

STATE OF MINNESOTA
COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT COURT
JUVENILE COURT DIVISION

**CONFINEMENT OF SOCIAL SERVICES YOUTH
AT THE HENNEPIN COUNTY JUVENILE
DETENTION CENTER**

ORDER

WHEREAS the Hennepin County Juvenile Detention Center (JDC) is a correctional facility authorized to house youth who have been charged with a juvenile crime or who are under delinquency jurisdiction and the JDC is not authorized to house children who are not charged with juvenile crimes, i.e. children who are under the court's jurisdiction due to having been found, as a result of abuse or neglect or due to sexual exploitation, to be in need of protection or services (CHIPS) or who receive mental health services, AND

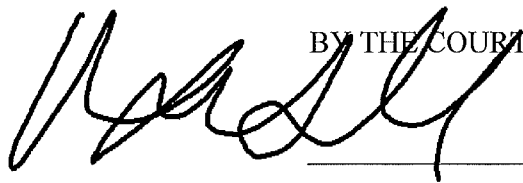
WHEREAS Chapters 260B and 260C, which govern juvenile delinquency and juvenile safety and placement state that non-delinquent children may only be placed with a relative, a designated caregiver or in a shelter facility but in any event the placement must be "the least restrictive setting consistent with the child's health and welfare and in closest proximity to the child's family as possible", AND

WHEREAS the Hennepin County Human Services and Public Health Department (HSPHD) is presently developing appropriate alternatives to the use of the JDC.

IT IS HEREBY ORDERED:

1. Effective **September 1, 2015** no youth will be ordered to or admitted to the Hennepin County Juvenile Detention Center (JDC) who does not meet the licensing and detention criteria of that facility.
2. Each social service warrant must set forth reasons for the warrant which meet the requirements of Minnesota Statute Chapter 260C and 260B and may only request release to relative or caregiver or placement in a shelter or other appropriate facility authorized for such youth.
3. The attached Memorandum is incorporated herein.

Dated:


BY THE COURT

Margaret Daly

2015.04.27 08:51:48

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Judge Margaret A. Daly
Presiding Judge of Juvenile Court

Memorandum

The Hennepin County Juvenile Detention Center (JDC) is a correctional facility authorized¹ to house youth who have been charged with a juvenile crime or who are under delinquency jurisdiction.² The JDC is not licensed to house children who are not charged with juvenile crimes, e.g. children who are under the court's jurisdiction due to having been found, as a result of abuse or neglect or due to sexual exploitation³, to be in need of protection or services (CHIPS) or who receive mental health services. Nonetheless at times these children are ordered confined at the JDC and are held there with children who have committed serious offenses.

Chapters 260B (Delinquency) and 260C (Juvenile Safety and Placement) both address the issue of detention. Under both children may be held initially (up to 24 hours) in a shelter facility or a secure detention facility but the statute sets forth strict guidelines for such detention. *See* Minn. Stat. §§ 260B.181 and 260C.181 (2014). The primary distinction between secure detention and a shelter is that the former is “physically restricting” and the latter is “physically unrestricting.” Minn. Stat. §§ 260B.007, subd. 29, 30 and 260C.007, subd. 29, 30 (2014). Non-delinquent children may only be placed with a relative, a designated caregiver or in a shelter facility, but in any event the placement must be “the least restrictive setting consistent with the child’s health and welfare and in closest proximity to the child’s family as possible.” Minn. Stat. §§ 260B.181, subd.2 and 260C.181, subd. 2 (2014).

The Hennepin County Juvenile System for many years has relied on the holding in *State ex rel. L.E.A. v. Hammergren*, 294 N.W.2d 705 (Minn.1980) as authority to detain social service children in the JDC. That case addressed the use of constructive contempt to incarcerate “wayward and habitually disobedient” youth (status offenders) who failed to comply with court orders. The Legislature had amended the juvenile law to prohibit placing such youth in secure detention.⁴ Hennepin County had been using constructive contempt to hold those children in secure detention when they violated orders for placement, for example by running away. While the Minnesota Supreme Court did not completely forbid the practice it stated that “only under the most egregious circumstances should the juvenile courts exercise their contempt power in such a manner that a status offender will be incarcerated in a secure facility. If such action is necessary, the record must show that all less restrictive alternatives have failed.” *Id.* at 707-08.

The *Hammergren* opinion, citing an ABA Juvenile Justice Project, noted: “

[R]unaway youth, truant youth, and otherwise ‘incurable’ and ‘wayward’ youth are

¹ State law as cited and the Juvenile Justice and Delinquency Prevention Act , 42 U.S.C. § 5601 *et seq.*, limit secure detention facilities to delinquent youth.

² Even with regard to those delinquent youth Hennepin County has implemented standards, consistent with JDAI principles, under which we seek to detain only those delinquent children who meet certain criteria, usually those charged with or convicted of serious crimes, in an effort to reduce the number of children subjected to the deleterious impact of confinement.

³With regard to sexually exploited youth the Legislature has recently determined that they should be recognized as victims, not delinquents. *See* Minn. Stat. §260B.007, subd. 6(c)(2014).

⁴ The statute in effect at the time, since repealed, expressly limited placement of such youth in any place other than shelter. The language of that statute is now contained in 260C.181.

best served outside the juvenile court system and outside juvenile detention facilities...[O]nce children are defined as delinquent and placed with delinquent law-breakers, they may conform their behavior to that label, thus countermanding the entire process. The Legislature may well have determined that removing status offenders from facilities designed for law violators would result in better treatment, better programs, and better services for the child and that child's family. In addition we interpret the amendment as reflecting the Legislature's concerns with co-mingling disobedient or wayward children with juveniles who have allegedly committed more serious crimes." *Id.* at 707.

Justice Rosalie Wahl, in a concurring opinion, went further, arguing that "even where the circumstances are 'most egregious'...the use of constructive contempt to incarcerate young people...directly contravenes the plain meaning of the statute..." *Id.* at 708. Citing criticism of the "bootstrapping" practice of confining children for contempt from courts in other states, Justice Wahl concludes that "[c]ourts should not, by their inherent contempt powers to enforce the terms of their orders, incarcerate a child for the very conduct which under the statute constitutes him or her as being in need of supervision only." *Id.* at 709.

The concern cited in *Hammergren* in 1980 for status offenders is consistent with our current understanding, informed by much research in the intervening years, regarding trauma and the harmful effects of even short periods of detention on children. If the argument against detention for children who are "incorrigible" or "wayward" is compelling, it is even more so for youth who have been found to have been abused, neglected or sexually exploited, or who, related to those issues or separately, suffer from serious emotional or mental disorders. These children may be the subject of pending child protection cases or have become state wards following termination of their parents' right or have been placed in long-term-foster care. Newly developed trauma assessment tools tell us what common sense has indicated for years, that these children enter the system traumatized by events that lead to Hennepin County Human Services and Public Health Department's (HSPHD) involvement. Removal from their homes and communities for protective placement carries additional trauma, however necessary to their safety. Not surprisingly these children struggle in placements and engage in running, self-harm and sometimes aggressive behaviors toward others. Placing these children in a correctional facility when they exhibit the very behavior that is symptomatic of the past experiences that caused the system to intervene for their protection is piling trauma on top of trauma.

As noted our social service children have been ordered to the JDC most often when they have either run away from a foster home or other out-of-home placement or have engaged in behavior which has caused them to be discharged from a placement⁵. Some of our social service youth have had over ten admissions to the JDC and have had significant periods of detention there, weeks at a time while a new placement is sought.⁶ These admissions have been requested and ordered with good intentions, out of concern for the safety and stability of the child. The reality

⁵ Chapter 260C and *Hammergren* set forth procedures and findings which must be provided related to the detention of these youth but in practice this is followed in only a cursory way, with a warning at the outset and warrant prior to confinement.

⁶ While the law does allow a brief detention (24 hours or less) these children are not admitted for issues resolvable within that time period and in fact such a brief detention would be of little use to HSPHD.

though is these children do not stay in the JDC forever. They are released again to community placements having received little in the way of rehabilitative services but having been exposed to a correctional environment. When they are re-released to the community the children often continue to run and act out. During that time they are at risk. This cycle of failed placements and JDC detention is not an intervention that reduces risk over the course of these children's lives. It serves instead to increase risky behavior and trauma.

It is past time to end this well-intended but flawed practice. Both HSPHD and Juvenile Corrections (which runs the JDC) have recognized that this practice is no longer acceptable and HSPHD has agreed that effective **September 1, 2015** social service youth will no longer be held in the JDC and that any social service warrants requested will direct that a child who has disrupted from a placement may only be placed with a relative, a designated caregiver or in a shelter care facility or other appropriate social service facility authorized for their care. HSPHD is currently developing resources which can meet the needs of these children and address their safety in a facility licensed for their care.

The court is appreciative of the many hours of discussion and research that has been committed to this issue and for the dedication of the professionals working in this system in both corrections and HSPHD all of whom who care deeply about children. Going forward we must continue to be guided by best practices related to sexually exploited and abused and neglected youth and incorporate recognized standards for trauma-informed care. With that guidance we will create a better path and ultimately greater safety for these children.

MAD