

To: New Jersey Law Revision Commission
From: Ryan Schimmel
Re: Post-adjudication Incarceration of Juveniles - *State in Interest of T.C.*
Date: July 8, 2019

MEMORANDUM

Executive Summary

In *State in Interest of T.C.*,¹ the Appellate Division considered the constitutionality of subjecting some developmentally disabled juveniles to short term post-adjudication incarceration while others, based solely on their geography, would be released from custody.

In its opinion, the Appellate Division held that in order to pass constitutional muster, the Juvenile Justice Code must be interpreted to prohibit the post-adjudication detention of juveniles with developmental disabilities in county detention facilities, so long as there is not a certified short-term incarceration program in every county, even though the language of the statute does not explicitly state this.²

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)

* * *

(1) Except as otherwise provided in subsections e. and f. of this section, 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 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....

¹ *State in Interest of T.C.* 454 N.J. Super. 189 (App. Div. 2018).

² *Id.* at 193.

* * *

(2) No juvenile may 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.

* * *

N.J.S. 2A:4A-43(f)³

* * *

(2) When a court in a county that does not have a juvenile detention facility or a contractual relationship permitting incarceration pursuant to subsection c. of this section is required to impose a term of incarceration pursuant to subsection e. of this section, the court may, subject to limitations on commitment to State correctional facilities of juveniles who are under the age of 11 or developmentally disabled, set a term of incarceration consistent with subsection c. which shall be served in a State correctional facility. When a juvenile who because of age or developmental disability cannot be committed to a State correctional facility or cannot be incarcerated in a county facility, the court shall order a disposition appropriate as an alternative to any incarceration required pursuant to subsection e.

* * *

Background

As a child, T.C. was classified on the autism spectrum as multiply disabled and attended school with the designation of developmentally disabled.⁴ At the age of 17, along with two other juveniles, T.C. participated in the unarmed, forceful theft of marijuana from a fourth juvenile's backpack.⁵ T.C. pled guilty to what would have amounted to second degree robbery if committed by an adult.⁶ In exchange for his guilty plea, the state recommended a two year probationary term conditioned by 60 days in the Ocean County Juvenile Detention Center (OCJNDC).⁷ T.C argued for a non-custodial sentence.⁸ The Court however, imposed a two year probationary term with 30 days at the OCJNDC and 30 days of electronic monitoring.⁹

On appeal, T.C. argued that the law did not allow for developmentally disabled juveniles to be incarcerated in state or county facilities.¹⁰ The State maintained that while the statute

³ Proposed legislation S.B. 48, 218th Leg., 2nd Sess. (N.J. 2018) removes the language in N.J.S. 2A:4A-43(f).

⁴ *State in Interest of T.C.*, 454 N.J.Super. 189 (App. Div. 2018).

⁵ *Id.* at 193

⁶ *Id.*

⁷ *Id.* at 193-194.

⁸ *Id.* at 194

⁹ *Id.*

¹⁰ *Id.* at 195

prohibited the detention of developmentally disabled juveniles in a State facility, it did not prohibit their incarceration in certified county short-term detention programs.¹¹

Analysis

In counties in which there is a facility that meets the requirements of the Juvenile Justice Commission, a juvenile may be detained in that facility per N.J.S. 2A:4A-43(c). Courts in counties without access to an approved facility may impose incarcerations in State facilities per N.J.S. 2A:4A-43(f). However, juveniles who are developmentally disabled cannot be committed to a State facility per N.J.S. 2A:4A-44(c).

At the time of the Court's decision, the counties of Burlington, Gloucester, Passaic, Camden, Atlantic, Mercer, Cape May, Salem, and Essex lacked access to an approved juvenile detention facility.¹² 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 developmentally disabled juveniles to be incarcerated in a county facility but not a state facility raises constitutional concerns.¹³ 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.¹⁴ Conversely, a juvenile in similar circumstances in a county without either an approved facility or a contracted ability to use another county's facility, faces no risk of short-term detention post-adjudication.¹⁵ These differing standards of incarceration, based on the county in which the adjudication takes place, was troubling to the Court.

Where, as here, a statute might violate New Jersey's equal protection guarantee, the Court used 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."¹⁶ The means employed by the Legislature must "bear a real and substantial relationship to a permissible legislative purpose."¹⁷

The Court found that short-term detention implicates a fundamental right, because it entails the total deprivation of liberty for up to 60 days.¹⁸ Moreover, if the Court applied the plain language of the statute, the statute would require different standards of detention for similarly situated individuals based solely on the arbitrary factor of geography.¹⁹ The Court determined that it must review the issue with heightened scrutiny.²⁰ When doing so, the Court found that "there is no

¹¹ *Id.*

¹² *Id.* at 197.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 199 (Quoting *Greenberg v. Kimmelman*, 99 N.J. 552, 567 (N.J. 1985)).

¹⁷ *Id.* (Quoting *Caviglia v. Royal Tours of Am.*, 178 N.J. 460, 473 (N.J. 2008)).

¹⁸ *Id.*

¹⁹ *Id.* at 200.

²⁰ *Id.*

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.”²¹

The Court looked beyond the plain language of the statute to preserve its constitutionality.²² The Court interpreted the Juvenile Justice Code to forbid the post-adjudication detention of all developmentally disabled juveniles until all counties have access to an approved short-term detention program.²³

Additional Statutory Considerations

Staff notes that there are other statutory provisions that the Appellate Division did not mention in this case that could potentially impact the outcome of cases like this.

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.” It could be argued that one of the conditions of probation that the 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 for 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 these out of home services prescribed by the Department of Children and Families could be similar to the short-term county facility mentioned in N.J.S 2A:4A-43(c).

Staff cannot determine how these provisions would affect a court in considering the issue presented in *State in Interest of T.C.* as the Appellate Division did not discuss them in its opinion.

Pending Legislation

Additionally, there are six items of pending legislation to amend N.J.S. 2A:4A-43.²⁴ None of this legislation addresses the issue presented in *State in Interest of T.C.*, although Staff has noted that S.B. 48, 218th Leg., 2nd Sess. (N.J. 2019) would remove N.J.S. 2A:4A-43(f) altogether.

²¹ *Id.* at 201-202.

²² *Id.* at 198.

²³ *Id.* at 202.

²⁴ S.B. 48, 218th Leg., 2nd Sess. (N.J. 2019).

A.B. 5217, 218th Leg., 2nd Sess. (N.J. 2019).

A.B. 5191, 218th Leg., 2nd Sess. (N.J. 2019).

S.B. 1080, 218th Leg., 1st Sess. (N.J. 2019).

S.B. 3447 218th Leg., 2nd. Sess. (N.J. 2019).

Conclusion

Staff seeks authorization to conduct additional research and outreach regarding this issue to determine whether amending the relevant statute would alleviate the constitutional issue identified by the Court.