

County Youth Jails May Be Liable for Sexual Abuse Committed by Staffers

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New Jersey Law Journal

August 29, 2007

County youth detention facilities may be liable for compensatory and punitive damages under the New Jersey Child Sexual Abuse Act if their employees engage in sexual behavior with inmates, a state appeals court holds.

The judges, in [*J.H. v. Mercer County Youth Detention Center*](#), A-3637-05 [digested at page xx], ruled Wednesday that the Mercer County Detention Center was a "household" under the terms of the act and that the county stood in loco parentis to the youth allegedly abused.

The ruling builds on last year's decision, in *Hardwicke v. American Boychoir School*, 188 N.J. 69 (2006), that a private institution is vicariously liable under the Act if it is aware of but takes no action to stop an employee's sexual abuse of a child in its charge.

The judges ruled in *J.H.* that the immunities granted to public bodies under the Tort Claims Act do not shield them from liability for Child Sexual Abuse Act infractions.

The plaintiff, J.H., while a 17-year-old Mercer County Detention Center inmate from Nov. 22, 2002, to May 21, 2003, had a sexual relationship with his youth worker, Monet Mason, who allegedly plied him with liquor, pornographic material, cigarettes and other gifts in exchange for sex. Mason has since been terminated.

J.H. alleged Mason's co-workers and supervisors, including Superintendent Lionel Henderson, were aware of the gifts and the sexual relationship, but did nothing to stop it. J.H. claims he suffers from emotional distress and is an alcoholic as a result of the abuse.

Superior Court Judge Wilbur Mathesius granted summary judgment for the county, dismissing J.H.'s claims under the act and under common law. Mathesius found that the Child Sexual Abuse Act did not apply to public entities, that public employers could not be held vicariously liable and that Tort Claims Act immunities applied.

But on appeal, Judges John Holston Jr., Joseph Lisa and Edwin Stern found the rationale of *Hardwicke* applied, namely that "an employer can be held vicariously liable for the acts of its employees acting outside the scope of their employment for child abuse claims

brought under the passive abuser provisions of the CSAA."

The judges said that the Legislature meant for there to be a broad interpretation of the classes of persons who may be liable under the act.

They also cited the Code of Juvenile Justice, which states that "children under the jurisdiction of the court are wards of the State, subject to the discipline and entitled to the protection of the State, . . . which may intervene to safeguard them from neglect or injury and to enforce the legal obligations due to them."

Holston thus concluded that "a county detention center, as an instrumentality of the Code of Juvenile Justice, operates in the traditional role of a guardian toward its ward."

The judges rejected the county's claim of immunity under the Tort Claims Act, finding the Child Sexual Abuse Act takes precedence. "Because the CSAA was enacted and amended subsequent to the TCA and is more specific with regard to the welfare of sexually abused children, we conclude . . . that CSAA was intended to supersede TCA immunity to the County defendants," wrote Holston for the panel.

"The logical extension of the Court's rationale in *Hardwicke* supports a finding that the passive abuser liability provision of the CSAA was intended to supersede in a child sexual abuse case any conflicting limitation of action provision against public entities contained in the TCA."

The judges also rejected the county's argument that the Tort Claims Act bars punitive damages against public agencies. They cited a string of cases, beginning with *Abbamont v. Piscataway Board of Education*, 139 N.J. 405 (1994), that have held otherwise in exceptional cases. "The public policy consideration for imposing punitive damages is the vulnerability of children in the County Detention Center's care and the non-delegable duty of its supervisors to protect them from victimization," Holston wrote.

While remanding the statutory claims for trial, the panel upheld dismissal of J.H.'s common law claims, finding that he did not meet the financial loss threshold.

J.H.'s lawyer, Hamilton solo Gregory Gogo, said of the ruling, "The Appellate Division is putting [county officials] on notice that they are subject to punishment if they do not monitor their employees."

Mercer County Assistant Counsel Sarah Crowley says county officials decline to comment.