JUVENILE COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO

Case No. 93JD1440 Division I

FINDINGS AND ORDER

The People of the State of Colorado,	Petitioner
In the Interest of F. N.,	Juvenile,
And Concerning F. N. AND B. S.,	Respondents.

This matter comes before the Court upon the juvenile's Motion To Declare C.R.S. 19-2-204(3)(a)(III) Unconstitutional. The Court has reviewed the briefs submitted, as well as the testimony presented, exhibits admitted, and oral arguments made during the hearing of November 8th and 9th, 1993.

FACTS

The juvenile was arrested by Denver Police on October 8, 1993 for felony menacing and illegal possession of a handgun by a minor, pursuant to C.R.S. sections 18-3-206 and 18-12-108.5, respectively. He was placed at the Gilliam Youth Center (hereinafter GYC) until the initial court appearance of October 12, 1993. At that hearing, the Magistrate found probable cause existed for both charges and ordered the juvenile detained without bond pursuant to C.R.S. section 19-2-204. The petition was then filed by the People on October 14, 1993, and the juvenile entered a not guilty plea. The juvenile, through his attorneys, shortly thereafter filed a Motion to Declare C.R.S. Section 19-2-204(3)(a)(III) Unconstitutional. The People

submitted in open court on November 8, 1993 their Brief In Opposition to the juvenile's motion.

ANALYSIS

INTRODUCTION

The juvenile's arguments are threefold. First, he argues that the new statutory provision prohibiting juveniles from possessing handguns creates a new status offense.[1] Detention of juveniles for a status offense is a violation of the principles underlying the present Colorado's Children's Code, as well as federal law; specifically, the Juvenile Justice Delinquency & Prevention Act (hereinafter, the JJDPA).

Secondly, he asserts that pre-trial detention without bond at GYC and the Arapahoe County Jail is a violation of the Children's Code. The juvenile states that this is so because the conditions at those two detention facilities are overcrowded, unsanitary, and unsafe, especially at GYC; additionally, Arapahoe County Jail continues to house adult offenders as well.

Lastly, the juvenile argues that the rebuttable presumption enacted during the recent special legislative session, codified at C.R.S. 19-2-204(3)(a)(III), is unconstitutional, both facially and as applied to him. He alleges that the presumption is violative of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the U.S. Constitution and similar provisions of the Colorado Constitution, as well as the

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[1]. The few exceptions contained in C.R.S. 18-12-108.5 are not relevant to these proceedings.

protection of the Fifth Amendment against self-incrimination. The juvenile concludes that if the amendment to the statute, adding the rebuttable presumption, were to be found unconstitutional for one or all of the aforementioned reasons, the progenitor statute would not, as a matter of statutory interpretation, be revived.

I. WHETHER INCARCERATION OF STATUS OFFENDERS VIOLATES THE COLORADO CHILDREN'S CODE AND THE JJDPA

"Status offenders" are youths who commit acts that would not constitute a criminal offense if committed by an adult, but that nevertheless subject youths to the jurisdiction of the juvenile court. In Interest Of J.E.S., 817 P.2d 508, 512, ft.6 (Colo. 1991)(status offenses include acts such as running away and truancy). The juvenile argues that by enacting C.R.S. 18-12-108.5, the legislature has created a new class of status offenders. This is compounded by the additional enactment of C.R.S. 19-2-204(3)(a)(III), which requires the court to find that a juvenile charged with possession of a weapon is presumed to be a danger to himself or the community and therefore must be detained. Therefore, the argument continues, juveniles who have committed the above status offense will, as a practical matter, be detained without bond in virtually every case pursuant to the rebuttable presumption. The detention of status offenders violates the principles underlying the Children's Code, see People v. E.R., 487 P.2d 824 (Colo.App. 1971) as well as federal law codified in the JJDPA, see Hendrickson v. Griggs, 672 F.Supp. 1126 (N.D.Iowa 1987); Kentucky Association for Retarded Citizens

v. Conn., 510 F.Supp. 1233 (W.D.Kentucky 1980).

It is clear that C.R.S. 18-12-108.5 creates a new class of status offenders, whether the term "status offense" is defined by state law, see In Interest Of J.E.S., supra, or the federal law of the JJDPA, see 28 C.F.R. section 31.304(h) and 42 U.S.C. section 5633 et. seq. The Colorado provision is specifically limited to juveniles, thereby proscribing conduct which would not be a crime if committed by an adult. It is, likewise, equally clear that Colorado is in violation of the JJDPA by detaining juveniles at GYC and the Arapahoe County Jail for the commission of this status offense. The JJDPA specifically prohibits the detention of status offenders in secured facilities. 42 U.S.C. section 5633(a)(12)(A).[2]

In Hendrickson v. Griggs, supra, the federal court in a section 1983 cause of action held that the JJDPA does create an enforceable right of action in juveniles detained as status offenders, and against states which fail to comply. The court, citing Wright v. Roanoke Redevelopment And Housing Authority, 479 U.S. 418, 93 L.Ed.2d 781, 107 S.Ct. 766 (1987), stated that when states receive funds and, in turn, subject themselves to mandatory eligibility conditions, duties are created and the states are obliged to comply with the requirements of the JJDPA.

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[2]. The Act has four Mandates, which are:
a) Deinstitutionalization of Status Offenders;
b) Separation by Sight and Sound of detained Juveniles and Adults;
c) Removal of Delinquent Children From Jails
d) Reduction of the Overrepresentation of Minority Juveniles in Detention Facilities.

Griggs, 672 F.Supp. at 1135. See also Kentucky Ass'n For Retarded Citizens v. Conn., 510 F.Supp. 1233 (for states participating in program, JJDPA is an absolute bar to placement of status offenders at secured facilities).

Additionally, the joint budget committee which reviewed the Governor's budget package for the special session legislation was specifically made aware of the fact that 1) the new gun legislation created a status offense, 2) the JJDPA prohibits the secure confinement of status offenders, and 3) the Governor's proposal to house juveniles in adult jails would directly conflict with the JJDPA. See Juvenile's Addendum to Brief (report to Joint Budget Committee). The juvenile's expert witness, Kent Berkley, an employee of the firm who contracts with the federal government to ensure compliance with the JJDPA by participating states monitor, testified that Colorado is in violation of the JJDPA Mandate regarding status offenders. The People objected to Mr. Berkley being allowed to testify as an expert. The Juvenile also offered testimony that Colorado may be in violation of the Mandate regarding the overrepresentation of minority youth in detention.

The Court also finds persuasive the juvenile's argument that the detention of status offenders violates the Children's Code. See People v. E.R., 487 P.2d 824 (Colo.App. 1971) (legislative intent was to segregate children in need of supervision from delinquent children). Though the Code has since undergone several amendments, this Court agrees that the legislative intent

has not changed. See C.R.S. 19-1-103(9)(a), before 1993 amendment; C.R.S. 19-2-102(1)(a); C.R.S. 19-2-204(1); C.R.S. 19-3-401; see also People In Interest Of T.M., 742 P.2d 905 (Colo. 1987)(underlying theme of delinquency proceedings is to provide guidance and rehabilitation for child and protection for society, rather than fixing criminal responsibility, guilt and punishment).

Therefore, this Court finds that C.R.S. 18-12-108.5 creates a status offense and that detention of status offenders, pursuant to C.R.S. 19-2-204(3)(a)(III), violates both the JJDPA and the Children's Code.

II. WHETHER PRE-TRIAL DETENTION WITHOUT BOND, GIVEN THE CONDITIONS OF CONFINEMENT, VIOLATES THE PRESUMPTION IN THE CHILDREN'S CODE THAT JUVENILES BE ELIGIBLE FOR BOND

Delinquency proceedings have been characterized as civil, not criminal, in nature. Therefore, not all of the protection afforded adult criminal defendants have been extended to juveniles. Some have, however, including protection against Double Jeopardy, Breed v. Jones, 421 U.S. 519, 44 L.Ed.2d 346, 95 S.Ct. 1779 (1974), the applicability of the criminal standard requiring proof beyond a reasonable doubt of the alleged offense, In Re Winship, 397 U.S. 358, 25 L.Ed.2d 368, 90 S.Ct. 1068 (1970), the right of written notice, of right to counsel, the privilege against self-incrimination, and the right to confront and cross-examine of adverse witnesses, In Re Gault, 387 U.S. 1, 18 L.Ed.2d 527, 87 S.Ct. 1428 (1967), and the requirement of a hearing before a juvenile is transferred from juvenile court to

adult criminal court, Kent v. Unites States, 383 U.S. 541, 16 L.Ed.2d 84, 86 S.Ct. 1045 (1966). The Colorado Supreme Court considered the above-cited U.S. Supreme Court cases when deciding whether juveniles have a constitutional right to bail. See L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981). In holding that juveniles do not have this right to bail, the Court stated that some rights provided to adult defendants have not uniformly made available to juveniles "because the protective purposes of juvenile proceedings preponderate over their punitive function." L.O.W., 623 P.2d at 1256. The Court in L.O.W. also stated that:

> [A] trial court may detain a juvenile without bail only after giving due weight to a presumption that a juvenile should be released pending a dispositional hearing except in narrowly-defined circumstances where the state establishes that detention is necessary to protect the child from imminent harm or to protect others in the community from serious bodily harm which the child is likely to inflict.

L.O.W. at 1259 (emphasis added)(citations omitted). The Court also cited favorably to the standards for juvenile detention set forth by the American Bar Association. The Standards propose, among other things, that the state should bear the burden at every stage of the proceedings of persuading the decision-maker that restraints on a juvenile's liberty are necessary. Id. Given the overcrowded, unsanitary, and in too many respects, unsafe conditions, at GYC and Arapahoe County Jail, along with the fact that Arapahoe County Jail also houses adult offenders, juveniles are no longer being treated differently than adults. Ceil Boyles, a witness for the Juvenile, testified that GYC is currently 179% over capacity.

See Exhibit 5. Susan Stein, another of the juvenile's witnesses, testified that the conclusion of her study is that exposure to delinquent peers is the primary factor in determining the likelihood of future delinquent activity.[3] See Exhibit 1. There was also testimony to the effect that conditions at the Arapahoe County Jail, despite the sight and sound separation of juveniles and adults, are a stark contrast to the conditions at GYC. The county jail is obviously intended to house adults and the conditions are tailored accordingly, i.e. non-contact visits, the wearing of prison uniforms, etc.

Therefore, this Court finds that detention pursuant to C.R.S. 19-2-204(3)(a)(III), in light of the unsafe and overcrowded conditions at both facilities, does amount to punishment. In light of these factors, no longer is fundamental fairness the touchstone of juvenile proceedings. Neither can it still be said that the juvenile court's safeguards and "ability to function in a unique manner" justify withholding from juveniles the constitutional right to bail. See McKeiver v.

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[3]. The court in Griggs stated the fallacy of the conventional wisdom on this issue very succinctly:

> [I]t would be a mistake to view this issue as a choice between protecting criminals and protecting society from crime. Many supporters of the JJDPA and the jail removal mandate believe that placing juveniles in adult jails fosters more serious criminal conduct. Senator Arlen Spector - no coddler of criminals - stated that "the consequence of mixing juveniles and adults is simply to teach juveniles how to commit more crimes. They are training schools, and I have seen that again and again and again with the experience I have had as a prosecuting attorney." Griggs at 1141.

Pennsylvania, 403 U.S. 528, 29 L.Ed.2d 527, 91 S.Ct. 1976 (1967); Breed v. Jones, supra; L.O.W., supra at 1257. The nature of detention at these facilities is punitive rather than protective[4] and, therefore, the justification cited by the Court in L.O.W. for not extending the right to bail is no longer present. Giving due weight to principles of fundamental fairness, as this Court is required to do by the above-cited decisions of the United States and Colorado Supreme Courts, the enactment of C.R.S. sections 18-12-108.5 and 19-2-204(3)(a)(III) gives rise to a Constitutional right to bail for affected juveniles.

III. WHETHER C.R.S. 19-2-204(3)(a)(III) IS CONSTITUTIONALLY INVALID, BOTH FACIALLY AND AS APPLIED TO THE JUVENILE, PURSUANT TO PROVISIONS OF THE U.S. AND COLORADO CONSTITUTIONS

A. DUE PROCESS AND RIGHT AGAINST SELF-INCRIMINATION

Section 19-2-204(3)(a)(III), in relevant part, allows that:

> With respect to this section, the court may further detain the juvenile if the court is satisfied from the information provided at the hearing that the juvenile is a danger to himself or herself or to the community. Any information having probative value shall be received regardless of its admissibility under the rules of evidence. In determining whether a child requires detention, the court shall consider any record of any prior adjudications of the juvenile. THERE SHALL BE A REBUTTABLE PRESUMPTION THAT A JUVENILE IS A DANGER TO HIMSELF OR HERSELF OR TO THE COMMUNITY IF:
> .....
> (C) THE JUVENILE IS ALLEGED TO HAVE COMMITTED ... ILLEGAL POSSESSION OF A HANDGUN BY A JUVENILE, AS DESCRIBED IN SECTION 18-12-108.5, C.R.S.

C.R.S. 19-2-204(3)(a)(III)(C).

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[4]. Though the safety of the community must also be considered, it must be weighed against the liberty interest of the juvenile. See part III of opinion.

Given the findings stated in Part II of this opinion, primarily that the principle of fundamental fairness required by the Due Process Clause gives rise to a protected interest in bail for juveniles, the next step in the analysis is to determine what process will comport with the aforementioned principal. A case cited by both parties, Schall v. Martin, 467 U.S. 253, 81 L.Ed.2d 207, 104 S.Ct. 2403 (1984), is dispositive of the issue. In Schall, the Supreme Court held constitutional a New York statute which permitted the pre-trial detention of juveniles. The Court stated that two questions presented themselves regarding a Due Process challenge to the statute. First, whether preventive detention served a legitimate state objective and whether that purpose was non-punitive in nature; second, whether the procedural safeguards contained in the statute were adequate to allow the valid detention of at least some juveniles charged with crimes. Schall, 81 L.Ed.2d at 216-217 (citations omitted). The Court determined that there were legitimate, non-punitive, state objectives for detaining juveniles and that 17 days, the maximum duration for which juveniles could be detained pursuant to the challenged statute, was reasonable in duration and the juvenile had the opportunity for a full hearing on the issue. Some of the factors to be considered when determining whether the state's objective is legitimate are 1) whether the statute at issue is a rational, rather than excessive, response to the stated interest, 2) whether the duration of detention is reasonable, 3) whether there is a provision for an expedited fact-finding hearing, and

4) the conditions of confinement. Schall, 81 L.Ed.2d at 220-221.

In the instant case, it is clear that even if it were to be assumed that the state's interest in creating the presumption contained in C.R.S. 19-2-204(3)(a)(III) is a legitimate regulatory interest, i.e., consideration of the safety of the juvenile and of the community, the restrictions and conditions of confinement to which this and other similarly-situated juveniles have been subjected are punitive in nature and are, therefore, incompatible with that interest(s). After all, it is well established that "[d]ue process requires that a pre-trial detainee not be punished." Bell v. Wolfish, 441 U.S. 520, 535, n.16, 60 L.Ed.2d 447, 99 S.Ct. 1861 (1979).

Next it must be determined whether the procedures afford pre-trial detainees sufficient protection against erroneous and unnecessary deprivation of liberty. Schall 81 L.Ed.2d at 223 (citing Mathews v. Eldridge, 424 U.S. 319, 335, 47 L.Ed.2d 18, 96 S.Ct. 893 [1976]). At the initial appearance, the juvenile is served with the petition and advised of his rights, and the People are given wide latitude in what may be used to establish probable cause to believe that a juvenile has committed the offense with which he has been charged. This procedure was also in place before the recent amendments. The charge is then either dismissed or bound over. At this point, the presumption relieves the People of requesting the juvenile be detained; the juvenile is simply held without bond, unless he or she is able to overcome the presumption.

It is at this point, when the rebuttable presumption becomes a procedural hurdle for a juvenile, that the protection of Due Process and the right to be free from making self-incriminating statements become intertwined. The People are correct in arguing that, standing alone, the right to be free from making self-incriminating statements is not implicated by the rebuttable presumption. After all, the Juvenile is not required to make any statements whatsoever during the initial appearance. However, the juvenile is forced to carry the burden of overcoming the presumption that he is not a danger to himself or the community. At this initial stage in the proceedings, it is highly unlikely that the juvenile will be able to present any evidence other than his own testimony. He or she is faced with a dilemma: testify and run the risk of making incriminating statements or refuse to testify and, as a matter of routine, be detained without bond. Additionally, the period of time for which these status offenders can be held without bond is 63 days or until the date of trial.

Given that the State's response to an admittedly legitimate interest has resulted in harsh and punitive treatment of status offenders, that the statute as amended contains very few procedural safeguards and requires the offender to carry the burden of persuasion, that the possible period of detention far exceeds that which was determined to be reasonable in Schall, and that the offender's right to be free from making self-incriminating statements is implicated, this Court finds that the rebuttable presumption constitutes an unconstitutional denial of

substantive and procedural Due Process, both facially and as applied to the offender in this case.

B. EQUAL PROTECTION

The Juvenile argues that C.R.S. 19-2-204, as amended, is violative of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and the similar provision of the Colorado Constitution, both as to him individually and other juveniles similarly situated. This is due to the fact that minority youth will be detained under the presumptive detention provision at a higher rate than non-minority youth. The juvenile argues that, either by direct or circumstantial evidence, the legislature had knowledge of this possibility. The People argue that for the juvenile to make a successful equal protection argument, there must be evidence of a discriminatory intent by the legislature; that evidence of a discriminatory impact, standing alone, is not enough.

It is a basic principle that a defendant who alleges an equal protection violation has the burden of proving the existence of purposeful discrimination, McCleskey v. Kemp, 481 U.S. 279, 95 L.Ed.2d 262, 107 S.Ct. 1756 (1987), and that the purposeful discrimination had a discriminatory effect upon him. Statistical proof normally must present a stark pattern to be accepted as sole proof of discriminatory intent under the constitution. Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 266, 50 L.Ed.2d 450, 97 S.Ct. 555 (1977). A discriminatory purpose implies more than intent as volition or

intent as awareness of possible discriminatory consequences; it implies that the decision-maker selected or reaffirmed a particular course of action at least in part "because of," not merely "in spite of," its adverse effect upon an identifiable group. See McCleskey, 481 U.S. at 282.

Regarding evidence of discriminatory intent and impact, the juvenile presented the testimony of Ceil Boyles of the Division of Youth Services (hereinafter DYS). Ms. Boyles, a research developer for DYS, testified regarding the overrepresentation of minorities in detention, as well as the problem of overcrowding at facilities managed by DYS. She stated that as of September 1993, GYC was severely over capacity, with 154 youth being detained in a facility built to hold 78 youth. She presented documentary evidence that established minority youth constitute 90% of the detained population. By comparison in Denver, minority youth (consisting primarily of Hispanic and African-american youth) between the ages of ten and eighteen comprise only 40% of the population. Ms. Boyles also testified that regarding the ethnic breakdown of youths detained on possession of handgun charges, 27.5% of the youth are Anglo, while the remaining 72.5% are minority youth. During her testimony, Exhibits 3,4,6,and 7 were admitted into evidence.

The People presented the testimony of the Honorable Roy Romer, Mayor Wellington Webb, and state senators Donald Mares and Regis Groff, both of Denver. All the above-referenced witnesses testified that, in their opinion, C.R.S. 19-2-204 was not amended

for any discriminatory reasons; that, in their discussions, the issue of race and ethnicity were not considered. However, all the People's witnesses recognized that minority youth, specifically African-americans and Hispanics, were overrepresented in the juvenile justice system. Governor Romer specifically testified that if the amended provision were unfair, judges would provide the needed fairness. He also testified that the effect of the provision is unrelated to race, that the incidence of overrepresentation of minorities in detention is analogous to the fact that they are also overrepresented among those who receive Aid to Families with Dependent Children (AFDC), and that minorities may have a greater propensity to be involved in crime. Finally, all the witnesses presented by the People testified that they were unaware of the impact that the federal act regarding status offenders, the JJDPA, would have on the issue of minority overrepresentation.

The evidence supports the proposition that minority youth have historically been disproportionately affected in the juvenile justice system of Colorado. It is equally clear that since at least 1989 that the overincarceration rate of minority youth has been a concern to DYS. The evidence also establishes that the state has not taken action to address the problem, as the data from DYS illustrates an increase in detained minority youth over the past two years. Conceivably, the legislature and the court could conduct monitoring and review efforts to assure that minority/ethnic youth are not arrested and incarcerated at

disproportionate rates simply because of their status as minorities. See Juvenile & Family Court Journal, Vol. 41, No.3A (1990).

Although this Court agrees and has found that the state was aware of the overincarceration rate of minority youth and that minority youth would be disproportionately impacted by the amendments, there is not proof of a discriminatory purpose to the new legislation. A legislature necessarily has wide discretion in the choice of criminal law and penalties and, if legitimate reasons exist for a legislature to adopt the provision, courts will not infer a discriminatory purpose. See McKleskey v. Kemp, supra. Given that the legislature had legitimate, non-discriminatory reasons to enact the amendments at issue - to address the increasing incidence of weapon-related violence among juveniles - the Juvenile's equal protection challenge must fail.

However, given the Court's finding that C.R.S. 19-2-204(3)(a)(III), as amended, constitutes an unconstitutional denial of substantive and procedural Due Process, both facially and as applied to the offender in this case, the Court must also rule on the juvenile's argument that such a ruling requires that the entire statute be declared invalid. The People argue that if any portion of the amended provision were found to be unconstitutional, it was the intent of the legislature that only the offending portion of the statute be severed. See People's Brief p. 18-19 (citing H.B. 93S-1001, p.11, section 14; People ex.rel. Tooley v. Seven Thirty-five East Colfax, Inc., 697 P.2d

348 [Colo. 1985]). The Court finds the People's argument persuasive on this point and so only the 1993 amendments to C.R.S. 19-2-204 are affected by this ruling. However, given the Court's findings in Part II of this opinion, status offenders cannot be detained in a secured facility, even pursuant to the provision as it existed prior to the amendments.

CONCLUSION AND REMEDIES

It is the finding of this Court that:

1) incarceration of status offenders pursuant to C.R.S. sections 18-12-108.5 and 19-2-204(3)(a)(III) is a violation of the JJDPA and the Children's Code under any circumstances, even if applying 19-2-204 as it existed prior to its amendment adding the rebuttable presumption;

2) pursuant to the findings in Part II of this opinion, and given that these findings conclude that an offenders's interest in liberty is a protected interest and is adversely impacted by the two aforementioned provisions, it is held that juveniles have a constitutional right to bail;

3) C.R.S 19-2-204(a)(3)(III), as amended, results in an unconstitutional denial of substantive and procedural due process, both as to this particular juvenile and as to all other juveniles similarly situated. As to the juvenile's equal protection argument, despite the evidence of discriminatory impact on minority offenders, there is simply no evidence of a discriminatory intent on the part of the state legislators. Finally, as to the holding regarding the unconstitutionality of

C.R.S. 19-2-204(3)(a)(III), this Court finds credible evidence that the legislature intended to have severed only the portions amended in 1993. However and as stated in #1 above, even under the provision as it existed prior to the amendment, status offenders are prohibited from being detained in a secure facility.

Regarding the fashioning of a remedy in this matter, it should be stated that this court does have jurisdiction to fashion a remedy pursuant to the JJDPA. The People argue that even if the state has violated the JJDPA by detaining status offenders in secure facilities, the only remedy available would be the withholding of federal funds. This view of the Act is too narrow and other courts which have considered the issue have not construed the Act in this fashion. See Hendrickson v. Griggs, cited supra. In Griggs, the court was also presented with the issue of what type of remedy is available when a state has violated the JJDPA. Though, as mentioned earlier, the issue was presented in Griggs in the context of juveniles requesting a preliminary injunction pursuant to a 42 U.S.C.A. section 1983 action, the rationale is applicable to the instant case as well. In fact, the argument is even more compelling in the context of a constitutional challenge in which a juvenile's liberty interest is implicated.

The court held that the JJDPA is more than a funding statute; the mandates of the Act give rise to duties for which the states agree to be responsible when they accept the federal

funds. Griggs, 672 F.Supp at 1135. In holding that the withholding of funds was a woefully inadequate remedy, the court noted that such a remedy would do nothing for the juveniles whose rights were violated by improper placement in jails. Id. at 1136. Likewise in this case, it seems very late in the day for the state of Colorado to now offer to withdraw from the Act; funds have been received, obligations have been accepted, and rights of juveniles presently detained pursuant to the amended provisions have been curtailed. Difficulty in complying with the Act should not justify the state's status of noncompliance.

However, as noted above, it is not the violation of the JJDPA which causes the statute to be constitutionally infirm and it is not pursuant to that Act by which this Court fashions the following remedies.

First, the juvenile in this matter is Ordered to be released forthwith on a $1,000 cash/surety/property bond.[5] As to other similarly-situated juveniles presently being detained, this Court issues no specific orders, since that issue has not been brought before the Court. This does not, however, preclude other similarly-situated juveniles from seeking a remedy, either in a juvenile court or via an action in federal court pursuant to 42 U.S.C.A. section 1983. As to the prospective application of this Court's Orders, the declaration that the rebuttable presumption is unconstitutional under federal and state law prohibits the

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[5]. Due to the manner in which this Court disposes of the arguments presented, the Juvenile's Motion for Judicial Review of the magistrate's decision of November 18, 1993 is rendered moot.

State from detaining in a secured facility all status offenders in the future. This of course does not preclude the State from arresting juveniles pursuant to C.R.S. 18-12-108.5 and detaining them temporarily pending release on bail.

DONE and SIGNED this 24th day of November, 1993.

D. E. Ramirez

Judge David E. Ramirez