1980;VanDusen,1981;Klein, 1978;Kobrin and Klein,1983;Handler & Zatz,1982;Schneider 1984). For example, in evaluating the results of the deinstitutionalization efforts pertaining to status

offenders Zatz concludes;

After more than a century of experimentation and wrestling with the problem of how best to deal with a broad range of juvenile misconduct, it has become apparent that the results of juvenile justice reform efforts have proved to be largely unjust, costly, and ineffective (1982;30).

Several themes regarding outcome run consistently through the literature, namely; system shifting or transinstitutionalism, relabeling, net-widening, and service restriction or benign neglect. In order to assess whether these processes are occurring in the case of Canadian legal reforms pertaining to status offenders it is necessary to consider these concepts in more detail. This review will examine the definitions of these concepts, the programs in which they occurred most frequently, and the factors which were attributed to the occurrence of these outcomes.

## Outcome Research

### 1.2.1 System Shifting/ Transinstitutionalism

The terms used to describe the process may vary; system shifting, transinstitutionalism (Warren,1981), alternative encapsulation (Klein,1973) community incarceration (Spergel,1976). However, the concept remains consistent. Attempts at removing status offenders from the juvenile justice system have repeatedly resulted in increased pressure on another social control system.



The phenomenon of shifting a population from one component of the social control system to another has been termed transinstitutionalism (Warren,1981). Lerman's examination of national trends in deinstitutionalization between 1950-1973 reported a consistent pattern of system shifting. Based on his findings, Lerman asserts that gains made in deinstitutionalizing juveniles in the justice system have been offset by corresponding increases in institutional placements within other systems. In other words, a new social control system has emerged to replace the old. Within the correctional system, with the exception of training schools there was an overall increase in the use of jails, detention centres and private correctional facilities. Institutional use in the Child Welfare system dropped moderately between 1950 and 1970 although there was a corresponding increase in the use of residential treatment centres. Finally, the mental health system has shown the most predominant pattern of growth in terms of both long and short term care (Lerman,1980). This analysis found the most significant type of system shifting was the transfer of juveniles from public correctional institutions to psychiatric hospitals.

The most common reasons provided for system shifting

were the fiscal incentives provided by the federal government. As Warren points out;

Federal fiscal incentives for deinstitutionalization and diversion, legitimated ideologically by labeling theory, have encouraged transinstitutionalism in the juvenile social control system...the Juvenile Justice and Delinquency Prevention Act of 1974 provided states with fiscal incentives to deinstitutionalize juvenile delinquents, but only from public correctional institutions (1981:723).

In other words, the federal program provided fiscal rewards for states which complied with the reform mandate by shifting or relocating acting out youth from the correctional system into 'nontraditional' settings in the child welfare and mental health systems (Warren, 1981; Lerman 1981; Klein, 1973).

Lerman's findings regarding national trends were replicated at the state level in California (Warren & Guttridge, 1984) and Minnesota (Schwartz, 1984). Warren & Guttridge's analysis highlights the increased strain on psychiatric services resulting from the status offender reforms. Specifically, in California, the per 100,000 rate of admissions to state/county mental hospitals of persons with no prior admissions increased from 6.0 to 15.5 for youth under 15, and from 76.9 to 91.8 for the 15-24 age group (Warren & Guttridge, 1984:126).

Schwartz found a similar pattern occurring in Minnesota

in private psychiatric facilities. The rate of private hospitalization per 100.000 population of juveniles increased from 187 in 1976 to 412 in 1983. She also reported a significant increase in the numbers of youth voluntarily placed in residential treatment centres. The data indicates that in the four year period between 1976-1980, the number of juvenile admissions to inpatient psychiatric settings in private hospitals increased from 1123 to 1775 (Krisberg & Schwartz, 1983; 360). Based on these data, Krisberg & Schwartz have suggested that deinstitutionalization of status offenders from the correctional system has led to an evolution of a 'hidden' system for disruptive or acting out youths who are no longer processed by the public juvenile justice control agencies (1983:361).

### 1.2.2 Relabeling

Relabeling is best understood as a precursor to a shift in systems. The term means that a client population exhibiting deviant behavior is redefined or given another label. The result of this process is often more restrictive treatment or maintenance of restrictive social control under a new definition (VanDusen, 1981).

Relabeling most typically occurs when juveniles who were previously handled by the courts under the label status offender continue to be involved despite the

implementation of policy changes that were intended to remove these youth from the system (Schneider, 1984:359). For example, by altering the youth's label from delinquent to dependent/or neglected the courts were able to retain jurisdiction and control. Klein suggests that this process was utilized by juvenile justice professionals and social workers in order to facilitate appropriate dispositions and treatment recommendations (1978). Relabeling can be seen as a means utilized by professionals to gain access to already limited resources. The existence of this process suggests therefore, a belief on the part of those professionals dealing with status offenders that they are in need of some form of care, control and/or treatment and cannot be simply ignored.

Klein further suggests that the amount and type of relabeling is a reflection of the agents of a particular system. In the case of youth who engage in both status and delinquent offenses, the label under which the individual enters the system is largely discretionary. In many jurisdictions studied, law enforcement officials utilized the status offender label whenever possible to avoid a more negative stigma and potentially harsher processing associated with the delinquency label (Schneider, 1984).

In order to measure empirically the extent to which relabeling was occurring, researchers have compared alterations in the numbers of status and delinquency offenses prior to and following legislative reforms. The research findings indicate relabeling occurring with all three reformist strategies. Klein cites several examples:

1) Gilman (1970) reports the case of the 1975 Florida law which relabeled status offenders as dependents, and two-time adjudicated ungovernable cases as delinquents.

2) Schneider et al. (1978) report that in the Spokane D.S.O. [Deinstitutionalization of Status Offenders] project an increase in the number of status offenders handled by relabeling both delinquents and neglect cases as status offenders (appropriate clients).

3) In the most blatant case of all, a report on a Santa Clara, California, project indicates that police were trained by program staff to relabel juveniles contacted by them in order to provide 'program credit for expanding efforts to divert such juveniles' (Klein, 1973:184).

Schneider (1984) conducted an impact study which focused on the divestiture of status offenses in Washington, one of the first states to adopt this reform strategy. Schneider's data indicate that although there was some measure of success in terms of a reduction of court contacts for status offenders, relabeling occurred at a rate which offset any positive gains. As a result of discretionary relabeling by law enforcement officials, the incidence of recorded delinquent acts in Seattle

increased significantly and almost doubled the number of delinquent and status incidents in Yakima (Schneider, 1984:367).

VanDusen (1981) examined the extent of relabeling which occurred subsequent to the enactment of Bill AB2121, California's deinstitutionalization legislation. Her findings pointed to three distinct types of redefinitions of client populations. The first form of relabeling occurs when status offenders are redefined as criminal offenders. This was the pattern found in Schneider's research. VanDusen reported a 42% increase in the number of juveniles who had committed both status and criminal offenses being charged with criminal offenses. The unforeseen result of this reform effort may be a "label which is even more stigmatizing and may result in a potentially harsher disposition" (VanDusen, 1981:808).

Costello and Worthington (1981) describe a similar process of relabeling which was utilized by juvenile court judges to circumvent legislative changes. Defined as 'bootstrapping', the contempt power was used to elevate a status offender to juvenile delinquent status. Once a youth has been charged with a criminal offense, the judge has the authority to place the youth in secure detention regardless of the fact that the act which

violates the court order was a status offense. Costello and Worthington suggest that although this process contradicts rehabilitative goals, bootstrapping has been justified as a "necessary technique that must be used in order to force status offenders to cooperate with the court and accept treatment"(1981:59).

The second type of relabeling described by VanDusen was from 'status offender' to 'neglected/dependent' child. In some locations, legislation permitted incarceration of dependent children but not status offenders. VanDusen's findings indicated that as a result of California's legislative reforms "youngsters who would previously have been treated as status offenders were relabeled to the dependency category, thus allowing for their incarceration" (1981:809). Relabeling of this type has also been found to have an impact on other social systems precipitating system shifting.

Where incarceration of this dependent/neglected category was not an option, youth were found to be relabeled 'emotionally disturbed'. According to Lerman's assessment of national trends, institutions have been reserved for troublesome youth in need of social control, or in child welfare terms, varying degrees of a structured style of living. Residential treatment centres for emotionally disturbed youth were identified