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A Proposal to Bring the Becca Bill's Runaway-Detention Provisions into Compliance with Juveniles' Procedural Due Process Rights

Carrie A. Tracy

A PROPOSAL TO BRING THE BECCA BILL'S RUNAWAY-DETENTION PROVISIONS INTO COMPLIANCE WITH JUVENILES' PROCEDURAL DUE PROCESS RIGHTS

Carrie A. Tracy

Abstract: The Becca Bill, enacted in Washington State in 1995, changed the way Washington treats runaway juveniles. The Bill creates a series of secure crisis residential centers and authorizes law enforcement officers to take juvenile runaways into custody and place them in these secure facilities. The facilities must keep the admitted juveniles for at least twenty-four hours but no more than five days. This Comment argues that the Becca Bill, which provides no judicial review of the commitment to detention, violates the procedural due process requirements of Washington and U.S. constitutions. While courts have extended procedural due process protection to juveniles' liberty interest in freedom from bodily restraint in the context of both juvenile delinquency proceedings and commitment for mental health care, no court has considered the due process rights of juvenile runaways in Washington. This Comment concludes that the Becca Bill's runaway detention provisions violate constitutional procedural due process requirements and, therefore, the Washington Legislature should amend the Becca Bill to provide judicial review of a juvenile's detention within twenty-four hours of the juvenile's commitment to detention. In the absence of legislative action to correct this problem, courts should require such review.

After leaving a home where his stepfather drank and beat him, sixteen-year-old "Damian" lived on the streets of Yakima, where he used marijuana.[1] Eventually Damian approached a local police officer and asked for help.[2] The officer took him to the Epic Center, a locked facility created under the Becca Bill[3] to shelter runaway juveniles. Damian lived at the Epic Center for three days and received counseling, which he said "opened up a new world" for him.[4] When he left the Epic Center, Damian went to a thirty-day substance-abuse treatment center.[5] His family also received counseling; his stepfather stopped drinking.[6]

A year later, however, the Becca Bill's involuntary custody provisions resulted in a violation of Damian's constitutional rights. According to

1. *See* Ruth Teichroeb, *Troubled Teens Meet Reality at Center*, Seattle Post-Intelligencer, Jan. 12, 2000, at A10.

2. *See id.*

3. 1995 Wash. Laws ch. 312 (codified in scattered sections of Wash. Rev. Code §§ 13.04, 13.32A, 28A.225, 28A.600, 36.18, 43.43, 46.20, 46.82, 70.96A, 71.34, 74.13, 82.14).

4. Teichroeb, *supra* note 1.

5. *See id.*

6. *See id.*

Damian, one day he told his mother that he was going to a neighbor's to buck hay.[7] Because his mother did not want him to go, she called the police and reported him as a runaway.[8] The police returned Damian to the Epic Center.[9] Instead of protecting a runaway from the dangers of the streets, this second detention entangled the State in a mother's punitive actions; instead of providing an at-risk youth with needed services, this detention merely gave Damian a bed, meals, and some company.[10] Not only was this visit a great expense to the State, but it was not a visit Damian believed he needed.[11]

The Becca Bill was named after Becca Hedman who, after running away repeatedly, was murdered in Spokane.[12] Becca's parents joined the parents of other runaways in demanding that the Washington State Legislature provide parents and law enforcement officials more options for controlling runaway youths.[13] Parents complained that police refused to pick up children when they found them on the street.[14] Police officers expressed frustration at seeing the same youths on the street only hours after the police had taken them to non-secure crisis residential centers.[15] Parent advocacy groups asked the legislature to create short-term secure facilities where runaway children could be detained.[16] These groups also asked for legislation that would allow parents to control their children with the state's assistance.[17] Parents such as Becca's father believed that these measures would allow parents to remove their children from the streets and would help solve the problems that drove them there.[18]

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7. *See id.*

8. *See id.*

9. *See id.*

10. *See id.*

11. *See id.*

12. Rebecca Hedman, or Becca, first ran away from her parents' Tacoma home when she was 12 years old. *See* Kery Murakami, *Would 'Becca Bill' Have Saved Becca?*, Seattle Times, June 23, 1995, at A1. Becca ran away several more times within the next year, began using marijuana and cocaine, became a prostitute, and suffered terrible abuse. *See id.* She moved to a non-secure residential drug treatment center in Spokane, but continued to run away periodically. *See id.* She last ran away from the center in 1993, when she was 13. *See id.* She returned to the streets of Spokane, where a man who had offered her money for sex murdered her. *See id.*

13. *See id.*

14. *See id.*

15. *See id.*; *see also infra* note 37.

16. *See* Murakami, *supra* note 12.

17. *See id.*

18. *See id.*

The legislature responded in 1995 by passing the Becca Bill,[19] which was amended in 1996[20] and 1997.[21] The Bill provides parents and law enforcement officials with more authority to detain and treat runaway juveniles.[22] Then-Governor Michael Lowry reluctantly approved a provision in the Bill allowing the state to hold youths for up to five days in secure centers without judicial review of their commitment to detention.[23]

Many providers of social services to runaways and advocates for children oppose the provisions of the Becca Bill that allow the state to detain children.[24] They warn that such a system drives children away from social services and state assistance.[25] This makes runaways more vulnerable to those who exploit them by reducing the number of such services that runaways accept and reducing the likelihood that runaways leave the streets with the assistance of state programs.[26] These advocates also question whether such measures violate constitutional due process rights.[27] Since the Becca Bill's enactment, neither the legislature nor any Washington court has responded to these constitutional concerns.

This Comment examines whether the Becca Bill's runaway detention provisions violate the Due Process Clauses of the Washington and U.S. constitutions.[28] Part I describes the Becca Bill's provisions that allow

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19. 1995 Wash. Laws ch. 312 (codified at Wash. Rev. Code §§ 13.04, 13.32A, 28A.225, 28A.600, 36.18, 43.43, 46.20, 46.82, 70.96A, 71.34, 74.13, 82.14).

20. *See* 1996 Wash. Laws ch. 133 (codified at Wash. Rev. Code §§ 13.32A, 13.34, 28A.225, 70.96A, 71.13, 71.34).

21. *See* 1997 Wash. Laws ch. 146 (codified in Wash. Rev. Code § 74.13.037 and scattered sections of § 13.32A).

22. *See* Mistee R. Pitman, Comment, *The Becca Bill: A Step Toward Helping Washington Families*, 34 Gonz. L. Rev. 385, 392 (1999).

23. *See* Kery Murakami, *Lowry Opposes Bill to Detain Runaways*, Seattle Times, Mar. 30, 1995 at B3.

24. *See* Jolayne Houtz, *Putting Brakes on Runaway Kids, Pressure Grows to Give Parents More Control*, Seattle Times, Jan. 31, 1995, at A1.

25. *See id.*

26. *See id.*

27. *See* Ruth Teichroeb, *State's Lockup Policy for Runaways May Violate Federal Law*, Seattle Post-Intelligencer, Jan. 12, 2000, at A10.

28. The Becca Bill's detention provisions may also violate the U.S. Constitution's prohibition of unreasonable searches and seizures. *See* U.S. Const. amend IV. However, this Comment addresses only the due process questions raised by the Becca Bill's runaway detention provisions because courts have applied a due process analysis to analogous detention situations. *See, e.g.*, *In re* Young, 122 Wash. 2d 1, 43–44, 857 P.2d 989, 1010 (1993); *In re* Harris, 98 Wash. 2d 276, 285, 654 P.2d

parents and police to detain juveniles against their will in secure crisis residential centers. Part II analyzes the procedural due process rights accorded to juveniles under the Washington and U.S. constitutions. Part III concludes that the Becca Bill's runaway detention provisions violate the procedural due process rights of juveniles by allowing the state to detain them against their will without a hearing. Finally, this Comment proposes in Part IV that Washington should afford juvenile runaways judicial review within twenty-four hours of their commitment to detention in a secure facility.

I. THE BECCA BILL

The Washington Legislature designed the Becca Bill to provide state authorities and parents with additional tools for assisting troubled juveniles.[29] The statute authorizes law enforcement officials to take runaway juveniles into custody and, under certain circumstances, place them in secure crisis residential centers against their will.[30]

A. The Becca Bill Was Designed to Provide State Intervention and Assistance to Troubled Families, Particularly Families of Runaway Children

The Becca Bill creates secure crisis residential centers in which juvenile runaways can be held for up to five days.[31] The Bill authorizes law enforcement officials to take juvenile runaways into custody and to commit them for detention in the secure crisis residential centers.[32] Once admitted to the secure facility, a juvenile can only be removed from the facility with a parent's consent.[33] The statute provides no judicial review of this commitment to detention and the facility administrator has very limited authority to transfer a child from a secure facility to a non-secure facility.

109, 113 (1982). The Bill may also violate a parent's liberty interest in raising children free from state intervention. However, this question is beyond the scope of this Comment.

29. *See* Wash. Rev. Code § 13.32A.010 (1998).

30. *See* Wash. Rev. Code § 74.13.032(1), (4) (1998); *see also infra* note 37 and accompanying text.

31. *See* Wash. Rev. Code § 74.13.032(1), (4); *see also infra* notes 37–39 and accompanying text.

32. *See* Wash. Rev. Code §§ 13.32A.050, .060, .065 (1998); *see also infra* notes 40–59 and accompanying text.

33. *See* Wash. Rev. Code § 13.32A.130 (1998).

1. General Provisions of the Becca Bill

The Becca Bill is a package of provisions designed to address a variety of problems concerning youths. The Bill provides several new procedures for parents and the state to control youths.[34] The Bill also creates ways for children and parents to access state services for children and their families.[35] The Bill attempts to address the issues surrounding runaways by authorizing law enforcement officials to take runaways into custody and by establishing secure facilities in which runaways can be held.[36]

A crisis residential center (CRC) is a well-staffed, structured group-care facility that provides treatment, supervision, and support for juveniles.[37] A secure CRC is locked or has a secured perimeter and is designed and operated to prevent the resident juveniles from leaving without staff permission.[38] The Becca Bill requires that where a secure CRC is located in or near a juvenile detention facility, the facilities must minimize contact between those housed in the secure CRC and the residents of the detention facility.[39]

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34. *See* Wash. Rev. Code § 13.32A.010. The legislative findings refer to the at-risk-youth provisions and the secure crisis residential centers, for example. *See* Wash. Rev. Code § 13.32A.010.

35. The Bill addresses two types of petitions: the child in need of services petition, which a child, parent, or the state may file, and the at-risk youth petition, which a parent may file. *See* Wash. Rev. Code §§ 13.32A.140, .150, .152, .160, .170, .179, .180, .190, .191, .192, .194, .196, .197, .198 (1998). Through court intervention, the petitions endeavor to provide troubled children and families with access to services that might resolve the families' issues. *See* Pitman, *supra* note 22, at 392.

36. *See infra* Part I.A.2.

37. *See* Wash. Rev. Code § 74.13.032(1), (4) (1998). Semi-secure CRCs are required to be operated in a manner to "reasonably assure that youth placed there will not run away." Wash. Rev. Code § 13.32A.030(15) (1998). Administrators of semi-secure facilities are required to establish policies to ensure that residents who are permitted to leave and return to the facility do so at appropriate times and with appropriate conditions on their movements. *See* Wash. Rev. Code § 13.32A.030(15).

38. *See* Wash. Rev. Code § 13.32A.030(14) (1998).

39. *See* Wash. Rev. Code § 74.13.032(6) (1998). The 1995 bill prohibited a CRC from being built on the same grounds as other secure facilities, including jails and juvenile detention centers, without a written finding that such a location was the only practical location. *See* 1995 Wash. Laws ch. 312 § 60(6). A 1998 amendment removed this language. *See* 1998 Wash. Laws ch. 296 § 4(6).

2. *The Becca Bill Establishes Procedures by Which Runaway Children Are Returned to Their Homes or Taken to Secure Crisis Residential Centers*

There are several ways in which runaway children enter secure CRCs set up by the statute. One manner in which a child[40] becomes subject to the provisions of the Becca Bill is when the child's parents[41] notify a law enforcement agency that the child has run away.[42] When a parent reports a child as a runaway to a law enforcement agency, an officer who encounters the child must take the child into custody.[43] An officer may also take a child into custody when the officer encounters the child and reasonably believes, considering the time of day, place, and age of the child, that the child is in a dangerous situation.[44]

The runaway provisions also apply to children subject to court or agency authority.[45] An officer must take a child into custody under the following circumstances: (1) if an agency legally charged with the supervision of the child reports the child has run away from placement,[46] (2) if the juvenile court notifies the law enforcement agency that the child has violated a court placement order, or (3) if the court issues an order for law enforcement pickup of the child.[47] When taking a child into custody under these conditions, the officer must inform the child of the reason for this custody and take the child to the supervising agency or to a secure CRC.[48] If the child is suspected of violating a court order, the

40. The statute defines "child," "juvenile," and "youth" as any unemancipated person under 18 years old. *See* Wash. Rev. Code § 13.32A.030(3) (1998).

41. The statute defines "parent" to include a child's custodian or guardian. *See* Wash. Rev. Code § 13.32A.030(13) (1998).

42. *See* Wash. Rev. Code § 13.32A.050(1)(a) (1998).

43. *See* Wash. Rev. Code § 13.32A.050(1)(a) (1998).

44. *See* Wash. Rev. Code § 13.32A.050(1)(b) (1998). In locations with curfews, an officer may also take a child into custody for violating that curfew. *See* Wash Rev. Code § 13.32A.050(1)(b).

45. *See* Wash. Rev. Code § 13.32A.050 (1998).

46. *See* Wash. Rev. Code § 13.32A.050(1)(c).

47. *See* Wash. Rev. Code § 13.32A.050(1)(d). The officer must take a child to a juvenile detention facility, rather than a secure CRC, whenever he or she knows that a court has entered a detention order for the child. *See* Wash. Rev. Code § 13.32A.060(2) (1998).

48. *See* Wash. Rev. Code § 13.32A.060(2). When the officer has been notified that the juvenile court has issued a detention order for the youth the officer must take the youth to detention. *See* Wash. Rev. Code § 13.32A.060(2).

officer may take the child either to a secure CRC or to a juvenile detention center.[49]

After a child is in custody, law enforcement officers must deliver the child to a parent or to a secure CRC unless the child has violated or is subject to an earlier court order.[50] The officer must first attempt to return the child to his or her home or to a parent's place of employment.[51] A parent may request that the officer deliver the child to the home of a family member or friend, a licensed youth shelter, a secure CRC, or the Department of Social and Health Services (DSHS) as the state department responsible for children dependent on the state.[52] If no parent is available to accept custody of the child,[53] if it is impractical to transport the child to a parent's home or workplace,[54] or if the child seems so frightened or unwilling to go home that the officer believes that the child is experiencing abuse or neglect, the officer must take the child to a secure CRC.[55]

Finally, the Becca Bill establishes procedures for review of commitment to detention for a juvenile who is the subject of a detention order by a juvenile court. When an officer takes a child into custody for violating a court placement order, the officer may take the child to a secure CRC or a juvenile detention center.[56] When an officer takes a child into custody because a juvenile court has entered a detention order for the child, the officer must place the child in a juvenile detention center.[57] A juvenile detention center must provide the child with a detention review hearing within twenty-four hours.[58] If the court orders the child to remain in detention, the court must hold a hearing on contempt within seventy-two hours, excluding weekends and holidays.[59]

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49. *See* Wash. Rev. Code § 13.32A.060(2).

50. *See* Wash. Rev. Code § 13.32A.060 (1998).

51. *See* Wash. Rev. Code § 13.32A.060(1)(a).

52. *See* Wash. Rev. Code § 13.32A.060(1)(a).

53. *See* Wash. Rev. Code § 13.32A.060(1)(b)(iii).

54. *See* Wash. Rev. Code § 13.32A.060(1)(b)(ii).

55. *See* Wash. Rev. Code § 13.32A.060(1)(b)(i).

56. *See* Wash. Rev. Code § 13.32A.060(2) (1998).

57. *See* Wash. Rev. Code § 13.32A.060(2).

58. *See* Wash. Rev. Code § 13.32A.065(1) (1998) In Part I.A.2 and I.A.3 of this Comment, all mandatory minimum time requirements for hearings exclude weekends and holidays.

59. *See* Wash. Rev. Code § 13.32A.065(2) (1998).

3. *The Becca Bill Provides Some Juveniles Judicial Review of Their Commitment to Detention, but Does Not Provide Juvenile Runaways with Judicial Review*

In some situations, Washington statutes provide juveniles with prompt judicial review of their commitment to detention. A juvenile taken into custody because a juvenile court has found probable cause exists to believe that the child has violated a court placement order, or because the court has issued an order for law enforcement to pick up the child, must be given a probable cause hearing within twenty-four hours.[60] When a child is detained by an officer for treatment, the state must provide the child a commitment hearing within seventy-two hours of admission.[61]

A child admitted to a secure CRC, however, must remain in the facility at least twenty-four hours unless removed by a parent,[62] but no more than five days.[63] During the first twenty-four hours, the administrator of the secure facility must determine whether the child will likely run away from a semi-secure facility.[64] If the administrator determines that the child would likely run away from a semi-secure facility, the administrator must keep the child in the secure facility.[65] An administrator may only transfer a child if he or she determines that the child is not likely to leave the semi-secure facility.[66] Moreover, the administrator may transfer a child back from a semi-secure facility to a

60. *See* Wash. Rev. Code § 13.32A.065 (1998).

61. *See* Wash. Rev. Code § 71.34.080 (1998).

62. The Bill provides that a parent can remove a child from the CRC at any time, as long as the administrator of the CRC has no reason to believe that the child is in danger of abuse or neglect if returned to the parent's home. *See* Wash. Rev. Code § 13.32A.130(4) (1998).

63. *See* Wash. Rev. Code § 13.32A.130(1) (1998).

64. *See* Wash. Rev. Code § 13.32A.130(2)(a)(i) (1998).

65. *See* Wash. Rev. Code § 13.32A.130(2)(a)(ii) (1998). The administrator must take into consideration:

> (A) the child's age and maturity; (B) the child's condition upon arrival at the center; (C) the circumstances that led to the child's being taken to the center; (D) whether the child's behavior endangers the health, safety, or welfare of the child or any other person; (E) the child's history of running away which has endangered the health, safety and welfare of the child; and (F) the child's willingness to cooperate in the assessment.

Wash. Rev. Code § 13.32A.130(2)(a)(ii).

66. *See* Wash. Rev. Code § 13.32A.130(2)(b) (1998).

secure facility at any time that he or she reasonably believes that the child is likely to leave the semi-secure facility.[67]

In 1996, the legislature amended the Becca Bill to limit the amount of time a child could spend in the secure CRCs without the permission of a parent or some action by the state to ensure that the child would be released into state or parental supervision. The amendment required that a child placed in a CRC or assigned by DSHS to an out-of-home placement[68] remain in that facility or placement for no more than seventy-two hours without parental permission, the filing of a child in need of services petition, or a court order for an out-of-home placement.[69] This provision imposed a duty upon the state to prepare a plan within seventy-two hours to release the child into parental or state supervision at the end of the permitted five-day detention.

B. State and Counties Lack the Resources To Implement Fully the Becca Bill's Purpose and Mandates

Delays in establishing the secure CRC facilities required by the statute have hampered implementation of the runaway provisions. No secure CRCs existed in 1995 when the legislature passed the Bill; one facility began operating in 1997 and five more opened in 1999.[70] At the beginning of 2000, only thirty-four of the envisioned seventy-five beds existed.[71] The most populated and urban county in the state, King County, has not yet built a secure CRC.[72] Although legislators intended the secure CRCs to be free-standing facilities devoted to housing and

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67. *See* Wash. Rev. Code § 13.32A.130(2)(d) (1998). If administrators transfer a child between semi-secure and secure facilities, the aggregate time that the child spends in all of these facilities must not exceed five days. *See* Wash. Rev. Code § 13.32A.130(1).

68. "Out of home placement" is a placement in a foster home or group care facility, or placement in a home other than that of the child's parent, guardian, or legal custodian. *See* Wash. Rev. Code § 13.32A.030(12) (1998).

69. *See* Wash. Rev. Code § 13.32A.060(3) (1998).

70. *See* Ruth Teichroeb, *State's Runaway Centers Provoke Controversy*, Seattle Post-Intelligencer, Jan. 12, 2000, at A1.

71. *See id.* Zoning restrictions and opposition from potential neighbors have stymied attempts to open free-standing facilities in some areas. *See id.* The state reimburses the CRCs for each bed at a daily rate regardless of whether the beds are empty or full; this guaranteed income is attractive to counties burdened by increasing numbers of juveniles being sent to juvenile detention as a result of other provisions of the Becca Bill. *See id.*

72. *See id.*

helping only juvenile runaways,[73] half of the beds are located in juvenile detention centers.[74]

The state has no empirical data to indicate whether CRCs have fulfilled the legislature's goals because the state does not track children after they leave the centers.[75] One function of the CRCs is to identify the problems that have driven resident juveniles onto the streets and to connect these juveniles with services to address these problems.[76] There is a shortage of services available to juveniles in the state to address their problems.[77] For example, juveniles who cannot pay for drug or mental health treatment often have to wait months for space to become available in the existing subsidized treatment programs.[78]

Many debate the efficacy of the secure CRCs.[79] Some argue that the secure CRCs are necessary to protect children and enforce the right of parents to control their children.[80] For example, the director of Yakima's Epic Center, the first secure CRC to be established, said: "These kids are screaming, 'Care enough to stop me.' We're having great success at getting to kids before they become a statistic."[81] Others argue that the secure CRCs are excessively punitive, costly, and curtail children's rights.[82] Some child advocates and social workers say that the centers are expensive facilities designed to punish children for trying to escape troubled homes.[83] They argue that five days are insufficient to accomplish all that the children need and that inadequate funding of follow-up services for children makes the purported goals of the Becca Bill unattainable.[84]

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73. *See id.*
74. *See id.*
75. *See id.*
76. *See* Wash. Rev. Code § 13.32A.010 (1998).
77. *See* Teichroeb, *supra* note 70.
78. *See id.*
79. *See id.*
80. *See id.*
81. *Id.*
82. *See id.*
83. *See id.*
84. *See id.*

II. THE WASHINGTON AND U.S. CONSTITUTIONS PROTECT MINORS FROM DEPRIVATION OF LIBERTY WITHOUT DUE PROCESS OF LAW

Both the Washington and U.S. constitutions provide that no person shall be deprived of "life, liberty, or property, without due process of law."[85] Thus, state deprivation of any of these protected interests is unconstitutional unless accompanied by adequate procedural safeguards.[86] Constitutionally adequate procedures generally require that a hearing precede any deprivation of liberty or property.[87] Because the Supreme Court of Washington has held that the state's due process protection is largely coextensive with that of the U.S. Constitution,[88] this section will treat the respective constitutional analyses together.[89]

A. Juveniles' Due Process Rights Are Not Coextensive with the Due Process Rights of Adults in Detention Situations

In discussing the nature of juveniles' due process rights, courts invariably have repeated two established tenets of due process law: (1) juveniles have due process rights, yet (2) those rights are not exactly the same as due process rights of adults.[90] The U.S. Supreme Court established juvenile due process protections in the context of juvenile delinquency proceedings in *In re Gault*,[91] declaring that "neither the

85. U.S. Const. amend. XIV, § 1; Wash. Const. art. I, § 3.

86. *See* Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 541 (1985).

87. *See id.* at 542.

88. *See* Washington v. Manussier, 129 Wash. 2d 652, 679–80, 921 P.2d 473, 486 (1996). In *Manussier*, the plaintiff challenged the constitutionality of Washington's "three strikes law." *See id.* at 658, 921 P.2d at 476. The law required trial courts to sentence persons convicted of a third felony, which fell into a statutorily defined category, to life imprisonment without possibility of parole. *See id.* at 659, 921 P.2d at 476. The court held that the law did not violate procedural due process. *See id.* at 682, 921 P.2d at 488. The Court applied the *Gunwall* test, which uses six nonexclusive factors to evaluate whether the Washington Constitution provides more extensive protections than the U.S. Constitution: "'(1) the textual language; (2) differences in the texts; (3) constitutional and common law history; (4) preexisting state law; (5) structural differences; and (6) matters of particular state or local concern.'" *Id.* at 679, 921 P.2d at 486 (quoting State v. Gunwall, 106 Wash. 2d 54, 58, 720 P.2d 808, 811 (1986)). After applying this test, the court concluded that the Washington Constitution's due process requirements would be satisfied by an application of the federal due process test. *See id.*

89. Although due process considerations include two analyses, substantive due process and procedural due process, this Comment will discuss only procedural due process.

90. *See* Schall v. Martin, 467 U.S. 253, 263 (1984).

91. 387 U.S. 1, 13 (1967).

Fourteenth Amendment nor the Bill of Rights is for adults alone."[92] In that case, the Court rejected the argument that the state, as parens patriae,[93] could deny due process protections to juveniles.[94] The argument that the Court rejected was based on the notion that juveniles, unlike adults, have a right to custody rather than liberty.[95] Nevertheless, in subsequent cases, the Court has expressed exactly this rejected sentiment as justification for limiting the due process made available to juveniles.[96] In *Schall v. Martin*,[97] for example, even as the Court repeated that the due process clause is applicable to juvenile delinquency proceedings, it countered this strong statement with a reminder that a juvenile's liberty interest may in some situations be subordinated to state interests in protecting the juvenile.[98]

The U.S. Supreme Court has recognized that, in the context of the juvenile delinquency system, juveniles are entitled to certain basic constitutional protections.[99] These protections include the right to notice of charges,[100] the right to counsel,[101] the privilege against self-incrimination,[102] the right to confrontation and cross examination of witnesses,[103] the use of the standard "proof beyond a reasonable doubt,"[104] and the principle of double jeopardy.[105] However, the Court has refused to extend the right to jury trial to juveniles in juvenile court because to do so could change unacceptably the nature of juvenile proceedings.[106]

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92. *Id.*

93. The phrase parens patriae originated in chancery practice, where it described the role of the state in protecting the property rights and the person of a child in the absence of a parent. *See id.* at 16.

94. *See id.* at 13.

95. *See id.* at 17.

96. *See, e.g.*, Reno v. Flores, 507 U.S. 292, 302 (1993).

97. 467 U.S. 253 (1984).

98. *See id.* at 265–66.

99. *See id.* at 263.

100. *See In re* Gault, 387 U.S. 1, 33–34 (1967).

101. *See id.* at 36.

102. *See id.* at 55.

103. *See id.* at 57.

104. *Schall*, 467 U.S. at 263.

105. *See id.*

106. *See* McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971) (stating that requiring extension of right to jury trials in juvenile delinquency proceedings could "remake the juvenile proceeding into a

The Court has also recognized that due process protections apply to juveniles not only in delinquency proceedings, but also in commitment for mental health care proceedings and pretrial detention contexts. In *Parham v. J.R.*,[107] the Court questioned the procedural due process compliance of a Georgia statute that allowed a parent to institutionalize a child for mental health care without a judicial hearing.[108] In *Schall v. Martin*, the Court held that a state procedure that gave juveniles detained while awaiting trial prompt judicial review of their commitment to detention would satisfy procedural due process requirements.[109] Courts have held in a broad spectrum of situations, therefore, that due process protections apply to juveniles.

B. The U.S. Constitution Guarantees Due Process Procedural Safeguards Before Citizens May Be Deprived of "Life, Liberty, or Property"

The U.S. Supreme Court developed the principle test for procedural due process in *Mathews v. Eldridge*.[110] The *Mathews* balancing test requires consideration of three factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[111]

Both the U.S. Supreme Court and the Supreme Court of Washington have applied the *Mathews* test to procedural due process questions regarding adult and juvenile detention.[112] The U.S. Supreme Court has

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fully adversary process [that] will put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding").

107. 442 U.S. 584 (1979).

108. *Id.* at 600–01.

109. 467 U.S. at 275.

110. 424 U.S. 319 (1976).

111. *Id.* at 335.

112. *See, e.g.*, United States v. Salerno, 481 U.S. 739, 746 (1987) (applying *Mathews* test to pretrial detention on grounds of future dangerousness); *In re* Young, 122 Wash. 2d 1, 43–44, 857 P.2d 989, 1010 (1993) (applying *Mathews* test to involuntary detention of sexually violent

also held that procedural due process protections must occur at a meaningful time if they are to be effective.[113]

1. The Relative Weight of an Individual's Liberty Interest in Freedom from Bodily Restraint

Both Washington state and federal courts have recognized that due process protects an individual's right to freedom from bodily restraint.[114] Minor children have this constitutionally protected interest as well as adults.[115] The U.S. Supreme Court has stated that juveniles accused of delinquency and held in pretrial detention have a substantial interest in freedom from institutional restraint.[116] In *Parham v. J.R.*,[117] the Court acknowledged that unnecessary confinement for medical treatment and commitment for psychiatric care may threaten a child's liberty interest and cause the child harm.[118] The Court also acknowledged the traditional assumption that parents have a strong interest in making decisions about their children's lives.[119] The Court finally struck a balance between these two interests:

> [W]e conclude that our precedents permit the parents to retain a substantial, if not the dominant, role in the decision, absent a finding of neglect or abuse, and that the traditional presumption that the parents act in the best interests of the child should apply. We also conclude, however, that the child's rights and the nature of

predators); *In re* Harris, 98 Wash. 2d 276, 285, 654 P.2d 109, 113 (1982) (applying *Mathews* test to involuntary commitment for mental health treatment).

113. *See infra* notes 165–73 and accompanying text.

114. *See, e.g.*, Foucha v. Louisiana, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.") (citation omitted); *Salerno*, 481 U.S. at 750 (stating "[w]e do not minimize the importance and fundamental nature" of the "individual's strong interest in liberty"); Jones v. United States, 463 U.S. 354, 361 (1983) ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.") (citation omitted); *Young*, 122 Wash. 2d at 26, 857 P.2d at 1000 (evaluating statute that allowed state to involuntarily commit persons as sexually violent predators); *Harris*, 98 Wash. 2d at 279, 654 P.2d at 110 (evaluating statute that allowed persons to be detained for up to three days without judicial hearing through summons procedure for involuntary civil commitment).

115. *See* Parham v. J.R., 442 U.S. 584, 600–01 (1979).

116. *See* Schall v. Martin, 467 U.S. 253, 265 (1984).

117. 442 U.S. 584 (1979).

118. *See id.* at 600.

119. *See id.* at 602.

> the commitment decision are such that parents cannot always have absolute and unreviewable discretion to decide whether to have a child institutionalized.[120]

This decision shows that juveniles' liberty interest can be strong enough to limit the power of competing parental interests.

Similarly, in *In re Harris*,[121] the Supreme Court of Washington found that a summons procedure that allowed a county-designated mental health professional to authorize apprehension and detention of a young woman[122] for involuntary civil commitment, based only on an affidavit submitted by the young woman's mother, substantially affected a private interest.[123] Although the summons authorized detention for only seventy-two hours, the court found that confinement for a period of that length still constituted a "massive curtailment of liberty."[124]

In considering the relative weight of the private interest at stake, courts have recognized that violating a juvenile's interest in freedom from bodily restraint may not only harm the juvenile but also threaten the state's ability to influence and assist the juvenile. For example, in *In re Gault*,[125] Justice Fortas expressed concern that procedures lacking in due process measures would "constitute a further obstacle to effective treatment of the delinquent to the extent that they engender in the child a sense of injustice provoked by seemingly all-powerful and challengeless exercise of authority."[126]

A Washington State Court of Appeals opinion, *In re M.B.*,[127] recently applied the *Mathews* test in a case involving juvenile status offenders and provisions of the Becca Bill.[128] The opinion examined contempt orders and the accompanying purge conditions that courts impose after finding that juveniles have violated court orders originating in at-risk youth petitions, child in need of services petitions, and truancy proceedings.[129] The court examined whether these contempt sanctions violated due

120. *Id.* at 604.

121. 98 Wash. 2d 276, 654 P.2d 109 (1982).

122. The court did not specify Ms. Harris's age in its decision.

123. *See Harris*, 98 Wash. 2d at 283, 654 P.2d at 112.

124. *Id.*

125. 387 U.S. 1 (1967).

126. *Id.* at 26 (citation omitted).

127. 101 Wash. App. 425, 3 P.3d 780 (2000).

128. *See id.* at 470–71, 3 P.3d at 804–05.

129. *See id.* at 431, 3 P.3d at 784.

process in the cases of six individual juveniles.[130] In one of these cases, the court applied the *Mathews* test to the issue of whether the admission of unsworn testimony in juvenile hearings violates due process.[131] The court held that juveniles in this situation have an "obviously substantial" liberty interest.[132]

2. *The Weight of the Government's Interest, Including the Fiscal and Administrative Burdens of Additional or Substitute Procedures*

A second factor of the *Mathews* test is the government's interest in maintaining the contested procedures, including the possible additional costs of any proposed alternative procedures.[133] Courts often look to the legislature's statement of intent to find this interest.[134] Courts have recognized a state's interest in assisting parents with juvenile commitment for mental health treatment[135] and the state's parens patriae interest in the welfare of the child.[136]

The state's interest, however, does not always mirror that of parents. For example, in *In re Sumey*,[137] the court acknowledged the state's interest, articulated in the statutory statement of intent, in preserving the family and supporting a parent's role in the family.[138] The court recognized a "parental constitutional right to the care, custody, and companionship of the child"[139] but also acknowledged that, when parental actions threaten the physical or mental health of the child, the state has a parens patriae right and responsibility to intervene to protect the child.[140] The court concluded that the state has an independent interest in protecting the physical and mental health of minors from the

130. *See id.*

131. *See id.* at 470–71, 3 P.3d at 804–05.

132. *Id.* at 471, 3 P.3d at 805. The juvenile who challenged the use of unsworn testimony had been ordered to detention for three days as a result of the hearing at which unsworn testimony was introduced. *See id.* at 803.

133. *See* Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

134. *See, e.g.*, *In re* Sumey, 94 Wash. 2d 757, 761, 621 P.2d 108, 110 (1980).

135. *See, e.g.*, Parham v. J.R., 442 U.S. 584, 605 (1979).

136. *See, e.g.*, Schall v. Martin, 467 U.S. 253, 263 (1984).

137. 94 Wash. 2d 757, 621 P.2d 108 (1980).

138. *See id.* at 761, 621 P.2d at 110.

139. *Id.* at 762, 621 P.2d at 110.

140. *See id.*

harms caused by extreme family conflict and the dangers that threaten runaway juveniles.[141]

This prong of the *Mathews* test also includes consideration of the additional financial or administrative burdens presented by the proposed additional procedural safeguards.[142] The Court in *Mathews* explained, however, that cost is not a controlling factor.[143] Cost is a problem where the cost of the additional safeguard is so high that it outweighs the benefits of the procedure to society and the individual.[144] The Court reiterated that there is much more at stake in due process analysis than fiscal considerations and that questions of fairness are paramount.[145]

3. *The Risk of Erroneous Deprivation of a Liberty Interest and Probable Value of Additional Procedural Safeguards Such as Hearings*

Under the *Mathews* test, the U.S. Constitution generally requires some kind of a hearing in order for a state to deprive a person of his or her liberty.[146] Therefore, courts have upheld statutes providing prompt judicial hearings shortly after detention begins.[147] Courts have required such hearings even when statutory schemes do not provide for them.[148]

In *Schall v. Martin*,[149] the U.S. Supreme Court upheld a statute permitting pretrial detention of juveniles based on a finding that there was a serious risk that the juvenile would commit a crime before trial. By providing a hearing before a court within seventy-two hours of commitment to detention, the statute sufficiently reduced the risk of

141. *See id.* at 764–65, 621 P.2d at 111–12.

142. *See* Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

143. *Id.* at 348.

144. *See id.*

145. *See id.*

146. *See* Zinermon v. Burch, 494 U.S. 113, 127 (1990). This does not mean that the state can never detain a person before providing a hearing. *See id.* at 132. ("[W]here a predeprivation hearing is unduly burdensome in proportion to the liberty interest at stake . . . or where the State is truly unable to anticipate and prevent a random deprivation of a liberty interest, postdeprivation remedies might satisfy due process.") (citation omitted).

147. *See, e.g.*, Schall v. Martin, 467 U.S. 253, 256–57 (1984).

148. *See, e.g.*, *In re* Harris, 98 Wash. 2d 276, 288, 654 P.2d 109, 115 (1982).

149. 467 U.S. 253 (1984).

erroneous deprivations of liberty.[150] The Court noted that this provision of a prompt hearing before a court and determination of probable cause satisfied the requirements both of the Fifth and Fourteenth Amendment's due process protections and of the Fourth Amendment's protection against unreasonable searches and seizures.[151]

Likewise, the Supreme Court of Washington has recognized the value of a hearing as a procedural safeguard in averting erroneous deprivations of liberty interests. For example, in *In re Young*,[152] the court held that a statute allowing involuntary commitment for sexually violent predators without a probable cause hearing during the forty-five days prior to trial was unconstitutional.[153] The court held that procedural due process required a hearing for those detained under the statute within seventy-two hours.[154]

Similarly, the *Harris* court found that a mental health commitment procedure inadequately eliminated the risk of erroneous deprivation of the petitioner's liberty and, therefore, did not fulfill due process requirements.[155] The statute addressed commitment of persons alleged to pose a likelihood of serious harm to self or others due to a mental disorder.[156] It allowed a mental health professional to summon such a person to appear for evaluation and for treatment for up to seventy-two hours.[157] This summons was permitted by the statute after the professional had investigated the allegation.[158] The court held that the

150. *See id.* at 281. The Court noted in this finding that the statutory procedures also provided the juvenile with notice of the hearing, notice of the rights to remain silent and to be represented by counsel, allowed the juvenile to be accompanied by parent or guardian, and informed the juvenile of the charges. *See id.* at 275.

151. *See id.* at 277. In *Gerstein v. Pugh*, 420 U.S. 103 (1975), the Court held that, under the Fourth Amendment, adults arrested without a warrant must be provided "a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest." *Id.* at 125. Later, the Court refined this requirement by holding that any "jurisdiction that provides judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement of *Gerstein*." Riverside v. McLaughlin, 500 U.S. 44, 56 (1991). When an arrested individual does not receive a hearing within 48 hours, the government must show that it was prevented from doing so by "a bona fide emergency or other extraordinary circumstance." *Id.* at 57.

152. 122 Wash. 2d 1, 857 P.2d 989 (1993).

153. *See id.* at 46–47, 857 P.2d at 1011.

154. *See id.*

155. *See In re* Harris, 98 Wash. 2d 276, 287, 654 P.2d 109, 114 (1982).

156. *See id.* at 279, 654 P.2d at 110.

157. *See id.*

158. *See id.*

procedure's potential for deprivation of liberty required a neutral third party to determine that the individual's situation justified detention.[159] In balancing the interests, the court found that the risk of erroneous liberty deprivation was high because the statute vested far too much authority in a mental health professional.[160] The court described this as a "uniquely judicial" determination.[161]

In reaching this decision the court noted that the traumatic effect of involuntary civil commitment can be felt within a very short period of confinement. This risk increases the importance of avoiding any erroneous deprivation of liberty by such potentially harmful detention.[162] It based this finding in part on testimony before the U.S. Senate that "any kind of forcible detention of a person in an alien environment may seriously affect him in the first few days of detention, leading to all sorts of acute traumatic and iatrogenic symptoms and troubles."[163] The court expressed concern that detention without due process could do more harm than good by frightening people away from needed sources of care.[164]

When a court considers whether proposed additional procedural safeguards will prevent erroneous deprivations of liberty, it must keep in mind that the "fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"[165] In *Armstrong v. Manzo*,[166] the Court set aside an adoption decree because the child's natural father was not given notice of the adoption proceedings.[167] Notice and an opportunity to be heard, essential elements of due process, were meaningless if they took place after the father had lost the opportunity to oppose the adoption.[168] In *Goss v. Lopez*,[169] the

159. *See id.* at 288–89, 654 P.2d at 115.

160. *See id.* at 286–87, 654 P.2d at 114.

161. *Id.* at 288, 654 P.2d at 115.

162. *See id.* at 279, 654 P.2d at 111.

163. *Id.* at 279–80, 654 P.2d at 111 (quoting *Constitutional Rights of the Mentally Ill: Hearings Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary*, 91st Cong. 210 (1969–70) (statement of Arthur Elson Cohen, member ACLU)).

164. *See id.* at 288, 654 P.2d at 115.

165. Mathews v. Eldridge, 424 U.S. 319, 333 (1975) (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)).

166. 380 U.S. 545 (1965).

167. *Id.* at 552.

168. *See id.* at 551.

169. 419 U.S. 565 (1975).

Court held that students must be given some minimum notice and hearing opportunity before even temporary suspensions from school.[170] The Court held that this opportunity must take place before the suspension to comply with the requirement that the hearing take place at a meaningful time.[171] The Court held that students have a protected property interest in attending school.[172] The hearing prevents the erroneous deprivation of that property interest by mistaken and arbitrary suspensions.[173] Each of these cases required state actors to provide hearings before the loss of some protected interest, regardless of the age of the person whose interests were at stake.

C. *Congress Has Codified the Right to Prompt Judicial Review of Commitment to Detention of Juvenile Status Offenders*

The federal Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA)[174] requires judicial review of commitment to detention for juvenile status offenders (those whose acts are only offenses when committed by minors).[175] States receiving federal funds to help pay for juvenile justice programs must provide a hearing within twenty-four hours, not including weekends and holidays.[176] Congress enacted the twenty-four hour review requirement in the JJDPA in response to arguments that detaining status offenders without procedural safeguards was counterproductive and contrary to the juvenile courts' rehabilitative goal.[177]

The JJDPA requires, as a condition of a state receiving formula grants, that the state submit a document outlining the state's plan for compliance with the requirements of the JJDPA.[178] For example, the state plan must show that, within three years of submission of its plan, it will no longer place juveniles charged with status offenses in secure detention or

170. *Id.* at 581.

171. *See id.* at 582.

172. *See id.* at 573.

173. *See id.* at 581.

174. Pub.L. No. 93-415, 88 Stat. 1110 (1974) (codified at 42 U.S.C. §§ 5601–5785 (1994)).

175. *See* Rayna Hardee Bomar, Note, *The Incarceration of the Status Offender*, 18 Memphis St. U. L. Rev. 713, 720 (1988).

176. *See* 28 C.F.R. § 31.303(f)(iii)(2) (1999).

177. *See* Bomar, *supra* note 175, at 728.

178. *See* 42 U.S.C. § 5633(a) (1994).

correctional facilities.[179] The state must also submit annual reports of the progress made toward the goal of de-institutionalization, showing that juveniles placed in secure facilities are placed in the least restrictive alternatives appropriate to the needs of the child and the community.[180] The Office of Juvenile Justice and Delinquency Prevention (OJJDP), the agency charged with implementing the JJDPA, has published regulations that allow the state to hold accused status offenders in a secure detention facility for up to twenty-four hours, excluding weekends and holidays, before a court appearance, and for up to twenty-four hours more after an initial court appearance.[181] The OJJDP has determined that the Becca Bill's secure CRC provisions are inconsistent with the requirements of the JJDPA, and that Washington is no longer in compliance with that Act.[182]

III. THE BECCA BILL DOES NOT PROVIDE JUVENILE RUNAWAYS WITH DUE PROCESS OF LAW

A juvenile has a fundamental liberty interest in freedom from bodily restraint and this interest is threatened by the secure CRC provisions of the Becca Bill. The government's interest in protecting juveniles and assisting their parents does not justify denying juvenile runaways the due process protection of judicial review of their commitment. There is a high risk of erroneous detention, and the harm that could be caused by such a detention is high in the case of the secure CRCs. Therefore, the Becca Bill currently violates procedural due process requirements.

A. The Becca Bill Violates the Due Process Rights of Juveniles Because Juveniles Have a Fundamental Right to Personal Liberty

The secure CRC provisions of the Becca Bill violate procedural due process under the analysis established in *Mathews v. Eldridge*[183] by

179. *See* 42 U.S.C. § 5633(a)(12)(A).

180. *See* 42 U.S.C. § 5633(12)(B).

181. *See* 28 C.F.R. § 31.303(f)(iii)(2).

182. *See* Letter from John J. Wilson, Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, to Gerald Sidorowicz, Assistant Secretary, Washington Department of Social and Health Services, Office of Juvenile Justice (Mar. 10, 2000) (on file with author) (noting that Washington state is in danger of losing some federal funding provided for juvenile justice programs because of this finding of noncompliance).

183. 424 U.S. 319 (1975).

threatening juveniles' constitutional liberty interest in "freedom from bodily restraint."[184] Courts have already indicated that this interest is implicated when juveniles are held in delinquency proceedings,[185] in commitment for mental health care proceedings,[186] and in pretrial detention.[187] The interest of a juvenile runaway in freedom from personal restraint should be accorded the same weight accorded to juveniles in other contexts. Even convicted sex offenders whom the court has labeled predatory, triggering involuntarily commitment, have been found to have a constitutional liberty interest that requires due process protection.[188] Juveniles who have been detained simply for leaving their parent's homes before attaining the age of majority should not have a lesser liberty interest under the procedural due process analysis than those who have committed a crime or who are found to be dangerous to society.

B. The State's Interest in Detaining Juvenile Runaways Is Inadequate To Deny Those Juveniles Procedural Due Process Protection

The *Mathews* test requires an evaluation of the state's interest in the Becca Bill's runaway detention provisions and how a mandatory judicial review of a juvenile's commitment to detention would affect the state's ability to satisfy that interest. Under the Becca Bill's statement of intent, the state interest in detaining juvenile runaways includes (1) the state's traditional but ambiguously defined parens patriae role in caring for neglected children and (2) its interest in defending and supporting parents' rights to custody of runaway children.[189] This statement of intent recognizes parents as the most qualified people to make decisions about their children's lives.[190] The statement of intent describes the secure facilities and the new procedures in the bill for dealing with runaways as tools to assist children for parents, law enforcement, and state

184. Foucha v. Louisiana, 504 U.S. 71, 80 (1992).

185. *See In re* Gault, 387 U.S. 1, 27 (1967).

186. *See* Parham v. J.R., 442 U.S. 584, 601 (1979).

187. *See* Schall v Martin, 467 U.S. 253, 265 (1984).

188. *See In re* Young, 122 Wash. 2d 1, 45–46, 857 P.2d 989, 1011 (1993).

189. *See* Wash. Rev. Code § 13.32A.010 (1998).

190. *See* Wash. Rev. Code § 13.32A.010. ("Presumptively, the experience and maturity of parents make them better qualified to establish guidelines beneficial to and protective of their children. . . . [T]he right and responsibility for establishing reasonable guidelines for the family unit belongs to the adults within that unit.").

agencies.[191] The legislature announced its intention that secure CRCs provide services to runaway juveniles for a limited time.[192] The legislature indicated that the time a juvenile spends in a CRC should be used to conduct assessments of the needs of the juveniles and their families.[193] These assessments should connect the juveniles and their families with longer-term services to address the problems that first led the juveniles to run away.[194]

The statute's failure to achieve these purposes diminishes the state's interest in depriving a juvenile's liberty interest under *Mathews*. In reality, the secure CRCs have not accomplished the legislature's goals.[195] While secure CRCs are intended to protect, not punish,[196] housing juveniles in detention centers is much closer to a punitive detention. Experience suggests that juveniles do not receive needed services outside of the secure CRCs.[197] This reality undercuts the state's expressed goal of reuniting families and ensuring these juveniles receive needed services, by force if necessary.

Similarly, while the state's interest in supporting parents' control of their children is important, the juvenile's fundamental interests are also important and may limit the state's duty to support parents' interests.[198] The state's parens patriae duty, often invoked to decrease the extent of juveniles' due process protections, was applied in *In re Sumey*[199] to stand for the proposition that the state must protect a child when parental actions threaten the child's physical or mental health.[200] In this case, while the legislature has expressed its intent to protect parents' custodial rights through the Becca Bill, the state cannot ignore its duty to juveniles by letting parental interests eclipse juveniles' constitutional liberty interests. The state should ensure that juveniles detained under the Becca Bill have at least the protection of a hearing.

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191. *See* Wash. Rev. Code § 13.32A.010.

192. *See* Wash. Rev. Code § 13.32A.010.

193. *See* Wash. Rev. Code § 13.32A.010.

194. *See* Wash. Rev. Code § 13.32A.010.

195. *See supra* Part I.B.

196. *See* Wash. Rev. Code § 13.32A.010.

197. *See* Teichroeb, *supra* note 70.

198. *See, e.g., In re* Sumey, 94 Wash. 2d 757, 762, 621 P.2d 108, 110 (1980).

199. 94 Wash. 2d 757, 621 P.2d 108 (1980).

200. *See id.* at 764, 621 P.2d at 111.

In addition, because the additional fiscal and administrative burdens of a twenty-four hour detention review are minimal, the state's interest in avoiding these costs does not justify a denial of due process. The juvenile courts already provide hearings to juveniles in emergency situations and have great experience evaluating juveniles' needs. For example, the juvenile courts provide probable cause hearings within twenty-four hours to any juvenile held in secure detention because a law enforcement officer found probable cause to believe that the child violated a court order.[201] Juvenile courts also must provide custody hearings within seventy-two hours when a child is taken into shelter care.[202] Following passage of the Becca Bill, the number of juveniles detained in Washington skyrocketed. Between 1993 and 1997, the number of youths detained increased by nearly 700%.[203] Detention days imposed by juvenile courts rose from approximately 1000 per year before passage of the Becca Bill to more than 12,300 per year in 1997.[204] Most of the additional detention days served resulted from changes created by the Becca Bill.[205] The legislature, in creating the Becca Bill, authorized this massive expansion of juvenile detention and court involvement. By comparison, the number of hearings that would be required to bring the runaway provision into compliance with procedural due process would be slight.[206] Therefore, because protecting the procedural due process rights of juveniles detained under the runaway provisions would not require considerable additional state resources, the state's interest in denying these procedures is insufficient.

201. *See* Wash. Rev. Code § 13.32A.065 (1998).

202. *See* Wash. Rev. Code § 13.34.060(1)(b) (1998). Shelter care is temporary physical care in a licensed facility or unlicensed home of a child removed from his or her home by Child Protective Services. *See* Wash. Rev. Code § 13.34.060(1).

203. *See In re* M.B., 101 Wash. App. 425, 438, 3 P.3d 780, 787 (2000).

204. *See id.*

205. *See id.* ("Approximately 60 percent and 27 percent of the detentions in 1997 occurred for violating ARY and truancy orders respectively.").

206. The limited number of secure CRC beds (34 beds were available in Jan. 2000) inherently limits the number of runaways who could be held in the facilities and require such hearings. *See supra* notes 70–72 and accompanying text.

C. *Because the Risk of Erroneous Deprivation of a Child's Liberty Is Great, the State's Current Secure CRC Provisions Violate Juveniles' Procedural Due Process Rights*

The Becca Bill's detention provisions do not satisfy the *Mathews* test because there is a high risk of erroneous deprivation of a child's liberty interest in the absence of judicial review at a meaningful time. The Becca Bill allows law enforcement officers to place the child in a secure CRC at their discretion or at the request of a parent.[207] Once in the facility, only the administrator of the facility reviews the child's detention; that review is limited to deciding whether transferring the child to a semi-secure facility would create a risk of the child running away from it.[208] The administrator is given no discretion to decide whether the child should even be at the secure CRC. As a result, besides the administrator, the only person with any authority to remove the juvenile from the facility is the child's parent.[209] In analogous situations, courts have found judicial review of detention within seventy-two hours or less is the only way to avoid the risk of erroneous deprivation.[210] Only by having such a review do many detention schemes comply with the due process clause.[211]

The Becca Bill's secure CRC provision is similar to the statutory provision rejected in *In re Harris*.[212] In that case, the challenged statute allowed a mental-health-care professional to commit a woman for evaluation and treatment by relying only on a mother's affidavit that her daughter was dangerous.[213] The court rejected this procedure because the risk of erroneous deprivation of liberty was too high.[214] Likewise, the risk of erroneous deprivation of liberty in the Becca Bill's procedures is too high because the statute allows the state to commit a child to a secure

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207. *See* Wash. Rev. Code § 13.32A.060 (1998); *see also supra* notes 52–55 and accompanying text.

208. *See* Wash. Rev. Code § 13.32A.130 (1998); *see also supra* notes 64–67 and accompanying text.

209. *See* Wash. Rev. Code § 13.32A.130; *see also supra* notes 64–67 and accompanying text.

210. *See, e.g.*, Schall v. Martin, 467 U.S. 253, 277 (1984); *In re* Young, 122 Wash. 2d 1, 46–47, 857 P.2d 989, 1011 (1993); *see also supra* Part II.B.3.

211. *See, e.g.*, *Schall*, 467 U.S. at 277; *Young*, 122 Wash. 2d at 46–47, 857 P.2d at 1011; *see also supra* Part II.B.3.

212. 98 Wash. 2d 276, 286, 654 P.2d 109, 114 (1982). It should be noted, however, that the *Harris* court did not specify whether Ms. Harris was a minor.

213. *See id.* at 286, 654 P.2d at 114.

214. *See id.* at 287, 654 P.2d 109, 114 (1982).

facility at the request of a parent with no judicial review of that commitment.

Some might argue that there is no risk of erroneous deprivation of a child's liberty as long as a parent authorizes that detention, either expressly or implicitly, by reporting the child as a runaway. However, this assumption is misguided. Parents who are abusive or fail to provide for their children defy the legislature's rationale that parents are better qualified to make decisions that affect their children than the children themselves.[215] Many runaway children have made reasoned decisions to leave abusive situations or parents who are delinquent in protection and support.[216] Although the legislature intended the secure CRCs to be used for assessment, treatment, and protection of at-risk juveniles,[217] there is a risk that a parent's detention request may contravene this intent.

The risk of erroneous deprivation of juveniles' liberty is particularly grave because of the great harm it can cause. The *Harris* court found that "[t]he injurious effect of [involuntary civil] commitment can be manifested in a very short time."[218] Ms. Harris's situation was similar to that of many runaways who might be detained in a secure CRC; the court pointed out that the record reflected no more justification for Ms. Harris's summons than her mother's affidavit that she was dangerous.[219] The court warned that incarcerating people "for their own good" may have the opposite effect, frightening them away from needed services.[220] Child advocates have expressed the same concerns about the Becca Bill: threatened with being involuntarily locked up, endangered runaways may

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215. *See* Wash. Rev. Code § 13.32A.010 (1998).

216. *See* Parham v. J.R., 442 U.S. 584, 602 (1979) (recognizing that incidents of abuse and neglect show that parents may act against best interests of their children, despite legal presumptions to contrary).

217. *See* Kelli Schmidt, Comment, *"Who Are You to Say What My Best Interest Is?" Minors' Due Process Rights When Admitted By Parents for Inpatient Mental Health Treatment*, 71 Wash. L. Rev. 1187, 1193 (1996). One commentator noted:

> A parent may have distorted perceptions and may blame all family problems on a child's behavior, while the child's behavior may be unrelated to mental illness but, instead, be in response to changes in the family structure, such as divorce, parental conflict, and family moves which sever social support networks. Not infrequently, the parent admitting the child for [mental health] treatment suffers from mental illness, or is experiencing extreme crisis that makes it difficult to cope with parenting responsibilities.

Id. at 1207 (citations omitted).

218. *Harris*, 98 Wash. 2d at 279, 654 P.2d at 111.

219. *See id.* at 286, 654 P.2d at 114.

220. *Id.* at 288, 654 P.2d at 115.

avoid those who are trying to help, particularly when those helpers are police officers.[221] Judicial or legislative recognition that juveniles have a right to liberty and to judicial review of their detention, even "for their own good," could make juveniles more trusting of the state and the secure CRC system and encourage more juveniles to cooperate with state agencies.

Damian's story is anecdotal but illustrative of the possible abuses to which this statute might be susceptible.[222] His initial stay at the CRC was precisely what the legislature intended: he was protected and reunited with his family, and he and his family received access to services unavailable to them before he entered the CRC. His second stay at the CRC, however, achieved none of the goals set for the CRCs. Rather, his mother used detention as a tool to punish him for disobedience, not because she believed him to be in danger.[223]

In light of the *Mathews* test, Damian's experience exemplifies how the Becca Bill currently violates procedural due process. The state had no interest in Damian's commitment to detention during his second visit; he was not running away, so his parents' custody and care interests were not in need of the state's protection, and he could not benefit from the services the state could offer through his stay in the CRC. In the absence of review of his commitment to detention, Damian was needlessly and erroneously deprived of his liberty.

IV. DUE PROCESS REQUIRES JUDICIAL REVIEW OF COMMITMENT TO DETENTION UNDER THE BECCA BILL WITHIN TWENTY-FOUR HOURS

Washington must bring the Becca Bill's commitment to detention procedures into compliance with the U.S. Constitution and the Washington Constitution by providing juveniles with a hearing within twenty-four hours of commitment to detention to minimize the risk of erroneous deprivation of the juvenile's liberty interest.[224] This conclusion

221. *See* Houtz, *supra* note 24.

222. *See supra* notes 1–11 and accompanying text.

223. *See* Teichroeb, *supra* note 1.

224. Because the juvenile courts have been given exclusive original jurisdiction in Washington over juvenile delinquency proceedings as well as a number of civil matters affecting juveniles, *see* Wash. Rev. Code § 13.04.030 (1998), the juvenile court judges and commissioners have considerable experience in adjudicating decisions about the best interests of children and in choosing appropriate placements for at-risk children.

has four premises: (1) U.S. Supreme Court precedent suggests that a hearing must occur within forty-eight hours, (2) the circumstances of juveniles' detention in the secure CRCs dictate that the only meaningful time for a hearing to take place would be within the first twenty-four hours, (3) a twenty-four hour hearing will allow the Becca Bill to fulfill its purposes more effectively, and (4) a hearing within twenty-four hours will bring the Bill closer to complying with the JJDPA requirements.

The legislature must amend the Becca Bill or courts reviewing the Bill's provisions must require that the procedures be amended to allow a hearing within forty-eight hours at a minimum to meet current minimal procedural due process standards established by the U.S. Supreme Court. The Court in *Schall v. Martin*,[225] reviewing pretrial detention of juveniles, recognized that the statutory provision of a hearing within seventy-two hours met both the requirements of due process and the Fourth Amendment's requirement of a prompt probable cause hearing.[226] Seven years later, the Court in *Riverside v. McLaughlin*[227] held that a probable cause hearing must occur within forty-eight hours of detention.[228] This forty-eight hour hearing requirement should also apply to procedural due process considerations and should extend to all juveniles detained in secure facilities. The risk of erroneous deprivation of liberty is even greater in the case of a child placed in a CRC than under the system examined in *Schall*. Juveniles detained under the statute examined in *Schall* made an initial appearance before a Family Court judge before being committed for pretrial detention; the seventy-two hour hearing that met due process requirements was in addition to that initial appearance.[229] Juveniles placed in CRCs have no initial appearance before their detention begins.

In addition to the state's interest in protecting juveniles, the *Schall* Court recognized both the state's interest in protecting the detained juveniles and society from the potential consequences of the juvenile's criminal acts, and the concerns of the state surrounding high recidivism rates among juvenile offenders.[230] Regardless of these additional state interests, the Court held that the juvenile's liberty interest required

225. 467 U.S. 253 (1984).

226. *See id.* at 277.

227. 500 U.S. 44 (1991).

228. *See id.* at 56.

229. *See Schall*, 467 U.S. at 277.

230. *See id.* at 264–65.

hearings within seventy-two hours.[231] If the state's interest is not strong enough in the case of a juvenile who may have committed a violent crime to justify denying that juvenile basic procedural due process, then the state's interest in holding a child who may be a runaway cannot be strong enough to justify denying the child basic procedural due process rights. Likewise, because the legislature has already provided a twenty-four hour hearing for juveniles taken to secure CRCs for violating a court order, it should not deny that hearing to children who have not broken the law.

Second, given the shortened detention period of the Becca Bill's runaway provisions, a twenty-four hour commitment to detention hearing would best fulfill the due process requirement that the hearing take place "at a meaningful time and in a meaningful manner."[232] If a juvenile will be spending at most five days in the secure CRC, a hearing at the earliest opportunity is likely to be most effective. This will ensure that children who are misplaced in the CRC do not become disaffected with state social services and suffer harm from the placement. If the child is aware that the court will not be reviewing his or her detention for three days, the child might not make full use of the resources available through the CRC. A child who is resentful of being placed in the facility and who does not feel fairly treated is less likely to cooperate with the facility staff and service providers. In contrast, a child who has had an opportunity to be heard by a judge and receive some review of that placement may be more cooperative afterwards. As Justice Fortas observed in *In re Gault*, "the appearance as well as the actuality of fairness, impartiality and orderliness—in short, the essentials of due process—may be a more impressive and more therapeutic attitude so far as the juvenile is concerned."[233] With at most five days to assess the child's needs, a cooperative attitude may make the difference between achieving the statute's goals of assessment and enrollment in needed services and failure to meet those goals.

Third, the Becca Bill's procedures should provide a hearing within twenty-four hours of commitment to detention to ensure that the facilities maintain their intended function: to provide children protection from the streets and provide a safe place for staff to evaluate and introduce them

231. *See id.* at 277.

232. Armstrong v. Manzo, 380 U.S. 545, 552 (1965); *see also supra* notes 165–68.

233. 387 U.S. 1, 26 (1967).

to the support services they need to remain at home.[234] The secure CRCs can most effectively perform these functions if the juveniles staying in them are actually in need of the services they can provide. If the secure CRCs can be used by parents as punishment for juveniles who disobey but are not in danger, the CRCs will be limited in their capacity and ability to serve children who really need help. Juveniles who have been detained in this fashion will not be amenable to cooperating with the state.[235] With such a review, only those children the statute aims to assist, children absent from home without parental consent who could be safely returned to their homes with state intervention and assistance, would be held. Those children who should not be detained would be released immediately, before the detention could cause additional harm. The state could also identify more quickly those children who need more serious and extensive state intervention.

Finally, the Becca Bill's procedures should provide juveniles with a hearing within twenty-four hours of admission to a secure CRC in order to bring the state closer to complying with the JJDPA. The rules promulgating the JJDPA require that states provide a court appearance within twenty-four hours, exclusive of weekends and holidays, for any status offender placed in a secure detention facility.[236] With the JJDPA Congress has recognized the procedural due process rights of juvenile status offenders by providing them with even more protection than that provided by the U.S. Supreme Court. Congress has also determined that this procedural due process right is so imperative to juveniles that it has conditioned funding of state juvenile justice programs on compliance with this requirement.[237] Washington should follow the wisdom of this determination by providing juvenile runaways with a judicial review of their commitment to detention within twenty-four hours.

234. *See* Wash. Rev. Code § 13.32A.010 (1998).

235. To ensure that the goals of the Becca Bill are met, the state must also ensure that the services children need are available to them after they leave the facilities. *See supra* notes 192–94 and accompanying text.

236. *See* 28 C.F.R. § 31.303(f)(iii)(2) (1999). However, even this change would not bring the statute into complete compliance with the Juvenile Justice and Delinquency Prevention Act because the regulation allows the State to continue to detain a juvenile in a secure detention facility for only 24 hours after the initial court appearance.

237. 42 U.S.C. § 5633(c) (1994).

V. CONCLUSION

Procedural due process requires that the state give juveniles runaways some judicial review of commitment to detention in the secure CRCs. Juvenile runaways have a fundamental liberty interest in freedom from bodily restraint. The state's interests in protecting juvenile runaways and assisting their parents are not threatened by providing such review and do not justify withholding it. The risk that a juvenile will be erroneously deprived of liberty by existing procedures is great and the harm this deprivation may cause is great. The Washington State Legislature should amend the Becca Bill's runaway provisions or courts reviewing the runaway provisions should require the State to provide judicial review of the commitment to detention in a secure CRC within twenty-four hours of a juvenile's placement in the CRC.

Judicial review of commitment to detention early in the juvenile's stay will maximize both the usefulness of that stay and the likelihood that juveniles will be encouraged to trust state offers of assistance. Due process requires that a hearing preceding deprivation of liberty take place at a meaningful time. Providing a review within twenty-four hours of commitment to detention would provide maximum protection from erroneous deprivation of liberty and allow more time for the state to perform the assessments and provide the services required by the statute after this judicial review is completed. Thus, the proposed review would more effectively achieve the Bill's purpose and bring the Becca Bill into compliance with the mandates of procedural due process and federal law.

Providing judicial review within twenty-four hours would assist juveniles like Damian placed in a secure CRC for reasons other than those envisioned by the legislature. The second time Damian was placed in a secure CRC, simply because his mother was angry at him, he expressed discouragement and frustration at being locked up in the center again: "I felt like, I'm trying my hardest. I'm wondering, 'Am I really as bad as I was last year?'"[238] At the same time, amending the Becca Bill to provide a twenty-four hour commitment to detention review hearing would allow the state to continue assisting children like Becca Hedman and their families.

238. *See* Teichroeb, *supra* note 1.