



## **NEW JERSEY LAW REVISION COMMISSION**

### **Draft Final Report Regarding Post-Adjudication Incarceration of Juveniles N.J.S. 2A:4A-43(c)**

**May 10, 2021**

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.

Please consult the New Jersey statutes to determine the law of the State.

Please send comments concerning this Report or direct any related inquiries, to:

Arshiya M. Fyazi, Counsel  
New Jersey Law Revision Commission  
153 Halsey Street, 7th Fl., Box 47016  
Newark, New Jersey 07102  
973-648-4575  
(Fax) 973-648-3123  
Email: [amf@njlrc.org](mailto:amf@njlrc.org)  
Web site: <http://www.njlrc.org>

## Project Summary<sup>1</sup>

In *State in Interest of T.C.*,<sup>2</sup> the Appellate Division considered the constitutionality of subjecting some juveniles with developmental disabilities to short term post-adjudication incarceration, while releasing others from custody based solely on geography.

In its opinion, the Appellate Division considered the Juvenile Justice Code (Code) and explained that, to “preserve its constitutionality”, the Court interpreted the Code to prevent the post-adjudication incarceration of all developmentally disabled juveniles because not all counties have access to an approved short-term detention program.<sup>3</sup>

One way to address the constitutional issue raised by the Court would be to require all counties to obtain access to approved short-term detention programs. Doing so would necessitate an expenditure of funds, and the imposition of such a requirement is properly left to the Legislature.<sup>4</sup> This Report does not contain a recommended solution, but identifies the constitutional issue raised by the case, to bring it to the attention of the Legislature.<sup>5</sup>

## Relevant Statutes

The relevant portion of the statutes state the following:

### N.J.S. 2A:4A-44(c)

\* \* \*

(2) The following juveniles shall not be committed to a State juvenile facility... Juveniles who are developmentally disabled as defined in paragraph (1) of subsection a. of section 3 of P.L.1977, c. 82 (C.30:6D-3).

\* \* \*

### N.J.S. 2A:4A-43(c)<sup>6</sup>

\* \* \*

(1) If the county in which the juvenile has been adjudicated delinquent has a juvenile detention facility meeting the physical and program standards established pursuant to this subsection by the Juvenile Justice Commission, the court may, in

---

<sup>1</sup> Preliminary work in this area was completed by Ryan Schimmel, a former Legislative Intern with NJLRC.

<sup>2</sup> *State in Interest of T.C.*, 454 N.J. Super. 189 (App. Div. 2018).

<sup>3</sup> *Id.* at 193.

<sup>4</sup> See N.J. LAW REV. COMM’N. (2020) ‘Post-adjudication Incarceration of Juveniles’. *Minutes of NJLRC meeting* 6 Apr. 2020, \*12 Newark, New Jersey.

<sup>5</sup> *Id.*

<sup>6</sup> The statutory language shown below does not match that quoted in the case, because the relevant subsection of the statute was amended effective November 1, 2020. The amendments do not substantively impact the question raised by *State in Interest of T.C.* as discussed in this Report.

addition to any of the dispositions not involving placement out of the home enumerated in this section, incarcerate the juvenile in the youth detention facility in that county for a term not to exceed 60 consecutive days....

\* \* \*

(2) A juvenile shall not be incarcerated in any county detention facility unless the county has entered into an agreement with the Juvenile Justice Commission concerning the use of the facility for sentenced juveniles.

\* \* \*

### **Background**

In *State in Interest of T.C.*, the Appellate Division considered the constitutionality of subjecting some juveniles with developmental disabilities to short term, post-adjudication incarceration, while other similarly situated juveniles were being released from custody simply based on the county in which they had committed their crimes.<sup>7</sup>

As a child, T.C., was classified as multiply disabled and described as being on the autistic spectrum.<sup>8</sup> At the age of 17, T.C. pled guilty to conduct that would have constituted second degree robbery if committed by an adult.<sup>9</sup> The Court imposed a two-year probationary term with 30 days at the Ocean County Juvenile Detention Center and 30 days of electronic monitoring.<sup>10</sup>

T.C. argued that the law did not allow for juveniles with developmental disabilities to be incarcerated in state or county facilities.<sup>11</sup> The State maintained that while the statute prohibited the detention of juveniles with development disabilities in a State facility, it did not prohibit their incarceration in certified county short-term detention programs.<sup>12</sup>

### **Analysis**

The Court in *T.C.* explained that pursuant to N.J.S. 2A:4A-43(c), a juvenile may be detained in a county in which there is a facility that meets the requirements of the Juvenile Justice Commission.<sup>13</sup> At the time the case was decided, a county without access to an approved facility could incarcerate a juvenile in a State facility pursuant to N.J.S. 2A:4A-43(f).<sup>14</sup> N.J.S. 2A:4A-44(c), however, prohibits the State from committing juveniles who are developmentally disabled to a State facility.<sup>15</sup>

---

<sup>7</sup> *State in Interest of T.C.*, 454 N.J. Super. 189 (App. Div. 2018).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 195.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 196.

<sup>14</sup> The language of N.J.S. 2A:4A-43(f) was deleted by amendment, P.L. 2019, c. 363.

<sup>15</sup> *State in Interest of T.C.*, 454 N.J. Super. at 196.

At the time of the appeal in this case, nine counties lacked access to an approved juvenile detention facility.<sup>16</sup> The Court held that since not every county has access to an approved short-term detention facility, and the Code does not require each county to establish access to such a facility, interpreting the statute to allow for juveniles with developmental disabilities to be incarcerated in a county facility but not a state facility raises constitutional concerns.<sup>17</sup> A developmentally disabled juvenile in a county that has an approved facility, or that has contracted for access to another county’s facility, is at risk of post-adjudication short-term detention.<sup>18</sup> A juvenile in similar circumstances in a county without either an approved facility or contractual access to another county’s program, faces no risk of short-term detention post-adjudication.<sup>19</sup> These differing standards of incarceration, based on the county in which the adjudication takes place, was troubling to the Court, which said that it “implicates concerns of equal protection and fundamental fairness.”<sup>20</sup>

The Court considered de novo the trial court’s interpretation of the statutes, and noted that a court should “interpret a statute ‘in a manner that would avoid constitutional infirmities,’ if it ‘can fairly do so.’”<sup>21</sup>

The Fourteenth Amendment provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws” and shall not “deprive any person of life, liberty, or property[ ] without due process of law.”<sup>22</sup> The Fourteenth Amendment, along with Article I, paragraph 1, of the New Jersey State Constitution protect “against unequal treatment of those who should be treated alike.”<sup>23</sup>

To assess whether a statute is consistent with the State’s “equal protection guarantee,” courts use a balancing test to weigh the “nature of the affected right, the extent to which the governmental restriction intrudes upon it, and the public need for the restriction.”<sup>24</sup> The means employed by the Legislature must “bear a real and substantial relationship to a permissible

---

<sup>16</sup> *State in Interest of T.C.*, 454 N.J. Super. at 197. (Burlington, Gloucester, Passaic, Camden, Atlantic, Mercer, Cape May, Salem, and Essex counties lacked access to juvenile detention facility).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 198.

<sup>21</sup> *Id.*

<sup>22</sup> U.S. Const. amend. XIV; *State in Interest of T.C.*, 454 N.J. Super. at 199. Citing *Barone v. Dept of Human Servs.*, 107 N.J. 355, 367 (1987) (“Although the phrase ‘equal protection’ does not appear in the New Jersey Constitution, it has long been recognized that Article I, paragraph 1, of the State Constitution, ‘like the [F]ourteenth [A]mendment, seeks to protect against injustice and against the unequal treatment of those who should be treated alike.’”).

<sup>23</sup> *State in Interest of T.C.* at 199. Citing *Barone v. Dept of Human Servs.*, 107 N.J. 355, 367 (1987); See also *State v. Pimentel*, 461 N.J. Super. 468, 489 (App. Div. 2019) citing *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 439 (1985) (citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982)).

<sup>24</sup> *Id.* at 199 (Quoting *Caviglia v. Royal Tours of Am.*, 178 N.J. 460, 473 (2004) quoting *Greenberg v. Kimmelman*, 99 N.J. 552, 567 (N.J. 1985)).

legislative purpose.”<sup>25</sup>

The Court noted that juvenile detention “invokes the ‘fundamental right’ of ‘personal liberty’” and N.J.S. 2A:4A-43(c) deprives the juveniles of their personal liberty for up to sixty days.<sup>26</sup> That Court said that “[u]nder either the federal or State equal protection analysis, the court should review such disparate administration of fundamental rights with heightened scrutiny.”<sup>27</sup> The Court found that “[t]here is no discernable rational basis, let alone a compelling justification, to support a geographic cause for depriving developmentally disabled juveniles of their fundamental right to liberty for up to sixty days.”<sup>28</sup>

The Court said that it had to “go beyond the Code’s plain language to salvage the law’s constitutionality and effectuate the legislative intent” and that the “Code must be read to prevent the post-adjudication detention of all developmentally disabled juveniles in any facility as long as all counties do not have access to short-term post-adjudication detention programs.”<sup>29</sup>

### **Additional Statutory Considerations**

In addition to the statutory provisions discussed by the Court in *T.C.*, there are other statutes that could potentially impact the outcome of cases like this one.

N.J.S 2A:4A-43(b)(3) provides that a court may “place the juvenile on probation to the chief probation officer of the county... upon such written conditions as the court deems will aid rehabilitation of the juvenile.” One of the conditions of probation that a court deems rehabilitative could potentially be similar to the short-term county facility mentioned in N.J.S 2A:4A-43(c).

N.J.S 2A:4A-43(b)(5) allows a court to “place the juvenile under the care and responsibility of the Department of Children and Families... for the purpose of providing services in or out of the home...” One of the out of home services prescribed by the Department of Children and Families could potentially be similar to the short-term county facility mentioned in N.J.S 2A:4A-43(c).

### **Pending Legislation**

In the 2020-2021 legislative session, there are three pending bills that seek to amend N.J.S. 2A:4A-43.<sup>30</sup> Although these bills address the incarceration of juvenile offenders, they do not address the constitutional issue discussed by the Court in *In the Interest of T.C.*

---

<sup>25</sup> *Id.* (Quoting *Caviglia v. Royal Tours of Am.*, 178 N.J. 460, 473 (N.J. 2008) quoting *Taxpayers Ass'n of Weymouth Twp. v. Weymouth Twp.*, 80 N.J. 6, 44 (1976)).

<sup>26</sup> *State in Interest of T.C.* at 199.

<sup>27</sup> *Id.* at 200.

<sup>28</sup> *State in Interest of T.C.* at 201-202.

<sup>29</sup> *Id.* at 202.

<sup>30</sup> A1915, 219<sup>th</sup> Leg., 1<sup>st</sup> Sess. (N.J. 2020) (Focuses on juvenile incarceration and parole. This bill imposes restrictions on the incarceration of juveniles; eliminates fines; and proposes to establish a program to collect, record and analyze data regarding juveniles who were incarcerated. A similar bill was signed into law by Governor Murphy on Jan. 20, 2020. See S.B. 48, 218<sup>th</sup> Leg., 2<sup>nd</sup> Sess. (N.J. 2018) was incorporated into P.L.2019, c.363); A1414 and S2249 219<sup>th</sup>

## Conclusion

The Commission has long considered its responsibilities to include bringing statutory issues to the attention of the Legislature if the Legislature has not yet addressed those issues. The constitutionality of the statute concerning short term, post-adjudication incarceration of juveniles was called into question by the New Jersey Superior Court, Appellate Division, in *State in Interest of T.C.*, 454 N.J. Super. 189 (App. Div. 2018).

Addressing the constitutional issue raised by the Court would likely necessitate an expenditure of funds, and the imposition of such a requirement is properly left to the Legislature. The bills pending in the current legislative session that seek to amend N.J.S. 2A:4A-43 do not address this issue.

This Report does not contain a recommended solution, but is intended to bring this matter to the attention of the Legislature so that it may be considered, an action taken, as appropriate.

The Commission will take no further action in this area at this time unless requested to do so by the Legislature.

---

Leg., 1st Sess. (N.J. 2020) are identical. (They both propose to establish a Juvenile Offender Community Conservation & Improvement Services program. It established a 90-day nonresidential program that would offer courts an alternate sentencing option for non-violent juvenile offenders); S3319 and A5507 219<sup>th</sup> Leg. 2<sup>nd</sup> Sess. (N.J. 2021) are also identical. (They both recommend eliminating certain juvenile justice fines, fees, costs, and other monetary penalties. Warrants based on unpaid fines would be deemed null and void).