

To: New Jersey Law Revision Commission
From: Arshiya Fyazi, Counsel¹
Re: *State in Interest of T.C.*, 454 N.J. Super. 189 (App. Div. 2018)
Post-adjudication Incarceration of Juveniles (N.J.S. 2A:4A-43(c))
Date: April 6, 2020

MEMORANDUM

Background

In *State in Interest of T.C.*,² 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.

As a child, T.C., was classified as multiply disabled and placed on the autistic spectrum.³ At the age of 17, T.C. pled guilty to what would have amounted to second degree robbery if committed by an adult.⁴ The Court imposed a two year probationary term with 30 days at the Ocean County Juvenile Detention Center and 30 days of electronic monitoring.⁵

On appeal, T.C. argued that the law did not allow for developmentally disabled juveniles to be incarcerated in state or county facilities.⁶ The State maintained that while the statute prohibited the detention of developmentally disabled juveniles in a State facility, it did not prohibit their incarceration in certified county short-term detention programs.⁷ At the time of appeal, nine counties lacked access to an approved juvenile detention facility.⁸

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. A county without access to an approved facility may incarcerate a juvenile in a State facility pursuant to N.J.S. 2A:4A-43(f).⁹ N.J.S. 2A:4A-44(c) prohibits the State from committing a juvenile to a State facility.

The Court found that a plain reading of the Juvenile Justice Code violated New Jersey's constitutional guarantee of equal protection. The Court in *T.C.* held that juveniles with developmental disabilities may not be held in county detention facilities if there was no certified, short-term incarceration program in every county.¹⁰

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

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

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 195.

⁷ *Id.*

⁸ *Id.* at 197.

⁹ The language in N.J.S. 2A:4A-43(f) was deleted by amendment, P.L. 2019, c. 363.

¹⁰ *State in Interest of T.C.* at 193.

In July 2018, the Commission authorized review of pending legislation and requested that Staff provide the Commission with an analysis of this legislation in a future Memorandum. Staff's work in this area follows.

Pending Legislation

At the Commission's request, Staff reviewed bills related to the incarceration of juvenile offenders in the State of New Jersey. In this new legislative session, Staff found two relevant bills that seek to amend N.J.S. 2A:4A-43.

- **A1414 and S2249**

Assembly bill 1414¹¹ is identical to Senate bill 2249.¹² Both propose to establish a Juvenile Offender Community Conservation and Improvement Services program.¹³ The bills establish a 90 day nonresidential rehabilitative program that provides juvenile offenders with an opportunity to learn various life skills and improve public areas such as State parks and beaches.¹⁴ These bills, if enacted, will offer the courts an alternate sentencing option for non-violent juvenile offenders.¹⁵ Similar bills were introduced in the last legislative session in both the houses but did not move forward after introduction.¹⁶ While the bills addresses necessary services for juvenile offenders, they do not address the constitutional defect discussed by the Court in *State in Interest of T.C.*

- **A1915**

Assembly bill 1915 focuses on juvenile incarceration and parole.¹⁷ This bill imposes restrictions on the incarceration of juveniles.¹⁸ It vests parole decisions concerning juveniles in a panel comprised of at least two members of the Juvenile Justice Commission (JJC).¹⁹ Pursuant to the bill, the panel is given the discretion to impose a term of post-incarceration supervision, but only if it finds it necessary to effectuate the juvenile's rehabilitation and reintegration into society.²⁰ Finally, the bill eliminates certain fines imposed on juveniles and requires the JJC to establish a program to collect, record, and analyze data regarding juveniles who were sentenced to a term of incarceration.²¹ A similar bill was signed into law by Governor Murphy on January 20, 2020.²² Although the newly enacted statute addresses the incarceration of juvenile offenders, it does not address the constitutional deficiency discussed by the court in *In the Interest of T.C.*

¹¹ Proposed legislation A.B. 1414, 219th Leg., 1st Sess. (N.J. 2020) introduced in the Assembly on Jan. 14, 2020.

¹² Proposed legislation S.B. 2249, 219th Leg., 1st Sess. (N.J. 2020) introduced in the Senate on Mar. 16, 2020.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ A.B. 5217, 218th Leg., 2nd Sess. (N.J. 2019); S.B. 3447, 218th Leg., 2nd Sess. (N.J. 2019).

¹⁷ Proposed legislation A.B. 1915, 219th Leg., 1st Sess. (N.J. 2020) introduced in the Assembly on Jan. 14, 2020.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² S.B. 48, 218th Leg., 2nd Sess. (N.J. 2018) was incorporated into P.L.2019, c.363.

Conclusion

So far, the bills that seek to amend N.J.S. 2A:4A-43, do not address the issues presented in *State in Interest of T.C.* 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.