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HEADLINE: Truants behind bars

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BODY:

For years, magistrates for Rhode Island Family Court's truancy program have imprisoned students who misbehave during hearings on their attendance, despite a state law created to keep the government from locking up juveniles for noncriminal offenses.

The magistrates, who run the weekly truancy court in classrooms, cafeterias and school offices around the state, have declared youths as young as 12 in criminal contempt of court for not answering their questions, swearing, slamming a door on their way out of the room or otherwise showing total disregard for authority, according to court documents and interviews.

Once inside the state's juvenile correctional system, the youths are forced to undergo strip searches, urine and blood tests. They wear prison uniforms and, for a night or two, mix with teenagers accused of drug dealing, robbery, weapons possession, assault and other violent crimes.

Juveniles who skip school -- like those who drink alcohol or violate a curfew -- are considered status offenders because their transgressions would not be considered crimes if they were adults.

Rhode Island law states that no child should be detained at the state Training School for a status offense.

But since 2005, the magistrates have sent at least 28 youths from truancy court to the Training School, records show, under an exception in the state law for criminal contempt of court. Few if any have been represented by a lawyer prior to their detention, as is their constitutionally guaranteed right. The proceedings are closed to the public, and the records are private.

These are blatant violations, Rhode Island Public Defender John J. Hardiman said. There's no this is a gray area of the law. It's clear you can't detain [in] these cases.

More than 6,100 students entered the Family Court's truancy program from 2005 through 2009, according to data the state reported to the federal Department of Justice. The Journal confirmed that at least 28 students were detained during those years, a small fraction of the total who participated in the program. But juvenile-justice advocates and a former U.S. Justice Department official say that even one detention of a status offender is troubling.

John J. Wilson, a lawyer in Washington, D.C., who worked almost 31 years for the Justice Department, wrote the federal regulations for compliance with the Juvenile Justice Delinquency and Prevention Act of 1974. The act provides money to states, including Rhode Island, if they abide by federal protections for youths in the justice system. To incarcerate juveniles for noncriminal offenses, even for one night, Wilson said, violates the basic premise of the federal act.

We don't punish adults for doing things that are not criminal, he said, so why in heaven's name would we punish children for doing things that aren't criminal?

For Rhode Island to use its criminal-contempt statute to lock up truants, Wilson said, is an abuse of judicial authority. And it's a practice that should be stopped.

The state's detention of these youths, Wilson said, could jeopardize Rhode Island's eligibility for federal funding. But the detentions have gone largely unnoticed because the state has failed to report them to the federal justice officials who monitor state compliance with federal regulations.

Joanne Minaya was 12 when her mother received a summons to appear with her in truancy court at the Gilbert Stuart Middle School in Providence. Joanne, who was in sixth grade, had been absent 28 of the first 109 days of the school year, according to a Family Court petition.

Although Joanne and her mother, Wanda Burgos, maintain that some of the absences should have been excused for doctors' appointments, they agreed in April 2008 to participate in the truancy court. Each Wednesday morning, a classroom became a courtroom where Magistrate Edward H. Newman, seated behind a desk, reviewed progress reports about the girl's attendance, grades and behavior.

On the morning of May 21, 2008, during third period, Joanne stood alone before Magistrate Newman. A truant officer and another school official were there, and so was a police officer, according to a hearing sheet in the court file. Joanne had been suspended for one day, tardy one day and was failing everything, Newman wrote on the hearing sheet.

There is no record of what was said during the proceeding; the truancy court has no stenographers and, at the time, the hearings were not recorded. But as Joanne left the classroom, she slammed or loudly closed the door to the classroom, according to court documents.

Joanne heard the magistrate's voice boom: Get that girl back in here!

The magistrate ordered Joanne to the Training School for two nights.

The police officer escorted Joanne to the guidance office, where he phoned her mother.

Joanne began to cry.

The next day, lawyers from the public defender's office appealed to Jeremiah S. Jeremiah Jr., then chief judge of the Family Court, to release Joanne. He refused to intervene. So they filed an emergency petition to the state Supreme Court.

Joanne's conduct in slamming or loudly closing a door, if in fact she did so, their petition stated, clearly does not rise to the level of behavior warranting the finding of summary contempt and immediate detention. At the time she was locked up, it says, she had not spoken to a lawyer.

The Supreme Court duty justice granted the petition and Joanne was freed. It was the second time that month a Supreme Court justice had overturned a magistrate's detention order in a truancy case.

Jeremiah, who retired in June after 23 years as chief judge, won national attention for the truancy court he founded as a pilot program in Providence in 1999. Over the last decade, the program has received about \$1.5 million in federal funding from the Justice Department's office of juvenile justice and delinquency prevention and expanded into 25 school districts throughout Rhode Island. The state has won national praise as a model for its innovative approach to keeping students in school.

Jeremiah said he couldn't speak about the truancy court because of pending litigation. (See related story.) The magistrates and the new chief judge, Haiganush R. Bedrosian, also declined comment through a court spokesman for the same reason, on the advice of counsel.

The American Civil Liberties Union and its Rhode Island affiliate filed suit in March against Jeremiah, five magistrates and officials in six school districts, charging them with operating the truancy court in secrecy and violating the constitutional rights of children and their parents.

The plaintiffs in the Superior Court class-action lawsuit are mostly students who have learning disabilities or medical conditions and whose absences were, in some cases, due to illnesses or doctor's appointments. The lawsuit mentions that some children were threatened with being sent to the Training School, though none of the plaintiffs in the suit were incarcerated.

Jeremiah has previously described the truancy court as a nonpunitive system that aims to support, rather than punish, students. The truancy program is like a super parent whose role is to provide support and compassion to students

when necessary while enforcing compliance through consequences, Jeremiah wrote in the fall 2001 edition of *Today*, a journal published by the National Council of Juvenile and Family Court Judges.

Truancy court is presented to students and their parents as an alternative to facing wayward or delinquency charges in Family Court. To participate, students and their parents must sign two forms -- one admitting to the truancy offenses and another waiving their right to a trial before a judge in Family Court.

The waiver of rights form says that if a student opts for a Family Court trial and refuses to obey a valid court order to attend school, the judge can sentence the child to the Training School. It also states that the signer has the right to an attorney if it appears that I could receive a sentence to the Rhode Island Training School.

But nowhere on the waiver form is it mentioned that a student who agrees to participate in the truancy court rather than go to trial may be sent to the Training School without speaking to a lawyer or having an opportunity for a hearing on the evidence, as is required in Family Court.

One morning in December 2009, Jennifer A. Fitzgerald, a lawyer with the public defender's office, noticed a man wandering the fifth-floor hallway of Family Court in Providence.

He looked like a deer in the headlights, recalled Fitzgerald, who spoke just enough Spanish to figure out why he was there. He had not slept. His wife was in the hospital and his [stepdaughter] was in jail.

Lorenzo Tavaréz, a mechanic and legal immigrant from the Dominican Republic who speaks no English, was looking for his 14-year-old stepdaughter, Anabel Pichardo.

The previous day, Tavaréz had accompanied Anabel to a truancy hearing at the Samuel W. Bridgham Middle School in Providence. The girl's mother, who was nine months pregnant, was home in bed. At the hearing, Anabel and her stepfather signed a waiver of rights form and an admission of sufficient facts form. A Family Court petition said that during the first 30 days of the school year, the eighth-grader had been absent 14 days and tardy 8 days.

Magistrate Patricia K. Asquith presided over the hearing.

At some point during the hearing, Asquith demanded that Anabel turn over her cell phone. She refused.

Do you want to go to the Training School? Anabel recalled the magistrate asking.

She did not answer.

In the left-hand margin of the hearing sheet, the magistrate wrote: Total disregard for authority. Talking in class. Not doing work. Dad take phone away. Very disrespectful to Court. Refuses to (answer) any questions posed by the court. Child in contempt of court.

In the right-hand margin Asquith penned her order: 1) Child found in contempt of court. 2) Providence Police to transport child to Training School. 3) Habeas to issue 12/4/09 Fam Ct. 4) Child to spend one night @ Training School.

A police officer handcuffed Anabel and, as her stepfather looked on, led her out of the school. She spent the night at the Training School.

The next morning, Anabel rode in a Corrections Department van to Family Court, where her stepfather was waiting.

Fitzgerald, the lawyer from the public defender's office, represented Anabel at a scheduled hearing that morning before Judge Jeremiah.

Tavaréz, the girl's stepfather, explained through a court translator why Anabel is often late for school. He said he has a disabled son whom he must dress and get ready for a day program before he drops off Anabel.

He said Anabel didn't answer the magistrate's questions because she froze up, according to a transcript of the hearing.

Fitzgerald tried to tell the chief judge that the girl's refusal to answer the magistrate's questions was not contempt but her constitutional right, but he cut her off.

I don't care, Jeremiah said. I'm trying to get her in school.

Records provided by the Family Court to The Journal in response to a public records request show that 26 youths have been detained overnight in the last five years. (While most of the students The Journal located for interviews were minority girls, it is unclear if their backgrounds are representative of those 26 students. The court did not provide data on the students' gender or ethnicity.)

Statistically, the detentions represent well under 1 percent of all truancy cases, Craig N. Berke, the state judiciary's spokesman, wrote in an e-mail. It is extremely rare. They were all for criminal contempt of court, which means the contempt occurred in the presence of the magistrate. It is typically the result of an egregious display of disrespect for the court.

Yet, the scope of the detentions remains unclear. The Journal independently obtained information about two additional detentions not on the court's original list; the court has since confirmed those cases.

Fitzgerald, the lawyer for the public defender's office, has provided Hardiman, the public defender, with documents showing another 13 students who were detained after magistrates transferred their cases to the drug court diversion program, designed to provide incentives and sanctions, outside of formal court proceedings, to juveniles who are first-time, non-violent offenders.

Those youths, she said, also had no lawyers, no written orders of their charges, and no hearings on the offenses before being detained.

Public defenders normally learn that a juvenile from these programs has been locked up only if someone alerts them or if they spot the cases on a list of detainees coming from the Training School into Family Court for a hearing.

Their goals may be excellent goals: to try to get kids to go to school to better themselves to be more productive citizens, Hardiman, the public defender, said. But taking a shortcut and sending a kid to the Training School without due process, you just can't do it. They're violating the law. And it's wrong. And they should know better. And they do know better.

Annie Salsich, director of the Youth Justice Program at The VERA Institute of Justice, a national nonprofit with offices in New York and Washington, said some judges resort to locking up juveniles because they see it as the only option.

These are often young people who are in crisis, and they do need assistance and support and, often, services, she said. The judges often feel exasperated, like their hands are tied, with parents who are often exhausted and at the end of their ropes and asking for help. And the judges feel like they need to do something.

But research shows that locking up these youths isn't the answer, she said, and may even create new problems.

Mixing kids who are low risk with the kids who really do pose a risk to public safety, Salsich said -- they learn skills we don't want them to be learning.

Anabel Pichardo's mother still tears up when she recounts the night her daughter, now 15, spent at the Training School. It was the same night her youngest child was born.

Seated in her living room in Providence one recent afternoon, Anabel by her side, Maribel Pichardo recalled lying in the hospital in labor and worrying about her daughter.

They put her in handcuffs, she said in Spanish, as her older daughter, Andriena, translated. They treated her like she was a delinquent like she had committed a crime.

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GRAPHIC: Anabel Pichardo, 15, spent a night in the Rhode Island Training School after a truancy court magistrate found her in criminal contempt of court for failing to answer questions and for being very disrespectful. At left is her 10-month-old sister, Victoria. Their mother, Maribel, was in labor the night Anabel was incarcerated. Sitting with Mrs. Pichardo are, from top to bottom, Anabel's brother, Leewys, her stepfather, Lorenzo Tavarez, and her disabled older brother, Michael.

Joanne Minaya was 12 when a truancy court magistrate sent her to the Training School for criminal contempt of court. At the time, Joanne, now 15, was a middle-school student in Providence. She is now a freshman at Shea High School, in Pawtucket.

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