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The Boston Globe

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## SJC: Juvenile offenders cannot be held beyond 18

February 10, 2009 05:55 PM

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By Shelley Murphy, Globe Staff

The state's highest court today struck down a law that allowed the state to keep juvenile offenders in custody for three years after they turned 18, if officials believed they would be "physically dangerous to the public."

The Supreme Judicial Court ruled that the law, which was challenged by three juvenile offenders who had been ordered held until they were 21, "does not comport with substantive due process requirements and is constitutionally infirm."

The law is flawed, according to the court, because it fails to set a standard for dangerousness. The court also noted that the law leaves a determination of dangerousness to the "unbridled discretion" of the Department of Youth Services, which isn't required to hold a hearing before concluding that a juvenile offender - who ordinarily is released on his 18th birthday -- should be civilly committed for three more years. A judge then presides over a trial to determine whether the juvenile should remain in custody.

The court said it advised the Legislature in 2004 that it had "grave concerns" about the constitutionality of the statute and "invited it to correct the deficiencies." However, the Legislature has not made any changes to the law.

Barbara Kaban, who is deputy director of the Children's Law Center of



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Massachusetts and represented one of the juveniles, said, "The statute is too vague. You can't deprive people of liberty based on some undefined term of dangerousness."

She said the state currently moves to civilly commit about 20 to 25 juvenile offenders each year after they turn 18.

As for the youths who challenged the law, Kaban said, "These three kids were not the most dangerous kids in the Commonwealth. None of them were charged with murder or rape or anything like that. These were kids who were delinquent, who had gotten in trouble, were arrested, and processed in the court system."

The current law has been in effect since 1996, and prior to that there was a different version of it, according to Kaban.

There are currently 12 individuals, between the ages of 18 and 21, who are currently in the custody of the Department of Youth Services based on the law that has now been ruled unconstitutional, according to Jennifer Kritz, a spokeswoman for DYS.

She said the lawyers representing the 12 are expected to contact the courts and seek their release.

"We are concerned about the decision, but at this point we are in the process of reviewing it," Kritz said. The DYS files about 20 petitions each year seeking to civilly commit an individual on the grounds of dangerousness after they turn 18, she said.


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