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## Del. illegally jails child suspects

### 3,000 charged in minor offenses sent to detention centers

By *MIKE BILLINGTON*  
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They show up in pairs in the middle of the night, a cop and a kid.

Some of the kids are silent, unsure about what's happening to them. Most appear indifferent, trying to maintain a semblance of cool in a situation they can't control.

Some were hanging out on street corners late at night. A few got into shoving matches with family members. Some said the wrong thing in anger.

All of them wound up in one of Delaware's two juvenile detention centers.

None of them should have.

Delaware justices of the peace and Family Court judges have illegally put thousands of children charged with minor crimes into the state's two juvenile detention facilities in the past 3 1/2 years. That exposes them to kids accused of committing serious offenses ranging from assault with a deadly weapon to rape to carjacking.

"A detention center is not really where you want to put your child, because when you do, your child can learn how to commit bigger and better crimes," said Alison McGonigal, a supervisor at the state's New Castle County Detention Center.

Although Family Court judges stopped the practice recently, many justices of the peace continue. In the first six months of 2005, state figures show they illegally locked up more than 300 children.

Some state officials want the practice stopped.

"We've all taken an oath to uphold the law, and we can't sidestep it or ignore it as judicial officers," said Kent County Family Court Commissioner David Jones.

But court officials say in many cases they don't have any other option. Parents, guardians or other trusted adults can't or won't take them, and state social workers cannot find any shelter.

Delaware's Chief Magistrate Alan Davis, who oversees all justices of the peace, said they are simply trying to do what's best for the children.

"I'm not justifying actions that are contrary to the statute, but judges have expressed their concerns, saying they just don't know what else to do with these kids. No one wants a bad result. The question is, are we going to follow the statute even if it means a bad result?" he said.

"The judges are just trying to do what's right," he said, "even if, under the statute, it's not legally right."

## Kids from all walks of life

The law is very specific when it comes to which juveniles can be legally detained. Under the law, children younger than 18 who have not been charged with a felony or a serious misdemeanor cannot be legally detained.

Despite that, more than 3,000 children younger than 18 have been illegally sent to Delaware juvenile detention centers from January 2002 through June 2005, according to state figures.

Robin Hamilton, a New Castle County Division of Family Services supervisor, said the children in magistrates' courts don't fit any stereotype.

"They come from all parts of the county and all socioeconomic groups and races," said Hamilton, who has spent 22 years working for the division. "Years ago, there were more inner-city kids, but that isn't the case any more."

The number of illegally detained children is so startling that Jones has been named co-chairman of a statewide committee seeking to end the practice. Its members are searching for alternative ways to handle children who, arrested on minor charges, cannot return home for various reasons.

In some cases, their parents refuse to take them, McGonigal said.

"We're seeing a lot of children 13 and younger" charged in a family dispute, she said. Some parents claim they're afraid of their children and don't want them in their homes. But social workers said often those parents are "just at their wits' end."

That puzzles Hamilton.

"I don't understand where that's coming from, where people can just say 'I don't want my child,' " she said.

In other cases, parents can't be immediately located or refuse to come to court. In some cases, the children refuse to go home.

## Illegal detentions 'huge'

Jones and other committee members have worked on the issue for about 14 months.

"We've made a serious dent in the number of kids illegally detained," he said, "but, obviously, we've got a ways to go."

Davis said justices of the peace often feel frustrated by the lack of services for teens and preteens who end up in their courtrooms late at night, sharing benches with adults accused of drunken driving, robbery and assault.

"We're asking them to push against the tide in some ways because there are not a lot of alternatives for them when they're confronted with this situation," he said.

No one knows that better than detention center staff, McGonigal said. When children accused of minor crimes are brought to either Stevenson House in Milford or the New Castle County Detention Center near Prices Corner, the police are no longer involved. Their authority -- and responsibility -- ends at the door.

The Division of Youth Rehabilitative Services -- which is part of the state children's department -- takes over from there. The first priority for staff members: determining if the child should be there.

"I don't have a problem with putting children into detention if they've been out stealing and robbing," McGonigal said. "My main focus is in keeping the younger children who have had some kind of family conflict from being detained."

She and detention center staffers begin searching for homes or shelters to take them. Beds are not always available, however. In those cases, the child must stay in the detention center.

"We're still getting huge numbers of illegal detentions," she said.

## Justices' hands tied

Jones and other state officials acknowledge that justices of the peace are hamstrung when children charged with minor offenses are brought before them late at night.

"State law says if no parent or guardian shows up in court, the child can be released on his or her own recognizance," said Cari DeSantis, secretary of the state's Department of Services for Children, Youth and Their Families. "But common sense says you can't turn some child back out onto the streets at 2 o'clock in the morning."

Jones agreed. "At that point, the magistrate has a real problem," he said.

The result: The justice of the peace orders that the child be put into a detention center, even though that violates state law.

"We have to stop doing that," Jones said.

Davis does not disagree. "This is a precarious situation for judges, but one that I've stressed that we've got to resolve," he said.

But, he cautioned, justices of the peace must have a reasonable alternative.

DeSantis, who has been a leader in the fight to end the illegal detentions, said one alternative lies in finding another family member or adult willing to take the child until an arraignment. Justices of the peace do not have staff to do that, she admitted.

"But that doesn't mean that these children should be locked up because the situation that led to the arrest might not have been the child's fault," DeSantis said. "We sometimes forget that these children are innocent until proven guilty, just like adults."

McGonigal agreed. "A lot of parents see detention as a wake-up call, but they don't know what it's like and who else is in there," she said.

In fact, instead of helping, recent research shows that detaining children even for a brief time can be harmful, said Raquel Mariscal, a senior associate at the Annie E. Casey Foundation, a national child advocacy program based in Baltimore.

"The research clearly shows that children who have been in detention are far more likely to commit serious offenses in the future," Mariscal said.

## Social workers step in

In an effort to decrease the number of illegal detentions, DeSantis has asked magistrates to call a Division of Family Services social worker when a child is brought before them. Social workers are trained to help locate family members or friends willing to take a child, she said.

It's not an easy job. Social workers must be prepared to deal with children who might be drunk or high on drugs. Some kids are homeless. Others have mental health issues.

In cases in which the child refuses to go home, social workers must determine why.

"If there's abuse and neglect that they are reporting, we explore that right at the moment," Hamilton said. "Sometimes we're able to find out that people are just angry at each other at the moment, and we can give them a chance to just cool down. Sometimes it's that simple."

Not all cases are that simple.

"We have those cases in which the parents are right there in the courtroom and refuse custody. We talk to them to find out why," Hamilton said.

Offering assistance -- like counseling -- can help.

If parents are still unwilling to take a child, "we ask if there are other relatives who are willing and we go from there," she said.

If there is another adult willing to take the child, a home visit, which can take hours, is required.

"It just is not easy to find a place for these kids," Hamilton said.

If no one will take the child, the social worker can call a Family Court judge and ask for custody to give them more time to search for another shelter.

"We don't immediately open a case file when we do this because that could mean that the parents can be investigated for abandonment," DeSantis said. "Our goal is to defuse the situation."

That has reduced the number of children being illegally detained, she said.

"But reducing the number is not good enough. The number should be zero," she said.

If the social worker can't find a shelter, the department has no choice but to put the child into the detention center and start a case file that can become part of the child's permanent record.

According to Nancy Pearsall, director of the Division of Youth Rehabilitative Services, which operates the two juvenile detention centers, "Once they hit the door of the detention center, then the child becomes a client."

## Funding scarce

Elsewhere in the United States, city police departments have started so-called "reception centers" where children who have been picked up for minor offenses can get help without being arrested and locked up.

The centers have counselors to address issues from drug use to family problems, said Pearsall, co-chairwoman of the committee with Jones.

Davis thinks that idea has merit. If such centers existed in Delaware, he said, "in a lot of instances we wouldn't see these kids coming through the courtroom doors. The police officer could choose not to make an arrest but, instead, take the child to the reception center and get them some services."

Staffing and cost can be obstacles, however.

"Of course, cost is always an issue whenever you deal with state or local governments," he said, "but this is something that needs to be looked at seriously."

Pearsall said if funding is a problem for state and local governments, the centers could be run by nonprofit agencies.

The ideal solution, DeSantis and others said, would be to station social workers in each of the state's 19 justice of the peace courts 24 hours a day, seven days a week to handle juvenile cases. But that would cost too much.

"Unlike major metropolitan areas, where they have a larger population and a lot of children appearing in court on any given night, we really don't have the volume to justify that," DeSantis said.

That's why she made social workers available for late-night juvenile cases. But because it can take hours to place a child, that can eat big holes in the department budget, Jones said.

"If we're going to keep doing that, we've got to expand the [Division of Family Services] budget, because we're seeing a significant number of these kids," he said.

DeSantis agreed, saying the problem needs to be solved -- and fast.

"I feel a very real sense of urgency about correcting this," she said, "because it's not only unfair to the children being detained, it's not good for them."

## Additional Facts

### THE LAW

Under state law, children younger than 18 who have not been charged with a felony or a serious misdemeanor cannot be legally detained. There are some exceptions. For example, a child who is a fugitive from another jurisdiction can be legally detained, even if he or she has been picked up on a minor charge. A child who has failed to appear for a hearing on a different charge or has violated probation also can be legally detained.

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