UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

JODIE SMOOK, Individually and on behalf of all other persons similarly situated, Plaintiffs, -vs- MINNEHAHA COUNTY, SOUTH DAKOTA; JIM BANBURY, in his individual capacity; TODD CHEEVER, as Director of Minnehaha County Juvenile Detention Center; and John and Jane Doe DETENTION CENTER OFFICERS, Defendants.	CIV 00-4202 MEMORANDUM OPINION AND ORDER

Pending before the Court is a Motion to Amend Class Definition, Doc. 72, by Plaintiff Jodie Smook on behalf of herself and all others similarly situated. The Court previously certified two classes. Before the class notices were mailed, however, Plaintiff moved to amend the class definitions to include a significant additional number of class members. Pursuant to an oral direction of the Court, Plaintiff's counsel did not mail the class notices as previously ordered. For the reasons set forth below, the motion will be granted in part and denied in part.

BACKGROUND

Plaintiff filed this action on November 1, 2000 alleging that her civil rights were violated at the Minnehaha County Juvenile Detention Center ("JDC"), in Sioux Falls, South Dakota. According to the Complaint, Plaintiff and three of her friends were arrested by Sioux Falls policemen for curfew violations on August 8, 1999. The four teenagers were taken to the JDC where, allegedly, they were

questioned about their religious beliefs and practices, individually ordered into a bathroom, and strip searched. According to the Complaint, the JDC had a policy of conducting strip searches of minors, even without probable cause to believe that the minors had weapons or contraband, as well as a policy of questioning juvenile detainees about their religious beliefs and practices.

In the Complaint, Plaintiff alleged that the requirements for a class action were satisfied. The definition of the class Plaintiff originally sought to certify was "all minors who were charged with minor offenses and were, pursuant to JDC policy, strip searched and/or subjected to questioning about their religious beliefs at the Minnehaha County Juvenile Detention Center between November 1, 1997 and November 1, 2000." (Motion for Class Certification, Doc. 25, June 4, 2001.) Following the resolution of a discovery dispute, Plaintiff submitted a Supplement in Support of Motion for Class Certification (Doc. 39) on October 18, 2001, proposing that two separate classes be certified based on the different life-span of the two allegedly unconstitutional policies. The first proposed class was defined as: "all minors who were charged with minor offenses and were, pursuant to JDC policy, strip searched at the Minnehaha County Juvenile Detention Center between November 1, 1997 and November 1, 2000." (Doc. 39.) The second proposed class was defined as: "all minors who were charged with minor offenses and were, pursuant to JDC policy, subjected to questioning about private matters, including but not limited to questions about their religious beliefs and practices, at the Minnehaha County Juvenile Detention Center between November 1, 1997 and November 1, 2000." (Id.) The phrase "minor offenses" proposed by plaintiff was defined as "petty theft, liquor violations, being a runaway and curfew violations." (Id.)

On March 20, 2002, the Court granted in part and denied in part Plaintiff's request for class certification. (Memorandum Opinion and Order, Doc. 42.) The Court certified two classes, but did so on a basis different than that proposed by Plaintiff. The first class certified by the Court was defined as "all persons seeking injunctive relief in this action who, when they under the age of eighteen years old, were charged with minor offenses and were, pursuant to JDC policy, strip searched and/or subjected to questioning about their religious beliefs at the Minnehaha County Juvenile Detention Center from June 1, 1999 through September 14, 1999." (Id.) The second class

certified by the Court was defined as "all persons seeking compensatory and/or punitive damages in this action who, when they under the age of eighteen years old, were charged with minor offenses and were, pursuant to JDC policy, strip searched and/or subjected to questioning about their religious beliefs at the Minnehaha County Juvenile Detention Center from June 1, 1999 through September 14, 1999." (Id.) Thus, the time period for both classes is from June 1, 1999 through September 14, 1999. As requested by Plaintiff, the term "minor offenses" was defined as "petty theft, liquor violations, being a runaway and curfew violations." (Id.)

At the time the class certification motion was decided the Court noted that "[t]he information presented in connection with the Motion for Class Certification only supports classes of persons who, as minors, were taken into the custody of the JDC from June 1, 1999 through September 14, 1999." (Doc. 42.) It was recognized that the record as it existed in March 2002, did not support the lengthy time frame suggested by Plaintiff. (Id.) The Court further stated "[b]ut subsequent discovery may establish a basis for expanding the class period." (Id.)

On November 19, 2002, Plaintiff moved to expand the class definition and postpone the class exclusion date. (Doc. 67.) After reviewing discovery materials, Plaintiff believed the class definition of "minor offenses" was too narrow and asked that the Court include the following offenses as minor offenses: "petty theft, liquor violations, being a runaway, curfew violations, unamenable, truancy, underage consumption, window peeking, misuse of phone, tobacco, driving while revoked, contempt of court-CHINS, contempt of court-delinquent, disturbance of school, damage to private property, damage to public property, false impersonation, delinquent probation violation, delinquent violation court order, CHINS probation violation, CHINS violation court order, unlawful occupancy, failure to appear, and disorderly conduct." (Doc. 67.) In her reply brief regarding the motion to expand the class definition, Plaintiff stated that depositions were scheduled for January 9 and 10, 2003 and she requested that she be allowed to file a supplemental reply brief fourteen days after those depositions to submit a proposed amended definition of minor offenses. (Doc. 70.) On January 14, 2003, the Court denied Plaintiff's request to expand the class definition of minor offenses without prejudice to her right to submit an amended proposed definition of minor

offenses on or before January 24, 2003, following the depositions to be taken in January. (Order, Doc. 71.)

On January 24, 2003, Plaintiff filed a second Motion to Amend Class Definition, Doc. 72, seeking to expand the class by defining it as follows:

> All individuals who, when under the age of eighteen years old, were arrested for or charged with non-felony offenses, and were strip searched at the Minnehaha County Juvenile Detention Center without particularized reasonable suspicion from November 1, [1997][1] through the present and/or were subjected to questioning about their religious beliefs at the Juvenile Detention Center from November 1, [1997][2] through September 14, 1999.

Plaintiff states that after the depositions of the current and former directors of the JDC, two former JDC staff members, the current assistant director of the JDC and the arresting Sioux Falls police officer, "plaintiffs discovered that the strip search and religious questioning policies were broader in scope both in terms of time frame and the number of juveniles who were subjected to such policies." (Doc. 72.) In the present motion, Plaintiff proposes that the phrase "non-felony offenses" replace the phrase "minor offenses" in the classes previously certified by the Court. The Court assumes Plaintiff intends to use the definition of "non-felony offenses" that was originally proposed in her November 19, 2002 Motion to Expand Class Definition, Doc. 67.

In support of her motion, Plaintiff contends that beginning at some point before November 1, 1997[3] and continuing until September 14, 1999, the JDC had a blanket policy to admit and strip search all juveniles who were brought to the JDC for any reason, without any individualized

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[1]While Plaintiff's motion to amend, Doc. 72, refers to the beginning of the class period as November 1, 1998, in her reply brief, Plaintiff clarifies that the beginning of the class period should be November 1, 1997. (Reply Brief, Doc. 76, p. 4, n.1.) The parties agree that the statute of limitations is three years pursuant to SDCL § 15-2-15.2. The complaint was filed on November 1, 2000. Thus, the Court will consider the motion to amend with a beginning date of the class period being November 1, 1997.

[2]See note 1, supra.

[3]See note 1, supra.

determination of probable cause. The JDC policy was changed as of September 14, 1999, in two respects. The first change was to install screens in the shower area to block from view the mid-sections of juveniles while they were taking showers. A visual search of the juvenile's body was conducted before and after the shower. The second change applied to minors detained for certain minor offenses such as curfew, petty theft and liquor violations. If those minors were not admitted to the JDC, they would not be strip-searched and required to shower. If they were admitted, however, they were strip-searched and required to shower in the same fashion as all other minors. Due to the passage of a state law, the JDC changed its policy again at some time in the year 2000 to prohibit juveniles from being strip-searched if they were detained solely for a curfew violation, unless there was probable cause to do so. See SDCL § 26-11-1.1.

Plaintiff further contends that the depositions in January 2003 revealed that the JDC's blanket strip search policy was in effect for years prior to June 1, 1999, the date Plaintiff originally believed was the effective date of the policy. Rather than the policy being adopted in June 1999, Plaintiff asserts that Defendant James Banbury, former Director of the JDC, issued a directive in June 1999 to require JDC staff to adhere to the policy of strip searching all juveniles admitted to the JDC, which policy was already in effect but not being followed by the JDC staff at that time. It is Plaintiff's assertion that the JDC currently continues to strip search all juveniles who are admitted to the JDC, without an individualized determination of probable cause and without considering the severity of the charged offense, in violation of juveniles' Fourth Amendment rights.

Regarding the policy of questioning juveniles about their religious preference, Plaintiff contends Banbury testified that policy has been in effect since the JDC was opened over 30 years ago. Thus, Plaintiff seeks to expand the certified class to those juveniles who were subjected to religious questioning from November 1, 1997[4] to September 14, 1999, the date the JDC ceased such questioning.

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[4]See note 1, supra.

Defendants oppose the motion to expand the classes based upon statute of limitations grounds. They concede that the statute of limitations was tolled on behalf of all putative members of the class as originally proposed by Plaintiff until class certification was denied. The statute of limitations, however, is not tolled for any potential class members not included in the original proposed class definition, which was limited in part to minors that were charged with minor offenses. The definition of "minor offenses" only included petty theft, liquor violations, being a runaway and curfew violations.[5] Moreover, Defendants contend that the statute of limitations was tolled for putative class members only until the Court ruled on the motion for class certification, which was issued on March 20, 2002. Once the class certification decision was issued, argue Defendants, the statute of limitations began to run again as to claims by all of the putative class members who were not included in the certified class. In addition, Defendants contend that the Plaintiff's current motion to expand the class does not have the same tolling effect as the original motion to certify a class. Thus, according to Defendants, the statute of limitations bars any claims that accrued more than three years prior to the date upon which this Court may grant Plaintiff's pending motion to expand the class.

In response to Defendants' opposition, Plaintiff contends that the Court's March 20, 2002 class certification order was merely preliminary and, pursuant to Federal Rule of Civil Procedure 23(c)(1), the order was conditional and could be altered or amended before the decision on the merits. Affirmative defenses, such as the statute of limitations, are not to be considered when deciding the issue of class certification. Even if the Court were to consider the statute of limitations' issue, Plaintiff asserts that none of the claims of the members of the proposed amended class is time-

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[5]The Plaintiffs contend in their reply brief, Doc. 76, that the Defendants do not argue that the complaint does not cover juveniles charged with "non-felony offenses" as included in the proposed amended class definition and that even if they did, the Complaint's reference to "minor offenses" reasonably includes "non-felony offenses." Contrary to Plaintiffs' characterization of Defendants' argument, Defendants do argue in their opposition brief that if one "erroneously assumed" that the phrase "minor offenses" in the complaint "somehow encompassed the phrase 'all non-felony offenses,'" such that the statute of limitations would be tolled for all non-felony offenses from the filing of the Complaint, the clock started ticking again when Plaintiffs filed the motion for class certification specifically defining "minor offenses" to include the specific offenses of petty theft, liquor violations, being a runaway and curfew violations. (Defendants' Opposition Brief, Doc. 75, at 5.)

barred because the Court did not deny class certification and it only preliminarily defined the class. The "no piggyback" rule cited by Defendants is a red-herring, asserts Plaintiff, because Plaintiff is not attempting to file a second class action for which class certification has been denied in a prior action. Plaintiff further argues that even if the Defendants' arguments are accepted, the statute of limitations would have been tolled from November 1, 2000 (filing of the Complaint) to March 20, 2002 (Certification Order), for a total of 505 days and the time frame of the previously defined class would be timely if they accrued on or after September 6, 1998.

DECISION

South Dakota's statute of limitations applies in this § 1983 action. See Wilson v. Garcia, 471 U.S. 261, 268 (1985) (explaining that federal courts apply the most analogous state statute of limitations to determine the statutory period for bringing a § 1983 action). The law in South Dakota is that "[a]ny action brought under the federal civil rights statute may be commenced only within three years after the alleged constitutional deprivation has occurred." SDCL § 15-2-15.2. Thus, Plaintiff's claims, and those of the class members, are subject to a three-year limitations period. "It is axiomatic that no class action may proceed on behalf of class members whose claims are barred by the applicable statute of limitations." Schmidt v. Interstate Fed. Sav. and Loan Ass'n, 74 F.R.D. 423, 428 (D.D.C. 1977). Thus, "the applicable statute of limitations marks the outer boundary for class membership." Id.

Plaintiff contends that the Court should not evaluate the statute of limitations issue as it relates to potential class members at the time it considers class certification. The cases cited by Plaintiff for this proposition are Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 177-78 (1974), International Woodworkers of Am. v. Chesapeake Bay Plywood Corp., 659 F.2d 1259, 1270 (4th Cir. 1981), and Healy v. Loeb Rhoades & Co., 99 F.R.D. 540, 543 (N.D. Ill. 1983). These cases are distinguishable from the present case. The Eisen court held that a court may not evaluate the merits of a suit to determine whether it may be maintained as a class action. 417 U.S. at 177. That case did not, however, address the situation of considering statute of limitations in defining the class. In International Woodworkers, the court noted that in determining whether a class should be certified,

the district court generally refuses to consider the impact of a statute of limitations' defense as to the "potential representative's case." 659 F.2d at 1270. Considering the merits of the potential representative's case is wholly different from determining the proper time period for defining the class. See Schmidt, 74 F.R.D. at 428 (explaining that "the applicable statute of limitations marks the outer boundary for class membership."). The remaining case, Healy, does not support Plaintiff's claim because that court specifically noted that the defendants did not argue that the limitation periods were relevant to establishing a cut-off date for class membership. 99 F.R.D. at 543. In this case, Defendants have asserted that the statute of limitations does set a cut-off date for class membership. Thus, the Court must consider the statute of limitations as it relates to class membership.

There are two separate, but interrelated, issues in the Plaintiff's request to expand the class definition. The first issue is whether the current time-frame of June 1, 1999 through September 14, 1999, should be expanded to November 1, 1997 through the present for strip searching and to November 1, 1997 to September 14, 1999 for religious questioning. The second issue is whether the class should be expanded from minors charged with "minor offenses" to minors charged with "non-felony offenses."

Addressing federal class action procedure, the Supreme Court held that "the commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action." American Pipe and Const. Co v. Utah, 414 U.S. 538, 554 (1974); See Crown, Cork & Seal Co., Inc. v. Parker, 462 U.S. 345, 353-54 (1983) (explaining that the statute of limitations is tolled until class certification is denied and "[a]t that point, class members may choose to file their own suits or to intervene as plaintiffs in the pending action."). One of the primary reasons for tolling the statute of limitations is that without the rule, "[p]otential class members would be induced to file protective motions to intervene or to join in the event that a class was later found unsuitable." American Pipe, 414 U.S. at 553. The tolling rule is consistent with the purpose of a statute of limitations because the commencement of the purported class action notifies the defendants of both the substantive

claims and also the approximate number and general identities of the potential plaintiffs asserting those claims. See id. at 554-56. The limitations period is tolled during the entire time the "individual *may* have been embraced within the not-yet-certified class." Ganousis v. E.I. du Pont de Nemours & Co., 803 F.Supp. 149, 154 (N.D. Ill. 1992) (emphasis in original).

If a definitive decision is made denying class certification to some or all of the class members, the statute of limitations begins to run again as to those members not certified. See Crown & Cork, 462 U.S. at 354. Federal courts have an option, however, to make a preliminary ruling on class certification that allows for amendment of that ruling if subsequent discovery demonstrates the class should be defined differently than the preliminary definition. See Fed.R.Civ.Pro. 23(c)(1). Rule 23(c)(1) provides that a ruling on a class certification "may be conditional, and may be altered or amended before the decision on the merits." Fed.R.Civ.P. 23(c)(1).

It is clear based upon the American Pipe tolling rule, that the three-year statute of limitations was tolled beginning on November 1, 2000 for any claims that accrued as of November 1, 1997. The question then becomes whether that tolling ended when the Court issued its ruling on class certification limiting the class period to June 1, 1999 through September 14, 1999. If the statute of limitations continued to be tolled following the Court's class certification ruling, the Court could expand the class period if the record supported such an expansion.

At the time class certification was denied for the entire time period requested by Plaintiff, the Court clearly stated the decision was not final and that discovery may provide a basis for expanding the class. (Order, Doc. 42.) The Court's certification was thus conditional as provided by Rule 23(c)(1) of the Federal Rules of Civil Procedure. See Genden v. Merrill Lynch, Pierce, Fenner & Smith, 114 F.R.D. 48, 54 (S.D.N.Y. 1987) (holding that a certification ruling was conditional under Rule 23(c)(1) because the Court certifying the class expressed willingness to reconsider after merits discovery has been conducted). There was no definitive decision as to class certification for the time period requested by Plaintiff. Because the certification ruling was not definitive or final, the Court does not find that the tolling of the statute of limitations ended as to the

purported class when the Court issued its certification ruling on March 20, 2002. Thus, there is no statute of limitations bar to expanding the time-frame of the classes as certified on March 20, 2002.

The next question is whether the record supports expanding the class period. As to the strip searching policy, Plaintiff seeks to expand the class period to November 1, 1997 to the present. Regarding the policy of questioning minors about their religious views, Plaintiff seeks to expand the class period to November 1, 1997 and ending on September 14, 1999, when the practice of religious questioning was terminated.

The policy in effect at the time Plaintiff was strip searched required that all juveniles who were brought to the JDC for any reason were to be admitted and strip searched. That policy changed somewhat on September 14, 1999, as Plaintiff acknowledged in a reply brief on the certification issue. (Reply Brief, Doc. 31, July 29, 2001.) After September 14, 1999, and apparently continuing today, juveniles charged with minor offenses such as petty theft, liquor violations, runaways and curfew violations are no longer immediately admitted to the JDC. Rather, such minors are subjected to an inventory search and held in a waiting area for two hours. If, after two hours, the JDC staff is unable to contact the minor's parents or the parents refuse to pick up the minor, the minor is admitted to the JDC and undergoes a strip search. Thus, if the minor is not picked up from the JDC, he or she is subjected to the same strip searching policy in effect when Plaintiff was strip searched in August 1999.

The current beginning date for purposes of class membership is June 1, 1999, which is the date Plaintiff originally believed the strip-searching policy began. After taking several depositions in January 2003, Plaintiff now contends that the policy of strip searching all juveniles was in effect for years prior to June 1, 1999. It was in June 1999 that former JDC Director Banbury issued a directive instructing all staff to comply with the strip-searching policy as to all juveniles admitted to the JDC because Banbury had learned that the staff was not always complying with that policy. Defendants do not challenge Plaintiff's assertion that the strip-searching policy was in effect for years prior to June 1, 1999. As explained above, there is no statute of limitations bar to expanding

the class back to November 1, 1997, three years prior to the filing of this action. Thus, because the record now supports an earlier beginning date than currently certified, the beginning of the class period will be November 1, 1997 as to the strip-searching policy.

The cut-off date for the classes currently certified is September 14, 1999, the date of the policy change explained above. The Defendants do not provide a persuasive reason for not extending the class period to the present and to include future members as to the strip-searching policy. After the policy change effective September 14, 1999, juveniles continue to be strip searched without probable cause upon their admission to the JDC for non-felony charges. The primary change is that juveniles charged with the offenses of petty theft, liquor violations, being a runaway and curfew violations are not strip searched if they are picked up by their parents within two hours of being taken to the JDC. In addition, at some point during the year 2000, the JDC's policy was changed again to comply with SDCL § 26-11-1.1, to prohibit, without probable cause, strip searches of juveniles admitted to the JDC on the sole charge of a curfew violation. The class period will extend to the present and will include future members. See Moore's Federal Practice ¶ 23.21[2] (3d ed. 2002) (explaining that "a class may include future members as long as the court would be able to determine, at any given time, whether a particular individual is then a member of the class."). The Court will establish a cut-off date as this litigation progresses.

The record now also demonstrates that the policy of questioning juveniles about their religious beliefs was in effect for years prior to June 1, 1999. Thus, similar to the class period regarding the strip-searching policy, the classes involving minors subjecting to questioning about their religious beliefs will be expanded to begin November 1, 1997. Contrary to the strip-searching class, however, the class period for minors subjected to questioning about their religious beliefs will end on September 14, 1999, because Plaintiff continues to believe the policy ended on that date.

The second issue regarding class expansion relates to the definition of "minor offenses" and whether the statute of limitations was tolled for minors charged with offenses other than petty theft, liquor violations, being a runaway and curfew violations. The Court finds that the statute of

limitations was tolled for certain periods of time for minors charged with offenses other than "minor offenses," as defined by Plaintiff in her Motion for Class Certification, Doc. 25, filed on June 4, 2001.

In her Complaint filed November 1, 2000, Plaintiff sought to define the class members as "others similarly situated who have been arrested for alleged violations of curfew laws or other minor offenses and detained at the Minnehaha County Detention Center and strip searched (Count I) and/or questioned about their religious beliefs or practices (Count II)." (Complaint, Doc. 1, ¶ 8.) The term "other minor offenses" was not defined in the Complaint. Rather, Plaintiff defined "minor offenses" in her Motion for Class Certification filed on June 4, 2001, as "petty theft, liquor violations, being a runaway and curfew violations." (Doc. 25.) This definition was adopted by the Court in its initial class certification ruling. (Doc. 42.)

Although the Court clearly stated in the class certification Order, Doc. 42, that Plaintiff could move to expand the class based upon the class period, the Court did not indicate a willingness to expand the class based upon the types of offenses for which the minors were charged. Thus, the portion of the class certification ruling based upon the types of offenses for which minors were charged was not conditional under Rule 23(c)(1) and the statute of limitations as to offenses other than petty theft, liquor violations, being a runaway and curfew violations was not tolled due to a conditional ruling.

Moreover, the tolling provision in American Pipe provides that the statute of limitations is tolled for "all *asserted members* of the class who would have been parties had the suit been permitted to continue as a class action." 414 U.S. at 554 (emphasis added); see Crown & Cork, (reconfirming that "[o]nce the statute of limitations has been tolled, it remains tolled for all members of the *putative class* until class certification is denied."). It is possible that the entire list of offenses currently asserted by Plaintiff falls within the definition of "other minor offenses" as alleged in the Complaint, such that the statute of limitations may have been tolled for the seven-month time period from the filing of the Complaint to the date the Motion for Class Certification Order, Doc. 25, was

filed. When the term "minor offenses" was defined in the class certification motion, however, that tolling would have ended and the statute of limitations began to run again for those minors charged with offenses other than "petty theft, liquor violations, being a runaway and curfew violations." See Ganousis, 803 F.Supp. at 154-56.

The Northern District of Illinois was faced with a situation similar to that posed by the present case. See id. In Ganousis, the parties seeking to be included in the certified class arguably were members of the putative class as set forth in the complaint, but were clearly excluded as class members based upon the class representative's definition of the putative class filed after the complaint. See id. The Court concludes that similar to the parties seeking to be included in the certified class in Ganousis, the American Pipe tolling halted as to any potential class members charged with offenses other than petty theft, liquor violations, being a runaway and curfew violations when Plaintiff filed her class certification motion on June 4, 2001. The tolling arguably recommenced when Plaintiff filed the initial Motion to Expand the Class on November 19, 2002 (Doc. 67) to include the other offenses, and continues to the present. From June 4, 2001 to November 19, 2002, 532 days elapsed. Thus, the appropriate class period for juveniles arrested for non-felony offenses other than petty theft, liquor violations, being a runaway and curfew violation, and strip searched at the JDC begins 532 days after November 1, 1997, which is April 16, 1999. As explained above regarding expanding the class period, the class as to strip searching will continue to the present and include future members. Regarding the juveniles charged with non-felony offenses who were subjected to questioning about their religious beliefs, the beginning class period will be April 16, 1999 and the cut-off date will be September 14, 1999, which is the date Plaintiff concedes the JDC discontinued such questioning.

As explained in the Court's first certification ruling, there must be a certified class for the claims involving compensatory damages that is separate from the claims involving injunctive relief. Because there are now separate time periods for juveniles subjected to strip searching from those subjected to religious questioning, additional classes must be certified.

CONCLUSION

As a result of the above rulings, four classes will be certified by the Court. There will be two classes involving minors who were strip searched, one for injunctive relief and one for compensatory and punitive damages. Minors who were strip searched and were charged with the four minor offenses as defined in the Court's prior certification order, which includes petty theft, liquor violations, being a runaway and curfew violations, will be members of the classes if they were charged from November 1, 1997 to a date in the future to be set by the Court. The classes will also include minors who were strip searched from April 16, 1999 to a date in the future to be set by the Court and were charged with non-felony offenses, which are defined as unamenable, truancy, window peeking, tobacco, driving while revoked, contempt of court-CHINS, contempt of court-delinquent, disturbance of school, damage to private property, damage to public property, false impersonation, delinquent probation violation, delinquent violation court order, CHINS probation violation, CHINS violation court order, unlawful occupancy, failure to appear and disorderly conduct.[6]

There will be an additional two classes for those minors seeking injunctive relief and those seeking compensatory and punitive damages as a result of JDC's policy of questioning them about their religious beliefs. The same definitions of offenses and beginning time periods will apply to these classes as to the classes involving strip searching described above, but the ending date for the classes will be September 14, 1999. Accordingly,

IT IS ORDERED:

1. That the Plaintiff's Motion to Amend Class Definition, Doc. 72, is granted in part and denied in part as explained in this Order.

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[6]The definition of non-felony offenses will not include "misuse of phone" as requested by Plaintiff because there has been no showing that misuse of phone is an offense for which a minor would be taken to the JDC and subjected to the strip searching policy at issue in this case. Rather misuse of phone appears to be a violation of the JDC's internal rules for which a minor would be punished after admission to the JDC and being subjected to the strip searching policy. Thus, a minor accused of misuse of phone is not similarly situated to the Plaintiff in this action.

2. That, pursuant to Federal Rule of Civil Procedure 23(b)(2), a class is certified of all persons seeking injunctive relief in this action who, when they under the age of eighteen years, were charged with minor offenses from November 1, 1997 to a date to be set by the Court or were charged with non-felony offenses from April 16, 1999 to a date to be set by the Court, and were, pursuant to JDC policy, strip searched at the Minnehaha County Juvenile Detention Center.

3. That, pursuant to Federal Rule of Civil Procedure 23(b)(3), a second class is certified of all persons seeking compensatory and punitive damages in this action who, when they under the age of eighteen years, were charged with minor offenses from November 1, 1997 to a date to be set by the Court or were charged with non-felony offenses from April 16, 1999 to a date to be set by the Court, and were, pursuant to JDC policy, strip searched at the Minnehaha County Juvenile Detention Center.

4. That, pursuant to Federal Rule of Civil Procedure 23(b)(2), a third class is certified of all persons seeking injunctive relief in this action who, when they under the age of eighteen years, were charged with minor offenses from November 1, 1997 to September 14, 1999, or were charged with non-felony offenses from April 16, 1999 to September 14, 1999, and were, pursuant to JDC policy, subjected to questioning about their religious beliefs at the Minnehaha County Juvenile Detention Center.

5. That, pursuant to Federal Rule of Civil Procedure 23(b)(3), a fourth class is certified of all persons seeking compensatory and punitive damages in this action who, when they under the age of eighteen years, were charged with minor offenses from November 1, 1997 to September 14, 1999 or were charged with non-felony offenses from April 16, 1999 to September 14, 1999, and were, pursuant to JDC policy, subjected to questioning about their religious beliefs at the Minnehaha County Juvenile Detention Center.

6. That the term "minor offenses" in all four certified classes includes the offenses of petty theft, liquor violations, being a runaway and curfew violations. The term "non-felony offenses" in all four certified classes includes the offenses of unamenable, truancy, window peeking, tobacco, driving while revoked, contempt of court-CHINS, contempt of court-delinquent, disturbance of school, damage to private property, damage to public property, false impersonation, delinquent probation violation, delinquent violation court order, CHINS probation violation, CHINS violation court order, unlawful occupancy, failure to appear and disorderly conduct.

7. That the parties proceed diligently and expeditiously to conduct any additional discovery that must be completed due to the expansion of the time period of the classes and the inclusion of additional offenses, with all such discovery to be completed on or before October 21, 2003.

8. That, on or before September 29, 2003, Plaintiff shall file a proposed form of notice to class members, for the two classes certified pursuant to Rule 23(b)(3).

Dated this 6th day of June, 2003.

BY THE COURT:

Lawrence L. Piersol
Chief Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: Darcy Marguliés
(SEAL) DEPUTY