

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

IN RE: THE INTEREST OF G.C.,
a minor, by and through his
next friend, W.S.; DIANE DOE,
ANN COE, FRANCIS ROE, by and
through their next friend
JOSEPH SMITH, on behalf of
themselves and all others
similarly situated,

Plaintiffs,

v.

GREGORY COLER, in his official
capacity as Secretary of the
Department of Health and
Rehabilitative Services for the
State of Florida; and GREGORY
JOHNSON, in his official capacity
as Superintendent of the Broward
County Regional Juvenile Detention
Center,

Defendants.

CIV. CASE NO. 87-6220
GONZALEZ

SECOND AMENDED CLASS
ACTION COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF

INTRODUCTORY STATEMENT

1. This is a civil rights class action brought on behalf of all children who are or will be confined at the Broward County Regional Juvenile Detention Center ("the detention center").

2. Plaintiffs and the class they represent seek declaratory and injunctive relief from cruel, abusive, inadequate, and inappropriate conditions of confinement that violate rights guaranteed to them by the United States Constitution and federal law. These conditions endanger

plaintiffs' physical and psychological health and safety; deprive them of meaningful access to or opportunity for rehabilitation, treatment, and education; and restrict their access to and communication with their families and the community. In particular, plaintiffs seek relief from overcrowding, inappropriate placement, unsanitary and dangerous physical conditions, lack of security, lack of adequate medical and psychological care, lack of adequate staff, abusive punishment including isolation, and lack of appropriate education and programming including lack of special education.

JURISDICTION

3. This Court has jurisdiction of this action under 28 U.S.C. § 1343(3) since this is an action to redress the deprivation under color of state law of rights secured by the Constitution of the United States; and the Civil Rights Act, 42 U.S.C. § 1983.

4. The Court also has jurisdiction under 28 U.S.C. §§ 2201 and 2202, and Federal Rules of Civil Procedure 57 and 65, since this action seeks a judgment declaring the rights of plaintiffs and injunctive and other equitable relief.

5. The Court also has jurisdiction under 28 U.S.C. § 1331(a) since this is an action in which the matter in controversy arises under the Constitution and laws of the United States.

PLAINTIFFS

6. Plaintiff G.C. is a minor child who is a citizen of the United States and a resident of Broward County. At the time of the filing of this complaint, he was detained at the detention center. He is in need of special education services. He sues through his next friend and mother, W.S.

7. Plaintiff DIANE DOE is a minor child who is a citizen of the United States and a resident of Broward County. At the time of the filing of this Complaint, she was detained at the detention center. She sues through her next friend Joseph Smith.

8. Plaintiff ANNE COE is a minor child who is a citizen of the United States and a resident of Broward County. At the time of the filing of this Complaint, she was detained at the detention center. She sues through her next friend Joseph Smith.

9. Plaintiff FRANCIS ROE is a minor child who is a citizen of the United States and a resident of Broward County. At the time of the filing of this Complaint, she was detained at the detention center. She sues through her next friend Joseph Smith.

DEFENDANTS

10. Defendant GREGORY COLER is the duly appointed Secretary of the Department of Health and Rehabilitative Services for the State of Florida (HRS) and is responsible for general supervision of HRS. In this capacity, he is responsible under F.S.A. §§ 959 et seq. and Chapters 10D-7 and 10H-8 of the Administrative Code

for licensing and operating all state juvenile detention facilities, including the Broward County Regional Juvenile Detention Center.

11. Defendant GREGORY JOHNSON is the Superintendent of the Broward County Regional Juvenile Detention Center and is responsible for its maintenance and operation, and for the policies, practices, acts, and omissions described in this Complaint.

12. All defendants are sued in their official capacities. At all times, defendants have acted under color of state law to deprive plaintiffs and the class they represent of their rights, privileges, and immunities under the Constitution and the laws of the United States.

CLASS ACTION

13. Plaintiff G.C., by and through W.S., his mother and next friend, brings this action on behalf of himself and all others similarly situated pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The class consists of all juveniles who are, or in the future will be, confined in the Broward County Regional Juvenile Detention Center.

14. The members of the class are so numerous that joinder of all members is impractical. On any given day, there are between 135 and 170 children in the detention center. There are questions of law and fact common to the members of plaintiffs' class regarding the practices of the defendants. The claims of

the named plaintiffs are typical of the claims of the members of the plaintiff class. The named plaintiffs and plaintiffs' counsel will fairly and adequately protect the interests of the members of the class.

15. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with regard to the class as a whole.

16. The injuries suffered by the named plaintiffs and the members of plaintiff class as a result of the policies and practices of defendants are capable of repetition, yet may evade review, thereby making class relief appropriate.

FACTUAL ALLEGATIONS

A. General Factual Allegations

17. The State of Florida, through HRS, receives federal financial assistance for programs for status offenders, dependent, and delinquent children.

18. HRS operates regional detention centers for the confinement of status offenders and dependent and delinquent children, both before adjudication and after adjudication while awaiting long-term placement. One of these is the Broward County Regional Juvenile Detention Center, a secure facility located in Fort Lauderdale, Florida. Children who reside or are apprehended in the Broward County area are detained in this facility.

19. The detention center was opened in 1980. At that time,

it had a capacity of 94 youths: 78 boys and 16 girls.

20. Subsequent to that time, modifications were made to the detention center to permit it to hold a higher population. At that time and since, the capacity of the detention center has been 109.

B. Overcrowding

21. The detention center is severely overcrowded. Despite its rated capacity, the detention center consistently holds over 135 children. For example, on one day in January of 1987, defendants detained 164 children in the detention center; on another day in March, defendants detained 164 children in the detention center. The population at this time is over 140 children.

22. Defendants have not made sufficient structural modifications to the detention center to accommodate this increase in population.

23. Defendants have not sufficiently increased their staff to accommodate this increase in population. As a result, the facility is chronically understaffed.

24. Because the facility is overcrowded, children must sleep on thin mattresses on the floor. Cells which are designed to hold two children now hold three or four. The cells are so crowded that these mattresses block the door and restrict access to the sink and toilet in the cells.

25. The overcrowding has also made it impossible for defendants to feed children in the regular eating areas. Instead, children must be fed in their sleeping areas. These areas contain no chairs or tables so that children regularly sit on the floor to eat.

26. Overcrowding has also restricted children's access to recreation and other programming. Children spend up to twenty-two hours a day locked in their cells because of the lack of adequate recreational facilities for the population.

27. Overcrowding has also resulted in limitations on telephone access and visitation, since there are not adequate telephone or visiting facilities for the expanded population.

28. Perhaps most seriously, overcrowding has resulted in acts of violence and physical abuse. Because the facility is not adequately staffed and because of the close quarters in which juveniles are confined, many fights, assaults, and other incidents of abuse have occurred. Plaintiff G.C., for example, was assaulted and nearly raped while at the detention center. His injuries resulted in stitches and hospitalization.

29. As a result of the overcrowding, children are completely denied rehabilitative treatment. They fear for their personal safety and even their lives while in the facility.

C. Classification

30. Defendants have failed to design or implement an adequate classification system to ensure placement in the least

restrictive setting. Defendants fail to ensure that children who are not a danger to themselves or to the community and do not need secure detention are released or placed in non-secure alternatives.

31. Defendants have failed to provide adequate alternatives to secure detention for status offenders and other non-violent offenders who present no danger of flight.

32. Within the facility, defendants have also failed to develop an adequate classification system. As a result, children who have non-violent offenses are confined with children who have a history of violence. Children who are essentially status offenders (who have committed no acts that would be criminal if they were adults) are confined with children who have committed criminal acts.

33. Defendants do not adequately review the history of violent activities or the psychological histories of juveniles prior to assigning them to cells with other juveniles. As a result, non-violent children are victimized and injured.

D. Living Conditions, Food, Clothing, and Privacy

34. Defendants fail to provide adequate, hygienic, safe living conditions for children in the facility.

35. Defendants confine children for twelve hours a day in small, cramped 7-foot-by-11-foot cells. Often, four children will be confined in the same cell.

36. The cells areas do not have adequate lighting. There is not sufficient lighting in the cells to permit children to read or write in the cells.

37. The cells and cellblocks are unsanitary. Unsanitary conditions include clogged toilets, sinks that do not run, peeling paint in residential modules, and windows that are broken, blocked, and dirty. These conditions directly affect the physical and psychological health of plaintiffs, causing plaintiffs to suffer physical and psychological injury.

38. Defendants require some children to sleep on thin mattresses on the floor. They further fail to provide them with pillows or pillow cases.

39. At night, defendants shut off the water supply to the sinks and toilets in the cells and refuse to provide children with toilet paper or soap. If a child needs to use the toilet or the sink or needs toilet paper or soap, he must bang on his cell door to attract the attention of the detention center staff. Because the detention center is inadequately staffed, staff often do not hear the children and so do not respond to these requests.

40. Defendants follow policies and procedures which are inadequate to ensure the safety of children in the event of fire. If a fire occurs at the detention center, staff must individually unlock each and every cell in order to allow the children to safely exit the facility.

41. Defendants deprive children of all personal privacy in their living areas. In addition to the crowded conditions of the

cells, defendants also provide no privacy in showers or toilet areas. There are no partitions between shower heads or around the toilets, so that whenever a child showers or uses the toilet, he is exposed to the unobstructed view of staff and other children. This problem is particularly acute in view of the high incidence of rape or attempted rape in the facility.

42. Defendants do not provide food that is adequate in quantity or quality to meet the nutritional needs of children or adolescents.

E. Staffing

43. Defendants fail to provide adequate staff to supervise and protect children in the facility.

44. The facility is chronically understaffed. There are not adequate staff to make classification decisions, monitor children in the facility, or provide rehabilitative services.

45. Staff that are employed in the facility are not trained or qualified in areas necessary to provide counseling, rehabilitation, or protection for children in the detention center.

46. Defendants operate the detention center without sufficient staff to ensure the safety of children in the event of fire or other emergency. In the event of fire, there are insufficient staff to individually unlock the cells doors to allow children to safely exit.

F. Recreation, Education, and Programming

47. Defendants deprive children in the detention center of adequate recreation or exercise. Children spend extended periods of time without any activity at all.

48. Defendants fail to provide children with adequate education services. The children do not receive educational opportunities equivalent to those available in the community, adequate to meet their special needs.

G. Medical, Psychological Care

49. The medical and dental care defendants provide children in the detention center is inadequate to maintain their physical and mental health. This failure to provide adequate medical care amounts to deliberate indifference to the health and safety requirements of children at the detention center.

50. Defendants fail to provide adequate, available trained medical staff to meet children's needs, including trained physicians, nurses, nurses aides, and dentists.

51. Defendants fail to provide adequate medical supplies to children at the detention center.

52. Defendants fail to provide adequate psychological and psychiatric services to children detained at the detention center.

H. Isolation and Due Process

53. Defendants routinely use extended periods of isolation as a form of punishment and behavior control. Defendants isolate children in the detention center in "isolation rooms" for extended periods of time as punishment for disciplinary infractions.

54. Defendants fail to provide children with adequate due process procedures when they are disciplined in any way, including but not limited to isolation or loss of trustee status or other privileges.

NO ADEQUATE REMEDY AT LAW

55. As a proximate result of the defendants' policies, practices, acts, and omissions complained of and the conditions and circumstances described above to which plaintiffs are subjected, plaintiffs have suffered, do suffer, and will continue to suffer immediate and irreparable injury. Plaintiffs have no plain, adequate, or complete remedy at law to redress the wrongs described. Plaintiffs will continue to be irreparably injured by the policies, practices, acts, and omissions of the defendants unless this Court grants the injunctive relief which plaintiffs seek.

ATTORNEYS' FEES

56. Plaintiffs are entitled to an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

LEGAL CLAIMS

57. For plaintiffs' claims enumerated below, they repeat and reallege paragraphs 1 through 61 above, as if fully set forth herein, in each and every statement of claim, and further allege:

FIRST CLAIM

58. Defendants' policies, practices, acts, and omissions violate plaintiffs' right to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution.

SECOND CLAIM

59. Defendants' policies, practices, acts, and omissions complained of herein deprive plaintiffs of the right to treatment in the least restrictive setting and under the least restrictive conditions guaranteed by the Fourteenth Amendment to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court:

- A. Assume jurisdiction of this action;
- B. Issue an order certifying this action to proceed as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure;
- C. Issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, and Fed. R. Civ. P., Rule 57, that the policies, practices, acts, and omissions complained of:

(1) subject plaintiffs to denial of due process of law guaranteed by the Fourteenth Amendment to the United States Constitution;

(2) violate plaintiffs' rights to receive treatment in the least restrictive setting and under the least restrictive conditions guaranteed by the Fourteenth Amendment to the United States Constitution;

(3) violate plaintiffs' rights under 42 U.S.C. § 1983;

D. Issue preliminary and permanent injunctions sufficient to rectify the unconstitutional acts and omissions and statutory violations alleged in this Complaint as follows:

(1) Preliminarily and permanently enjoin defendants, their agents, employees, successors in office, and assigns, from engaging in the unconstitutional and unlawful practices, acts, and omissions described herein, including, but not limited to:

(a) confining children in the detention center under conditions that are overcrowded, unhealthful, unsanitary, and life-endangering;

(b) failing to adequately protect children's physical, mental, and emotional health;

(c) failing to protect children against attacks by other children confined at the detention center;

(d) failing to provide adequately trained staff in adequate number to ensure children's safety and provide them with care and treatment;

(e) failing to provide children with adequate

medical, dental, and psychiatric care;

(f) failing to provide children with adequate education;

(g) failing to provide children with adequate programming, including indoor and outdoor recreation;

(h) using isolation as a method of discipline for children in the detention center; and

(i) failing to provide children with due process protections prior to imposing discipline;

(2) Restraining and prohibiting defendants from failing to provide and use appropriate community-based alternatives, such as non-secure detention, to detention of juveniles at the detention center;

E. Order defendants to develop and implement a comprehensive plan for correction of the unlawful policies, practices, acts, and omissions complained of in this Complaint, and to submit this plan to the Court and to attorneys for plaintiffs for review;

F. Appoint a Special Master to review and ensure implementation of the plan submitted by defendants;

G. Retain jurisdiction over this action until such time as the Court is satisfied that the unlawful policies, practices, acts, and omissions complained of no longer exist and will not recur;

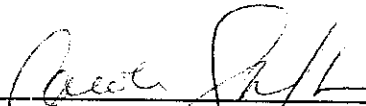
H. Award to plaintiffs and the class reasonable attorneys' fees and costs in this act, pursuant to 42 U.S.C. § 1988, 19

U.S.C. § 794a(2)(6), and Pub. L. No. 94-142;

I. Award such other and further relief as this Court may deem necessary.

DATED: January 29, 1988

Respectfully submitted,



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PROOF OF SERVICE

I certify that I mailed a true and correct copy of the foregoing MOTION AND MEMORANDUM TO AMEND COMPLAINT and SECOND AMENDED CLASS ACTION COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF to counsel hereinafter listed by depositing in the United States mail, postage prepaid, this ___ day of February, 1988.

Eric J. Taylor
Asst. Attorney General
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DATED: February __ 1988.

Michael Dale