

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

T.9

FILED
U.S. DISTRICT COURT
DISTRICT OF CONNECTICUT
HARTFORD
MAY 1 1987

JANE DOE, a minor by and through
her next friend, JOHN DOE,
ELIZABETH DOE, a minor by and
through her next friend, BRIAN
CARLOW, on behalf of themselves
and those similarly situated

Plaintiffs

v.

CIVIL NO. ()

H87-673

AHN

ANTHONY MILANO, Secretary, Office
of Policy and Management, in
his official capacity
JOHN HERRINGTON, Supervisor,
Hartford Juvenile Detention
Center, in his official
capacity
JOHN BORYS, Deputy Director,
Juvenile Matters, Superior
Court, Hartford, Connecticut,
in his official capacity
AMY WHEATON, Commissioner,
Department of Children and
Youth Services, in her official
capacity
RICHARD ADAMICK, Officer,
Newington Police Department, in
his official capacity

Defendants

CLASS ACTION COMPLAINT

I. INTRODUCTION

1. Plaintiffs, children under the age of sixteen who are nondelinquent status offenders, bring this action to enjoin state officials from incarcerating them in highly secure state juvenile detention facilities merely because they have run away to Connecticut from some other state and are subject to the Interstate Compact on Juveniles. Plaintiffs seek declaratory and injunctive relief challenging C.G.S. §46-149(e), C.G.S. §46b-149a and C.G.S. §17-76 on their face and as applied as violative of plaintiffs' rights under the First, Fourth, Ninth, and Fourteenth Amendments to the United States Constitution, the Juvenile Justice Delinquency and Prevention Act, 42 U.S.C. §5633(a)(12)(A) (hereinafter "JJJPA"), and 42 U.S.C. §1983.

II. JURISDICTION

2. Jurisdiction of this action is conferred upon this Court pursuant to 28 U.S.C. §1343 and the JJJPA, 42 U.S.C. §5601 et seq.

3. Injunctive and declaratory relief is authorized pursuant to 28 U.S.C. §§2201 and 2202 and Rule 65, Federal Rules of Civil Procedure.

4. This action to redress deprivation of constitutional rights is authorized by 42 U.S.C. §1983 and statutory rights as granted by the JJJPA, 42 U.S.C. §5601 et seq. Costs and attorneys fees are authorized pursuant to 42 U.S.C. §1988.

III. PARTIES

Plaintiffs:

5. Plaintiff Jane Doe is and at all times pertinent herein was a citizen of the United States. She is fourteen years old and is presently confined at the Hartford Juvenile Detention Center (hereinafter "HJDC"). She brings this case by her next friend, her father John Doe.

6. Plaintiff Elizabeth Doe is and at all times pertinent herein was a citizen of the United States. She is fourteen years old and is presently confined at HJDC. She brings this case by her next friend, Brian Carlow.

Defendants:

7. Defendant Anthony Milano is and at all times pertinent herein has been Secretary of the Office of Policy and Management (hereinafter "OPM"). Pursuant to C.G.S. §4-65a(a), he is responsible for the management and supervision of the state budget including federal grants received by Connecticut under the JJDPA, 42 U.S.C. §5601 et seq., and for juvenile justice planning within the State of Connecticut. He is sued in his official capacity.

8. Defendant John Herrington is and at all times pertinent herein has been Supervisor of the HJDC. In this capacity, he is responsible for the day to day care and custody of all juveniles detained at the HJDC. He is sued in his official capacity.

9. Defendant John Borys is and at all times pertinent herein has been Deputy Director of Juvenile Matters, Superior Court, Hartford, Connecticut. He is responsible for overseeing the care and custody of juveniles at Connecticut's three juvenile detention centers and for reporting to defendant Milano the extent of compliance with that portion of the JJDPa which bars the housing of accused and adjudicated status offenders in secure detention or correctional facilities. 42 U.S.C. §5633(a)(12)(A). He is sued in his official capacity.

10. Defendant Amy Wheaton is and at all times pertinent herein has been Commissioner of the Department of Children and Youth Services (hereinafter "DCYS"). Pursuant to C.G.S. §17-415(k), she is responsible for acting as administrator of the Interstate Compact on Juveniles established by C.G.S. §17-76 et seq., having been so designated by the governor in accordance with C.G.S. §17-77. She is also empowered, pursuant to C.G.S. §46b-120, C.G.S. §46b-149 and C.G.S. §17-415(a), to provide services to "families with service needs," which families are defined to include families with children under sixteen years of age who have run away. She is sued in her official capacity.

11. Defendant Richard Adamick is a member of the Newington Police Department who, pursuant to C.G.S. §46b-149a, is authorized to transport children to the HJDC under the Interstate Compact on Juveniles, C.G.S. §17-75 et seq.

IV. CLASS ACTION ALLEGATIONS

12. This action is brought as a class action pursuant to Rule 23(b)(1) and (2) of the Federal Rules of Civil Procedure.

13. Plaintiffs file this complaint on behalf of themselves and all others similarly situated and seek equitable and declaratory relief for the unconstitutional acts of defendants in holding nondelinquent juvenile runaways from out-of-state in secure juvenile detention facilities.

14. The named plaintiffs, Jane Doe and Elizabeth Doe, are fourteen year-old children presently incarcerated at the HJDC pursuant to C.G.S. §46b-149, C.G.S. §46b-149a, and C.G.S. §17-76.

15. The class plaintiffs seek to represent is composed of all nondelinquent children under sixteen years of age who are incarcerated by defendants in secure juvenile detention centers merely because they have run away to Connecticut from other states.

16. The class is so numerous that joinder of all members is both impracticable and impossible. Because juvenile runaways enter and leave the State of Connecticut on a daily basis, there is constant fluctuation in the composition and number comprising the plaintiff class.

17. There are questions of law and fact common to the members of plaintiff class in that:

a. All members of the class have been or are being deprived of rights guaranteed by the First, Fourth, Ninth and Fourteenth Amendments to the United States Constitution, the JJDDPA, 42 U.S.C. §5633(a)(12)(A), and 42 U.S.C. §1983.

b. The claims of the named plaintiffs are representative of the claims presented by the class as a whole, for they have been denied all the rights which have been or may be denied the entire class.

c. All members of the plaintiff class seek injunctive and declaratory relief to prevent future violations of their statutory and constitutional rights.

18. The claims of the representative parties are typical of the claims of the class in that the constitutional and statutory deprivations caused by defendants and claimed by the named plaintiffs are the same as for all other members of the class. The named plaintiffs, like all other class members, are nondelinquent children under the age of sixteen who seek to be free from the illegal actions of defendants in confining them in a secure juvenile detention center.

19. The representative parties will fairly and adequately protect the interests of the class. The named plaintiffs have no interests antagonistic to the class. Further all plaintiffs are represented by attorneys experienced in federal constitutional litigation.

20. The prosecution of separate actions by individual members of the classes would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the parties opposing the class.

21. Defendants have consistently acted and refused to act on grounds generally applicable to the class. Thus, final injunctive and declaratory relief with respect to the class as a whole will be appropriate.

V. STATEMENT OF FACTS

22. Plaintiff Jane Doe is a fourteen year old juvenile who, until recently, resided with her mother in Port St. Lucie, Florida.

23. In March 1977, plaintiff Jane Doe's parents, who resided in Connecticut at the time, were divorced. Custody was awarded to plaintiff Doe's mother by the Superior Court, Hartford, Connecticut, subject to reasonable visitation by the father.

24. Plaintiff Jane Doe's father, John Doe, presently resides in Newington, Connecticut with plaintiff Doe's grandmother and plaintiff Doe's brother.

25. On or about August 12, 1987, because of repeated disagreements with her mother, plaintiff Jane Doe left her mother's home without her mother's knowledge or permission and ran away to her father's home in Newington, Connecticut.

26. John Doe willingly accepted plaintiff Jane Doe into his home and began to provide a warm, loving environment for his daughter.

27. On August 15, 1987, after reporting her daughter missing to police, plaintiff Doe's mother learned of her daughter's whereabouts. This information was immediately transmitted to members of the Newington Police Department.

28. On that date, plaintiff Jane Doe was taken into custody as a runaway by defendant Adamick, an officer of the Newington Police Department. Defendant Adamick was acting pursuant to C.G.S. §46b-149a and C.G.S. §17-76, the Interstate Compact on Juveniles, which authorizes the holding of a juvenile by Connecticut authorities pending the forwarding of proper requisition papers by the state of origin. Plaintiff Jane Doe was thereafter transported by the Newington Police to the HJDC pursuant to C.G.S. §46b-149(e) which has been interpreted by defendants to allow status offenders such as plaintiff Doe to be incarcerated in one of the state's three juvenile detention facilities.

29. Upon plaintiff Jane Doe's arrest, John Doe, her father, sought to obtain legal custody of plaintiff Jane Doe from his former wife. On August 17, 1987, Superior Court Judge Mary Aspell issued an order of temporary custody granting John Doe temporary guardianship over plaintiff Doe and allowing plaintiff Doe to stay

with her father while formal motions to change custody, from her mother to her father, filed August 17, 1987, are heard and adjudicated.

30. Despite this Order, plaintiff Jane Doe currently remains incarcerated at the HJDC, having been ordered to remain there by an Order issued by a Superior Court Judge for Juvenile Matters, Judge Frederica Brenneman, until a formal hearing pursuant to the Interstate Compact on Juveniles is held.

31. Plaintiff Jane Doe remains incarcerated at HJDC, a locked, secure facility, although she has neither committed nor been charged with committing any criminal offense, nor violated any valid court order directed against her.

32. Plaintiff Elizabeth Doe is a fourteen year old child who is presently incarcerated at HJDC as an out-of-state runaway. She is held there pursuant to C.G.S. §§46-149(e) and C.G.S. §17-76, the Interstate Compact on Juveniles.

33. Prior to her incarceration at HJDC, plaintiff Elizabeth Doe had been living in California at the Orangewood Home, a temporary shelter for abandoned, abused and neglected children. There is presently pending in California a petition of neglect against her father, alleging child abuse.

34. Plaintiff Elizabeth Doe, at the time of her arrest in Connecticut, had not been adjudicated a delinquent either in Connecticut or in California.

35. Defendant Herrington, as Supervisor of the HJDC, supervises the incarceration of children confined therein, including children who are charged with delinquent acts, children adjudicated to be delinquent and awaiting disposition, children who have escaped from Long Lane School and are awaiting return there, as well as children, such as plaintiffs, who are neither charged with nor convicted of delinquent acts but who merely are out-of-state runaways.

36. Defendant Borys, as Deputy Director of Juvenile Matters, oversees the care and custody of juveniles at HJDC and the state's other two juvenile detention facilities.

37. The HJDC is a highly secure, regimented institution which is similar in many respects to an adult jail.

38. The outside doors of the HJDC are locked twenty-four hours a day. Children, including plaintiffs, are not free to leave the building except to go to Court or to other professional appointments such as for emergency medical treatment and only under escort.

39. The individual rooms within the facility in which defendants Herrington and Borys incarcerate plaintiffs and others

similarly situated are small and sparsely furnished. The windows within the rooms cannot be opened from the inside. At various times during the day and at night, plaintiffs are routinely locked in their rooms in solitary confinement.

40. Plaintiffs are not allowed to have pens or pencils in these rooms. The only items allowed are two books and one set of pajamas.

41. Plaintiffs and others similarly situated rarely are allowed outside. Most of their time is spent in large communal rooms watching TV or playing pingpong.

42. The temperature in the communal and individual rooms has been extremely cold. This problem is exacerbated due to defendants Herrington and Borys' policy of not allowing children in detention to wear shoes, sneakers, hats or jackets.

43. During the current summer months, there is no school program at the HJDC. When school is scheduled, it consists of only approximately thirty-five to forty minutes of tutoring each day.

44. Visitation for plaintiffs is severely restricted. They are permitted to visit only with parents, lawyers, clergy and probation officers. Parents are allowed only during regular visiting hours which is one hour per day on weekdays and one hour per day on the week-end at the discretion of officials at HJDC. They are not allowed to visit with siblings or friends except in extraordinary

circumstances. Limited phone calls are allowed to parents, lawyers, clergy and probation officers. Other calls are at the discretion of the HJDC.

45. Plaintiffs have received no individual therapy or counseling from any professional staff on a regular basis since they have been there.

46. There have been assaults at the facility and some children have made suicidal gestures because of the extreme anxiety they feel when incarcerated at HJDC.

47. In 1980, the Connecticut General Assembly enacted "Families with Service Needs" legislation, C.G.S. §46b-149, in part to deinstitutionalize status offenders such as plaintiffs and thereby bring the State of Connecticut into compliance with the JJDPA which requires that status offenders not be housed in secure detention or correctional facilities.

48. Defendant Anthony Milano, as Secretary of OPM, is responsible for the supervision and management of those federal monies disbursed to Connecticut under the JJDPA.

49. Defendant Milano continues to receive federal funds pursuant to the JJDPA, but fails to report and prevent the commingling of interstate compact runaways with juvenile delinquents as required by JJDPA.

50. Children who run away within the State of Connecticut are treated differently and more favorably than children, such as plaintiffs, who run away into Connecticut from out-of-state although both categories of runaways are status offenders. An intrastate runaway can, inter alia, be referred to defendant Wheaton for any voluntary services provided by DCYS, be committed to the custody of defendant Wheaton, Commissioner of DCYS, pursuant to C.G.S. §46b-148, and be placed in his or her own home, in the custody of a relative or in shelter facilities or homes which are not secure, but may not in any circumstance, be housed in a secure detention facility like HJDC.

51. The shelters in which interstate runaways can be placed are staffed with persons who are specially trained to provide counselling services to such youth until the problems in their living arrangements can be resolved.

52. The only two groups of status offenders, exempted by state statute from the protections afforded Connecticut status offenders to be free of detention in secure facilities are those, like plaintiffs, who are detained under the Interstate Compact on Juveniles, C.G.S. §17-76, and those who have violated a court order specifically directed at them, C.G.S. §46b-148. Even under C.G.S. §46b-148(b), those juveniles who violate court orders can be detained only if a hearing occurs within seventy-two hours (excluding weekends and holidays) and there is a judicial determination that there is no less restrictive alternative.

53. The incarceration of status offenders such as plaintiffs in the same detention centers as children who are alleged or adjudicated as delinquent for criminal acts, punishes rather than treats the child and is not in the best interest of a child from a family with service needs.

54. Plaintiffs and others similarly situated are currently suffering irreparable injury and have no adequate remedy at law.

VI. FIRST CAUSE OF ACTION - Equal Protection

55. The allegations of paragraphs one through fifty-four are incorporated by reference, as though pleaded herein in full.

56. C.G.S. §46b-149(e), C.G.S. §46b-149a and C.G.S. §§17-75 through 17-81 as written and as here applied by defendants to authorize the detention of plaintiffs and members of the plaintiff class of nondelinquent juvenile interstate runaways in secure detention facilities violate the rights of plaintiffs to equal protection of the law in that:

a. nondelinquent juvenile interstate runaways are confined in secure detention facilities which severely restrict their physical liberty whereas nondelinquent juvenile interstate runaways, who run away but remain within the State of Connecticut, are not confined in such facilities;

b. nondelinquent juvenile interstate runaways are confined in secure detention facilities without even the judicial findings

which are mandated by C.G.S. §46-149(e) as a prerequisite to the vesting of temporary custody of nondelinquent juveniles in suitable persons or agencies;

c. nondelinquent juvenile interstate runaways are confined in secure detention facilities without a judicial determination that there is no less restrictive alternative appropriate to the needs of the juvenile and the community whereas, under C.G.S. §46b-148, delinquent juveniles who have violated valid court orders directing them not to run away cannot be held in secure detention facilities unless such a judicial determination is made;

d. nondelinquent juvenile interstate runaways can be confined indefinitely in secure detention facilities without any judicial determination as to the validity of and need for such confinement whereas, under C.G.S. §46b-148, delinquent juveniles who have violated valid court orders directing them not to run away cannot be held in such facilities for more than seventy-two hours (excluding Saturday, Sunday, and holidays) without a judicial hearing, with continued detention allowed thereafter only upon judicial determination that there is no less restrictive alternative appropriate to the needs of the juvenile and the community;

e. Nondelinquent juvenile interstate runaways are deprived of the rehabilitative services and treatment provided by defendant Wheaton to nondelinquent juvenile intrastate runaways.

VII. SECOND CAUSE OF ACTION - Due Process

57. The allegations of paragraphs one through fifty-six are incorporated by reference, as though pleaded herein in full.

58. C.G.S. §46b-149(e), C.G.S. §46b-149a, and C.G.S. §§17-75 through 17-81 as written and as applied by defendants to authorize the detention of plaintiffs and members of the plaintiff class of nondelinquent juvenile interstate runaways in secure detention facilities violates plaintiffs' Fourteenth Amendment right to due process of law in that:

a. plaintiffs' physical liberty is restricted and plaintiffs are confined in secure and penal conditions without any judicial determination of legal wrongdoing by them;

b. plaintiffs' physical liberty is restricted without any judicial determination that such confinement is necessary for defendants to provide rehabilitative care and treatment to them;

c. plaintiffs' physical liberty is restricted and plaintiffs are confined in secure and penal conditions without any judicial determination that such confinement is necessary to provide rehabilitation to plaintiffs, to protect plaintiffs, or to protect society;

d. plaintiffs' physical liberty is restricted without any judicial determination that placement of plaintiffs in said facilities is the alternative which is the least restrictive of plaintiffs' rights to liberty and to family integrity;

e. plaintiffs are confined by defendants in secure and penal conditions which are restrictive of their liberty yet in which no rehabilitative care and treatment is provided to them by defendants to assist them in whatever problems occasioned their run-away behavior;

f. defendants' commingling of plaintiffs, who are nondelinquent juveniles, together with juveniles who are accused and/or convicted of criminal conduct subjects plaintiffs to penalties which are constitutionally unwarranted and disproportionate to their actions.

VIII. THIRD CAUSE OF ACTION - Family Integrity

59. The allegations of paragraphs one through fifty-eight are incorporated by reference, as though pleaded herein in full.

60. Defendants' confinement, pursuant to C.G.S. §46b-149(e), C.G.S. §46b-149a, and C.G.S. §§17-75 through 17-81, of those members of the plaintiff class, who are nondelinquent juveniles who have run away from one parent but who are incarcerated in secure detention facilities because they are interstate runaways subject to the Interstate Compact on Juveniles, C.G.S. §§17-75 et seq., violates said plaintiffs' rights to family integrity as guaranteed by the First, Ninth, and Fourteenth Amendments to the United States Constitution.

IX. FOURTH CAUSE OF ACTION - Unreasonable Seizure

61. The allegations of paragraphs one through sixty are incorporated by reference, as though pleaded herein in full.

62. Defendants' confinement of plaintiffs in secure detention facilities, pursuant to C.G.S. §46b-149(e), C.G.S. §46b-149a, and C.G.S. §§17-75 through 17-81, violates plaintiffs' rights to be free of unreasonable seizures as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

X. FIFTH CAUSE OF ACTION - Juvenile Justice and Delinquency Prevention Act

63. The allegations of paragraphs one through sixty-two are incorporated by reference, as though pleaded herein in full.

64. C.G.S. §46b-149(e), C.G.S. §46b-149a, and C.G.S. §§17-75 through 17-81 as written and as applied by defendants to authorize the detention of plaintiffs and members of the plaintiff class, who are nondelinquent juvenile interstate runaways, in secure detention facilities are violative of the JJJPA of 1974, as amended by the Juvenile Justice Amendments of 1980, §5601 et seq., and most specifically JJJPA's prohibition on the detention of all status offenders in secure detention or correctional facilities, 42 U.S.C. §5633(a)(12)(A).

XI. PRAYER FOR RELIEF

Wherefore, plaintiffs request that this Court:

1. Assume jurisdiction over this action.
2. Certify this case as a class action.
3. Enter a declaratory judgment declaring that C.G.S. §46b-149(e), C.G.S. 46b-149a and C.G.S. §17-76 which allow nondelinquent runaways from states other than Connecticut to be detained together with violent and non-violent juvenile delinquents in locked juvenile detention facilities are violative, both on their face and also as applied, of the First, Fourth, Ninth and Fourteenth Amendments to the United States Constitution, the JJDP, 42 U.S.C. §5633(a)(12)(A), and 42 U.S.C. §1983.
4. Enter temporary, preliminary, and permanent injunctions enjoining defendants, their agents and successors in office from enforcing C.G.S. §46b-149(e), C.G.S. §46b-149a and C.G.S. §17-76 insofar as said statutes authorize defendants to incarcerate nondelinquent juvenile interstate runaways in secure juvenile detention facilities in Connecticut and enjoining defendants from continuing to incarcerate members of the plaintiff class in such facilities.
5. Award to plaintiffs their costs and attorneys' fees.

6. Award to plaintiffs such other and further relief as this Court deems just and proper.

Respectfully Submitted,

BY: Martha Stone / Shelley Geballe

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