Runaway Youth

CHILDREN'S LAW CENTER OF MINNESOTA

Practice Tips for Attorneys When a Client Runs Away

All too often, foster children, particularly those in their teens, tend to "vote with their feet" when a foster care placement is not working out. If you have a client who goes on run, the following tips may be helpful in representation of your client. Please call CLC staff attorneys or social worker if you have questions about representation of a client who becomes a runaway.

A. Contact with the Runaway Child

If your client contacts you while she is on run, your communications will continue to be confidential and privileged attorney-client communications. Attorneys are not mandated reporters, so you are not obligated to report her location to social services; you are, however, required to immediately advise your client that she should turn herself in to authorities, or should contact her case worker immediately. Once that advice is conveyed, ensure that she is safe, and ask whether there are any questions she has of you.

B. Continued Representation at Hearings

Continue to attend any review hearings held even if your client is on run and her whereabouts are unknown. Ordinarily, your report will be that the child takes no stated position on the matters discussed. However, you should continue to ensure the preservation of the child's right to services when she returns to foster care, and should continue to engage in communications with the other players to keep informed on the case status. When your client does return from being on run, you may need to request a hearing to discuss placement and other services.

C. CHIPS Petitions for Absenting/Runaways

The definition of a child in need of protection or services includes children who are runaways. Minn. Stat. § 260C.007, subd. 6 (13). In some cases, an absenting/runaway CHIPS petition or citation may be filed with the court by the county attorney or by a peace officer. Children who are already under the child protection court's jurisdiction, and who already have a CLC lawyer representing them in that matter, may look to their CLC attorney for guidance in dealing with the runaway charge. Please contact CLC staff if this issue arises in your case, and we will provide guidance about how to assist your client.

Section 260C.007, Subd. 6 "Child in need of protection or services" means a child who is in need of protection or services because the child: **(13)** is a runaway

Section 260C.007, Subd. 28 - A "runaway" is an unmarried child under age 18 who is absent from the home of a parent or other lawful placement without the consent of the parent, guardian or lawful custodian.

260C.143 PROCEDURE; HABITUAL TRUANTS, RUNAWAYS, OFFENDERS.
Subdivision 1.Notice: When a peace officer, or attendance officer in the case of a habitual truant, has probable cause to believe that a child is in need of protection or services under section 260C.007, subdivision 6, clause (13) or (14), the officer may issue a notice to the child to appear in juvenile court in the county in which the child is found or in the county of the child's residence. If there is a school attendance review board or county attorney mediation program operating in the child's school district, a notice to appear in juvenile court for a habitual truant may not be issued until the applicable procedures under section 260A.06 or 260A.07 have been followed. The officer shall file a copy of the notice to appear with the juvenile court of the appropriate county. If a child fails to appear in response to the notice, the court may issue a summons notifying the child of the nature of the offense alleged and the time and place set for the hearing. If the peace officer finds it necessary to take the child into custody, sections 260C.175 and 260C.176 shall apply.

Subd. 2.Effect of notice: Filing with the court a notice to appear containing the name and address of the child, specifying the offense alleged and the time and place it was committed, has the effect of a petition giving the juvenile court jurisdiction. In the case of running away, the place where the offense was committed may be stated in the notice as either the child's custodial parent's or guardian's residence or lawful placement or where the child was found by the officer. In the case of truancy, the place where the offense was committed may be stated as the school or the place where the child was found by the officer.

Subd. 3.Notice to parent: Whenever a notice to appear or petition is filed alleging that a child is in need of protection or services under section 260C.007, subdivision 6, clause (13) or (14), the court shall summon and notify the person or persons having custody or control of the child of the nature of the offense alleged and the time and place of hearing. This summons and notice shall be served in the time and manner provided in section 260C.151, subdivision 1.

260C.175 TAKING CHILD INTO CUSTODY.
Subdivision 1.Immediate custody.
No child may be taken into immediate custody except:

(1) with an order issued by the court in accordance with the provisions of section 260C.151, subdivision 6, or Laws 1997, chapter 239, article 10, section 10, paragraph (a), clause (3), or 12, paragraph (a), clause (3), or by a warrant issued in accordance with the provisions of section 260C.154;

(2) by a peace officer:

(i) when a child has run away from a parent, guardian, or custodian, or when the peace officer reasonably believes the child has run away from a parent, guardian, or custodian; or

(ii) when a child is found in surroundings or conditions which endanger the child's health or welfare or which such peace officer reasonably believes will endanger the child's health or welfare. If an Indian child is a resident of a reservation or is domiciled on a reservation but temporarily located off the reservation, the taking of the child into custody under this clause shall be consistent with the Indian Child Welfare Act of 1978, United States Code, title 25, section 1922;

(3) by a peace officer or probation or parole officer when it is reasonably believed that the child has violated the terms of probation, parole, or other field supervision; or

(4) by a peace officer or probation officer under section 260C.143, subdivision 1 or 4.

260C.176 RELEASE OR DETENTION. – See this statutory section for guidance.
Subdivision 1.Notice; release.
Subd. 2.Reasons for detention.
Subd. 3.Advisement if detained.
Subd. 4.Transportation.

See **Minn. R. Juv. Prot. P. 33, 34, and 35** for guidance about court procedures related to runaway/absenting CHIPS petitions and admit/deny hearings.

260C.201 DISPOSITIONS; CHILDREN IN NEED OF PROTECTION OR SERVICES OR NEGLECTED AND IN FOSTER CARE.

Subdivision 1.Dispositions.

(b) If the child was adjudicated in need of protection or services because the child is a runaway or habitual truant, the court may order any of the following dispositions in addition to or as alternatives to the dispositions authorized under paragraph (a):

(1) counsel the child or the child's parents, guardian, or custodian;

(2) place the child under the supervision of a probation officer or other suitable person in the child's own home under conditions prescribed by the court, including reasonable rules for the child's conduct and the conduct of the parents, guardian, or custodian, designed for the physical, mental, and moral well-being and behavior of the child; or with the consent of the commissioner of corrections, place the child in a group foster care facility which is under the commissioner's management and supervision;

(3) subject to the court's supervision, transfer legal custody of the child to one of the following:

(i) a reputable person of good moral character. No person may receive custody of two or more unrelated children unless licensed to operate a residential program under sections 245A.01 to 245A.16; or

(ii) a county probation officer for placement in a group foster home established under the direction of the juvenile court and licensed pursuant to section 241.021;

(4) require the child to pay a fine of up to $100. The court shall order payment of the fine in a manner that will not impose undue financial hardship upon the child;

(5) require the child to participate in a community service project;

(6) order the child to undergo a chemical dependency evaluation and, if warranted by the evaluation, order participation by the child in a drug awareness program or an inpatient or outpatient chemical dependency treatment program;
(7) if the court believes that it is in the best interests of the child or of public safety that the child's driver's license or instruction permit be canceled, the court may order the commissioner of public safety to cancel the child's license or permit for any period up to the child's 18th birthday. If the child does not have a driver's license or permit, the court may order a denial of driving privileges for any period up to the child's 18th birthday. The court shall forward an order issued under this clause to the commissioner, who shall cancel the license or permit or deny driving privileges without a hearing for the period specified by the court. At any time before the expiration of the period of cancellation or denial, the court may, for good cause, order the commissioner of public safety to allow the child to apply for a license or permit, and the commissioner shall so authorize;
(8) order that the child's parent or legal guardian deliver the child to school at the beginning of each school day for a period of time specified by the court; or
(9) require the child to perform any other activities or participate in any other treatment programs deemed appropriate by the court.

To the extent practicable, the court shall enter a disposition order the same day it makes a finding that a child is in need of protection or services or neglected and in foster care, but in no event more than 15 days after the finding unless the court finds that the best interests of the child will be served by granting a delay. If the child was under eight years of age at the time the petition was filed, the disposition order must be entered within ten days of the finding and the court may not grant a delay unless good cause is shown and the court finds the best interests of the child will be served by the delay.

294 N.W.2d 705
STATE of Minnesota ex rel. L.E.A., petitioner, Appellant (50619),
State of Minnesota ex rel. S.P., petitioner, Appellant (50620),
State of Minnesota ex rel. C.S., petitioner, Appellant (50621),
State of Minnesota ex rel. K.H., petitioner, Appellant (50622),
State of Minnesota ex rel. K.H., petitioner, Appellant (50623),
v.
Donald HAMMERGREN, Superintendent, Hennepin County Juvenile Detention Facility, Woodview, Respondent,
Donald Omodt, Hennepin County Sheriff, Defendant (50619).
Nos. 50619-50623.
Supreme Court of Minnesota.
June 20, 1980.
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William R. Kennedy, County Public Defender, and Patrick J. Sullivan, Asst. Public Defender, Minneapolis, for appellants.

Thomas L. Johnson, County Atty., and David W. Larson, Asst. County Atty., Minneapolis, for respondent.

Linda J. Gallant, Minneapolis, Coalition for the Protection of Youth Rights, Amicus Curiae.

Heard before SHERAN, C. J., PETERSON, and TODD, JJ., and considered and decided by the court en banc.

SHERAN, Chief Justice.

Petitioners appeal from dismissal of their petition for habeas corpus in the Fourth Judicial District. Petitioners sought habeas corpus claiming they were wrongfully being held in the Hennepin County Detention Center for contempt of court. The lower court reasoned that under Minn. Stat. §§ 260.301 and 588.01, subd. 3 (1978), the court has the power to find status offenders in constructive contempt of court for failing to comply with court orders and that In re Welfare of R.L.W., 309 Minn. 489, 245 N.W.2d 204 (1976) permits confinement in any center authorized by the Juvenile Court Act. Consequently, the lower court found that detention in the secure facility was appropriate and dismissed the petition.

The issue raised by this case is whether, despite the language of Minn. Stat. § 260.173, subd. 3 (1978) stating that wayward children shall be placed in shelter care facilities only, status offenders can be held in secure detention centers after being found in constructive contempt of court for failing to comply with court orders.

Although each petitioner's case presents a slightly different fact pattern, the parties stipulated to the following common factors. At separate times, the juveniles were each charged with being wayward and habitually disobedient within the meaning of Minn. Stat. § 260.015 (1978). Thereafter, they were each charged with constructive contempt of court under Minn. Stat. § 588.01, subd. 3(3) (1978) for violating a court order by running away from a shelter care facility1 or failing to appear for a hearing. As a result of a finding of constructive contempt of court, each was incarcerated in the Hennepin County Juvenile Detention Center.

The individual juveniles may no longer be held in a secure facility. Normally, this would render the case moot but, we find that the issue raised is "capable of repetition but evading review" and take jurisdiction. Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 546, 96 S.Ct. 2791, 2797, 49 L.Ed.2d 683 (1976); Gerstein v. Pugh, 420 U.S. 103, 110 n. 11, 95 S.Ct. 854, 861, 43 L.Ed.2d 54 (1975); Roe v. Wade, 410 U.S. 113, 125, 93 S.Ct. 705, 712, 35 L.Ed.2d

147 (1973). We make these observations notwithstanding the mootness which moves us to discharge the writ.

Juvenile courts have the authority to find a juvenile in contempt of court and to impose appropriate sanctions. But, given the Legislature's expressed disapproval of the

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practice of confining status offender juveniles in secure facilities, juvenile courts should not direct such confinement for contempt of court unless they first find specifically that there is no less restrictive alternative which could accomplish the court's purpose.2 In re Welfare of R.L.W., 309 Minn. 489, 245 N.W.2d 204 (1976); see also U. S. v. Wilson, 421 U. S. 309, 319, 95 S.Ct. 1802, 1808, 44 L.Ed.2d 186 (1975).

Minn. Stat. § 260.173, subd. 3 (1978) was amended by the Legislature in 1978 in Minn. Laws, ch. 637. The statute before the amendment stated that a child taken into custody by reason of being wayward or habitually disobedient who had previously escaped from a shelter care facility might be placed in a secure detention facility. Minn. Stat. § 260.173 (1976). As amended, Minn. Stat. § 260.173, subd. 3 (1978) states that a child taken into custody because of waywardness or habitual disobedience "may be placed only in a shelter care facility" even if she is conditionally released and has violated her field supervision. The language in the former statute authorizing the placement of these children in a secure detention facility was eliminated. The Hennepin County Juvenile Detention Center where these juveniles were incarcerated is a "secure detention facility" defined in Minn. Stat. § 260.015, subd. 16 (1978) as a "physically restricting detention facility, including a detention home."

The amendment brought Minnesota into compliance with the funding requirements of the Law Enforcement Assistance Administration of the United States Justice Department. The Juvenile Justice and Delinquency Prevention Act of 1974 requires that each state seeking funds under the Act submit a plan to ensure that wayward or disobedient children "shall not be placed in juvenile detention or correctional facilities." 42 U.S.C. § 5633(a)(12) (1976).

Minnesota, in adopting the federal policy of deinstitutionalization of status offenders, is moving in the direction adopted by the ABA Juvenile Justice Standards Project, Standards Relating to Noncriminal Misbehavior.3 The ABA Standards, and their Commentary, conclude that runaway youth, truant youth, and otherwise "incorrigible" or "wayward" youth are best served outside the juvenile court system and outside juvenile detention facilities. As Amicus Coalition for the Protection of Youth Rights rightly points out, once children are defined as delinquent and placed with delinquent law-breakers, they may conform their behavior to that label, thus countermanding the entire process. E. Schur, Radical Non-Intervention: Rethinking the Delinquency Problem, 118-126 (1973). The Legislature may well have determined that removing status offenders from facilities designed for and used 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 concern with the effects of comingling disobedient or wayward children with juveniles who have allegedly committed more serious crimes.

In light of the foregoing, we hold 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

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alternatives have failed in the past. (See State in Interest of M.S., 73 N.J. 238, 374 A.2d 445 [1977] for other alternatives.)

In L.A.M. v. State, 547 P.2d 827, 831 (Alaska, 1976), the Alaska Supreme Court noted:

Before a party may be held in criminal or civil contempt for failure to abide by a court order, certain elements must be established: (1) the existence of a valid order directing the alleged contemnor to do or refrain from doing something and the court's jurisdiction to enter that order; (2) the contemnor's notice of the order within sufficient time to comply with it; and in most cases, (3) the contemnor's ability to comply with the order; and (4) the contemnor's willful failure to comply with the order.

In order for the juvenile court to find a "willful failure to comply" which warrants a holding of contempt, the record from the previous hearing must show that the child understood that disobedience would result in incarceration in a secure facility. A child too young to comprehend the warning cannot be found in contempt of court. With these limitations, the juvenile court can resort to the use of the secure facility if absolutely necessary.

Finally, if it is necessary to rely on the use of a secure facility, the order must include instructions to the administrator of the institution that the disobedient child's contact with the more committed juvenile be kept to a minimum.

Writ discharged.

Notes:

1. A "shelter care facility" is defined by Minn. Stat. § 260.015, subd. 17 (1978) as "a physically unrestricting facility, such as a group home or a licensed facility for foster care, excluding a detention home."

2. In contrast to adults who, by escape "affront * * * the authority of the State," children who run away only harm their own well being. State in Interest of M.S., 73 N.J. 238, 374 A.2d 445 (1977).

3. 1.1 Noncriminal misbehavior generally.

A juvenile's acts of misbehavior, ungovernability, or unruliness which do not violate the criminal law should not constitute a ground for asserting juvenile court jurisdiction over the juvenile committing them.

* * * * * *

5.2 Prohibition against placement in secure facility.

In no event should alternative residential placement for a juvenile in conflict with his or her family, who has violated no criminal law, be arranged in a secure detention facility or in a secure institution used for the detention or treatment of juveniles accused of crimes or adjudged delinquent.

WAHL, Justice (concurring specially).

I concur with the discharge of the habeas corpus writs as to these four young people because, they no longer being confined, their petitions are moot. However, I believe that even where the circumstances are "most egregious" (a showing the state did not make in these cases), the use of constructive contempt to incarcerate young people under these circumstances directly contravenes the plain meaning of the statute, as set out in the text of that statute in unambiguous words, as revealed in its legislative history, and as recognized in the majority opinion.

Minn. Stat. § 260.173, subd. 3 (1978), as amended, specifically addresses the conduct which the lower court labeled "contempt of court." It provides:

If the child had been taken into custody and detained as one who is alleged to be delinquent by reason of:

* * * * * *

(c) Having been previously adjudicated delinquent, or conditionally released by the juvenile court without adjudication of delinquency, has violated his probation, parole, or other field supervision under which he had been placed as a result of behavior described in

this subdivision; he may be placed only in a shelter care facility. (Emphasis supplied.)

The history of this legislation indicates that its purpose was to bar the confinement of even those young persons who are repeatedly wayward or habitually disobedient and who violate the terms of their court-ordered probation or confinement. To define disobedience to court orders during proceedings concerning an alleged status offense as a new act of delinquency of so different a nature from the original offense as to justify secure detention violates the policy of the federal Juvenile Justice Act and makes Minn. Stat. § 260.173, subd. 3(c) meaningless.

Such a procedure has been criticized by other courts and commentators. In State in Interest of M.S., 73 N.J. 238, 374 A.2d 445 (1977), the New Jersey Supreme Court vacated delinquency adjudications against four "status offenders" whose crimes consisted of leaving a shelter care facility without permission, an offense the trial court labeled criminal "escape." The court noted that:

[t]he unauthorized leaving of a shelter is symptomatic of the very problem for which shelter care is being provided. It would be incongruous to classify a juvenile as a delinquent for the same kind of conduct which under the Act constitutes him or her as being in need of supervision only.

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73 N.J. at 244-45, 374 A.2d at 448. Similarly, the California Court in In re Ronald S., 69 Cal.App.3d 866, 138 Cal.Rptr. 387 (1977) criticized as "bootstrapping" the lower court's procedure by which a 13-year-old offender who ran away from a court-ordered shelter was charged with contempt, a criminal violation justifying secure detention. See also Matter of Mary D., 95 Cal. App.3d 34, 156 Cal.Rptr. 829 (1979). In North Carolina, where recent legislation forbids forcible confinement of juveniles charged with status offenses, one judge has cited these juveniles for contempt of court and sentenced them to solitary confinement in the local jail. This procedure has been criticized sharply and termed "unusual and highly controversial." B. Stuart, Solitary, Jail Terms for NC Youth, III Change II (Law Enforcement Assistant Administration publication) (1979) reprinted in Community Corrections Scene 6 (Washington County, Minnesota, Department of Community Corrections publication) (1980).

Minn. Stat. § 260.173, subd. 3(c) (1978) provides clearly that even those juveniles, such as those before us, who have violated the terms of their probation orders, are not to be physically confined. Courts 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.