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CLERK U S DISTRICT COURT
DISTRICT OF ARIZONA
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

MATTHEW DAVEY JOHNSON, et al.,

Plaintiffs,

vs

JAMES R. UPCHURCH, in his personal
capacity, et al.

Defendants.

No. CIV 86-195 TUC RMB

CONSENT DECREE

I. Introduction

1. This case was filed on April 6, 1986, on behalf of Matthew Davey Johnson, a resident of Catalina Mountain Juvenile Institution (CMJI) near Tucson. (The institution has since been renamed Catalina Mountain School.) The Complaint alleged general civil rights violations stemming from Matthew Johnson's confinement in a punishment cottage pursuant to the "Motivational Hold" program. He alleged that he was being held in Yucca Cottage arbitrarily, in violation of his constitutional rights.
2. On June 27, 1986, this Court appointed counsel to represent the plaintiff, who amended his Complaint and moved for preliminary relief. Soon thereafter, the parties reached an agreement whereby Matthew Johnson was released from Yucca Cottage and provided additional services.
3. On April 8, 1987, the Court granted plaintiff's motion to file a Fourth Amended Complaint on behalf of seven residents of CMJI whose identities were not

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disclosed pursuant to the terms of a protective order. These plaintiffs alleged that officials responsible for the administration and operation of CMJI had failed to provide them with rehabilitative treatment, and had confined them under conditions amounting to punishment in violation of the Fourteenth Amendment. These plaintiffs also moved to proceed on behalf of a class of plaintiffs, and on July 29, 1987, the Court certified a class consisting of all residents of CMJI, then and in the future.

4. On May 26, 1988, the Court granted plaintiffs' motion to file a Fifth Amended Complaint. This complaint added as defendants the Arizona Board of Education and officials responsible for education at CMJI and alleged that special education programs did not meet the requirements of state and federal law. Plaintiffs sought a preliminary injunction requiring defendants to provide special education services at CMJI.
5. On June 10, 1988, with the agreement of the parties, the Court appointed Dr. Peter Leone, Professor of Special Education, University of Maryland, as special master for special education. On July 19, 1989, the Court denied without prejudice plaintiffs' motion for preliminary injunction as moot.
6. After observing educational programs at CMJI and Adobe Mountain Juvenile Institution (AMJI) near Phoenix, and conferring with state officials and institutional personnel, Dr. Leone filed a report with the Court on November 10, 1988, which identified deficiencies in the Department's institutional educational programs.

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7. On April 27, 1990, the Court granted plaintiffs' motion to file a Sixth Amended Complaint alleging that defendants' parole revocation procedures are arbitrary, in violation of plaintiffs' rights guaranteed by the Fourteenth Amendment. Plaintiffs' moved for summary judgment and on August 20, 1990, the Court denied this motion on the grounds that there are genuine issues of material fact.
 8. On May 17, 1989, Governor Rose Mofford advised the Court that the state was moving toward a comprehensive reform of its juvenile justice system and, on May 25, 1989, Governor Mofford signed an executive order recognizing a right to treatment in the least restrictive environment consistent with public safety for all youth in juvenile institutions operated by the state.
 9. On September 22, 1989, the Governor signed an Executive Order establishing a Select Commission on Juvenile Corrections to study the state's juvenile justice system and recommend reforms. The Commission conducted research on state and national programs for delinquent youth and consulted with juvenile justice professionals. The Commission also held public hearings and heard testimony from juvenile court judges, childrens' advocates, private providers, probation officers, and others.
 10. The Commission reported specific recommendations for reform to the Governor on May 17, 1990. The Commission also recommended that the Governor appoint a Task Force on Juvenile Corrections to implement its recommendations. Governor Mofford signed an executive order on June 5, 1990, creating a Task Force on Juvenile Corrections and the Court continued the trial to provide an

1 opportunity for the defendants to implement the recommendations of the
2 Commission. On May 15, 1991, Governor Fife Symington signed an executive
3 order extending the Task Force's term of operation.

4 11. On October 16, 1990, the parties reached agreement on individual claims for
5 damages by Matthew Johnson and M. G., a named plaintiff and class representa-
6 tive.

7 12. On October 22, 1991, the Court awarded interim attorneys fees for plaintiffs and
8 on June 28, 1992, the parties finally resolved all pending issues concerning
9 attorneys fees.

10 13. THEREFORE, based upon the record herein, including the investigations and
11 reports prepared by the parties' expert consultants; and based upon significant
12 changes in policy by the Department since this action was filed; and based upon
13 changes in direction and leadership within the Department, including changes
14 in personnel administering the Department; and based upon the parties' interest
15 in maintaining continued progress in the provision of a safe, humane, caring
16 environment for children through the utilization of individualized care and
17 treatment in the least restrictive environment; and based upon the
18 acknowledgement that the interests of all parties to this action are best served
19 by this Consent Decree, the parties hereby agree to the entry of this Consent
20 Decree as the final judgement of the Court as to the merits of this action.
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23 II. Stipulations

24 1. As used in this Consent Decree:
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- 1 A. AMS shall mean Adobe Mountain School;
- 2 B. BCS shall mean Black Canyon School;
- 3 C. CMS shall mean Catalina Mountain School;
- 4 D. CMJI shall mean Catalina Mountain Juvenile Institution;
- 5 E. Department shall mean the Department of Youth Treatment and
- 6 Rehabilitation;
- 7 F. Departments shall mean the Department of Youth Treatment and
- 8 Rehabilitation and the Department of Education.
- 9 G. Director shall mean the Director of the Department of Youth Treatment
- 10 and Rehabilitation;
- 11 H. Secure treatment unit shall mean AMS, BCS, CMS and any future
- 12 institution operated by the Department pursuant to A.R.S. §41-2816.A.
- 13
- 14 2. The Court has jurisdiction of this action under 28 U.S.C. §§1331 and 1343(3),
- 15 and declaratory and injunctive relief are authorized pursuant to 28 U.S.C.
- 16 §§2201 and 2202 and Rule 65 Fed. R. Civ. Pro.
- 17
- 18 3. Nothing in this Consent Decree shall be construed to abrogate any substantive
- 19 rights or procedural protections a child may now have or hereafter acquire under
- 20 state or federal law.
- 21
- 22 4. Counsel for the defendants, as signatories to this Consent Decree, are
- 23 specifically authorized to bind each of the defendants, including the Arizona
- 24 Department of Youth Treatment and Rehabilitation and the Arizona Board of
- 25 Education, to the terms of this Consent Decree.
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- 1 5. This Consent Decree is binding on the successors in office of the individually
2 named defendants and on any successor agencies of state government which
3 assume all or part of the responsibilities of the Arizona Department of Youth
4 Treatment and Rehabilitation or the
5 Arizona Department of Education.
- 6 6. Nothing in this Consent Decree shall be construed as affecting or in any way
7 abrogating the authority of a Superior Court Juvenile Judge to determine who
8 is to be committed to the Department's custody.

9 III. Limitations on Institutional Populations

10 1. Least Restrictive Environment

11 A. The principle which shall guide the Department in its decisions regarding
12 out-of-home placement of delinquent youth is that every youth
13 committed to the custody of the Department has a right to receive
14 individualized care and treatment in the least restrictive setting consistent
15 with the youth's needs and the protection of the public. The presumption
16 shall be that each youth's best interests are served by remaining in his or
17 her home community with necessary services provided there, provided
18 that the youth poses no undue risk to the community. The Department
19 shall continue its efforts to develop and implement a plan to work with
20 committing courts to increase community based services for youth not
21 appropriate for secure care.

22 (1) The Department shall conduct a diagnostic review for each youth
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1 committed to its custody. The Department shall not place any
2 youth into secure care after diagnostic review except youth who
3 pose a threat to public safety, or who have engaged in a pattern
4 of conduct characterized by persistent and delinquent offenses
5 that, as demonstrated through the use of other alternatives, cannot
6 be controlled in a less secure setting, or who have had their
7 conditional liberty revoked pursuant to the Arizona Revised
8 Statutes.

- 9 (2) The diagnostic review shall include a standardized, objective
10 classification or risk assessment instrument as the basis for deter-
11 mining the appropriate level of restrictiveness.

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13 2. Population Limitations

- 14 A. The Department shall not average more than 110 youth confined in CMS
15 each month, 240 youth in AMS each month, and 30 youth in the BCS
16 residential program each month, unless additional physical facilities are
17 constructed to house such youths in accordance with the standards set
18 forth in paragraph 2(B). Quarterly population reports shall be furnished
19 to the Court within ten days of the end of each quarter.
- 20
21 B. The Department shall provide rooms for youth in its secure institutions
22 and shall not utilize day rooms, hallways, dormitories or other common
23 areas for sleeping. The Department shall confine no more than two
24 youth in each room, except those existing rooms designed for 3 or 4
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youth.

- 1 C. The Department shall not increase its total number of secure beds except
2 with the agreement of the Committee of Consultants.

3 IV. Continuum of Care

- 4 1. "Continuum of Care" shall refer to services provided after commitment to the
5 Department.

- 6
7 2. The Department shall develop and implement a continuum of care for youth
8 consistent with A.R.S. §41-2817. The continuum shall include residential and
9 non-residential community-based programs designed to supervise and rehabilitate
10 youth in the least restrictive environment consistent with public safety and the
11 needs of the youth.

- 12
13 A. Residential services in the continuum of care may include therapeutic
14 foster care, community-based chemical dependency programs, shelter-
15 care, and supervised independent living programs. Non-residential
16 services in the continuum may include home-based services, intensive
17 case management, educational and vocational services, day-treatment pro-
18 grams, and substance abuse programs.

- 19
20 B. The Department may both operate programs along the continuum of care
21 and contract for the programs with private providers. The goal of the
22 Department is to involve the private sector in the provision of a complete
23 array of treatment services.

- 24 C. In order to assist in the development of the continuum of care, the
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1 Department shall assess the aggregate treatment needs of committed
2 youth together with then-existing community-based treatment services at
3 least annually. The Department shall take all reasonable steps to provide
4 or develop the treatment services identified by these assessments.

5 D. Youth in the custody of the Department have the right to equal access to
6 the full continuum of services regardless of their gender, ethnicity,
7 country of origin, or race.

8 V. Safe Institutional Environment

- 9 1. The Department shall ensure that its secure institutions comply with all
10 applicable government health, fire and safety codes, and with the Arizona Fire
11 Code, and shall remedy all violations of applicable codes in a timely manner.
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13 2. The Department shall undergo health and fire inspections at least annually. The
14 Department shall conduct safety inspections at least annually and may use public
15 agencies or contract with qualified individuals for such inspections.
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17 3. The Department shall prepare annual construction budgets reflecting planned
18 expenditures for physical improvements necessary to meet the terms of this
19 Consent Decree.

20 VI. Institutional Programs

- 21 1. The goal which shall guide the Department in the administration of its secure
22 institutions is to provide a safe, humane, and caring environment for youth and
23 access to needed services that will contribute to normal growth and develop-
24 ment. The Department recognizes the importance of involving a youth's family
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in rehabilitative efforts and shall maintain program components and flexibility in visitation to encourage families to visit and participate in treatment.

2. Within 30 days of arrival at a secure treatment unit, the Department shall develop an Individual Treatment Plan (or Individual Development Plan) for each youth initially committed to its custody and review the ITP (or IDP) for each youth returned on revocation of conditional liberty, in accordance with the requirements of A.R.S. §41-2815.
3. The Department shall develop programs that address the individual treatment needs of youth committed to its custody, as evidenced by their ITP/IDP's. These programs shall provide rehabilitative services consistent with A.R.S. §41-2816 and shall include education, individual, group and family counseling, mental health services, recreation, vocational training, and transition and reintegration services. The Department shall also provide specialized programming for sex offenders, violent offenders, and substance abusers.
4. The Department shall within eighteen months of the date of final approval of this Consent Decree fully implement and thereafter maintain the current treatment program (Keys to Innervisions) unless the Department develops an alternative program approved by the Committee that provides rehabilitative services appropriate to age, needs and abilities, as required by A.R.S. §41-2816.
5. The Department shall coordinate and integrate all aspects of programming including the treatment and cottage life program, education, recreation, and the work program.

6. The Department shall develop a plan to evaluate the effectiveness of treatment programs through objective outcome measures selected by the Department and approved by the Committee.
7. The Department shall employ at least one full-time certified psychologist at each secure institution, and shall employ counselors, with at least a masters degree in psychology or related field, as needed to perform assessments and assist with counseling and group treatment programs.
8. The Department shall develop a program to use volunteers in its secure institutions. The Department shall screen volunteers as needed for safety and shall provide them with appropriate training and supervision.
9. The Department shall employ sufficient full-time chaplains at each institution to meet the spiritual needs of youths committed to its custody.

VII. Medical, Dental, and Psychiatric Care

1. All health care staff in the Department's secure institutions shall have written job descriptions and shall meet applicable state licensure and/or certification requirements. A licensed physician shall continue to supervise health care staff at the Department's secure institutions. The supervising physician shall approve standard written operating procedures for medical and health services including consent, screening, physical examinations, medical history, immunizations, pharmaceutical, detoxification, first aid, and preventive, emergency, routine, chronic, convalescent and special care.
2. The Department shall provide for an initial health screening for youth promptly

1 upon arrival at its secure institutions. The initial health screening shall include
2 an assessment of the youth's current condition and health status. The
3 Department shall develop written procedures for treating youth when the initial
4 health screening indicates that they have a contagious illness or are intoxicated
5 or experiencing withdrawal from alcohol or other drugs.

- 6 3. The Department shall provide for a health appraisal for youth not later than
7 seven days after arrival at a secure institution, except for youth transferred intra-
8 departmentally from one secure institution to another. The health appraisal shall
9 include a review of the results of the health screening, a health history, and the
10 recording of vital signs. The health appraisal shall also include laboratory and
11 diagnostic tests and examinations as governed by written health policies and
12 procedures developed at the direction of the supervising physician.
- 13 4. The Department shall provide for a dental screening for youth within seven days
14 of admission to a secure institution and a dental examination within one month
15 of admission.
- 16 5. The Department shall provide sick call at its secure institutions at least five days
17 each week by the nursing staff. The Department shall ensure that a health care
18 provider is on call 24 hours/day, 7 days/week for immediate access by nursing
19 staff. The Department shall enter into written agreements with nearby hospitals
20 to provide medical services which cannot be provided within its facilities,
21 including 24 hour emergency medical care.
- 22 6. The Department shall take all reasonable steps to ensure the provision of
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1 necessary treatment for diseases or medical conditions discovered or identified
2 during health screenings, health assessments, or sick calls. The Department shall
3 take all reasonable steps to ensure the provision of dental treatment, not limited
4 to extractions, when the health of the youth would otherwise be adversely
5 affected, as determined by the dentist.

- 6 7. Stimulants, tranquilizers, and psychopharmacological drugs shall continue to be
7 used only as deemed medically necessary and shall not be administered for pun-
8 ishment.
- 9 8. The Department shall recognize the physician-patient privilege and the principles
10 of informed consent. However, nothing herein prohibits any Department official
11 from access to a youth's medical records and information under appropriate
12 circumstances.
- 13 9. The Department shall employ or contract with psychiatrists to treat and assist in
14 treating youth with psychiatric disorders, including recommending transfers to
15 mental health facilities, and to act as a resource for staff. A psychiatrist shall
16 be scheduled at CMS and BCS at least one day each week, and at AMS at least
17 two days each week.

18 VIII. Education

- 19 1. The Departments shall ensure timely, multidisciplinary assessments of youth
20 who are suspected of being in need of special education and related services in
21 accordance with applicable Arizona Statutes and the Individuals with Disabilities
22 Education Act (IDEA), 20 U.S.C. §§1400, *et seq.* This assessment shall:
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- A. provide timely notice and meaningful involvement of parents or surrogate parents;
- B. require that, to the extent possible, prior education records of youth be obtained, particularly those relating to evaluation and eligibility for special education services;
- C. be conducted by a multidisciplinary team, including persons specified in the Arizona Department of Education regulations as well as appropriate members of the students' individual treatment team;
- D. involve students in planning their educational programs;
- E. utilize, to the extent valid instruments are available, curriculum-referenced assessments to assist in the placement of students eligible for special education services;
- F. include assessment of social skills and vocational interests of referred students; and
- G. provide transition planning that involves reviewing Individual Education Plan (IEP) goals and objectives and identifying appropriate community-based placements for students.

2. The Departments further agree to maintain appropriate services for students eligible for special education and related services. Appropriate services shall include:

- A. a continuum of treatment options for students enrolled in special education;

- 1 B. implementation of a curriculum in basic skills, vocational skills, and life
2 skills;
3 C. providing an appropriate mix of individual and group instruction for
4 students enrolled in special education programs, based on the students'
5 individual needs;
6 D. maintaining appropriate student/teacher ratios in all classes;
7 E. coordinating students' individualized education programs with regular
8 education programs and activities and their individual treatment plans;
9 F. making instructional materials available in students' native languages,
10 when educationally appropriate to do so;
11 G. providing bilingual instruction in accordance with A.R.S. §§15-751 -
12 756;
13 H. ensuring that students receive a full day of instruction in accordance with
14 A.R.S. §15-901;
15 I. providing education and vocational services for all eligible youth in
16 secure care;
17 J. providing services that enable students to achieve the goals and
18 objectives specified in their individualized education programs.
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20 3. The Department further agrees to provide ongoing support for educational
21 programs generally and special education programs specifically. In providing
22 this support, the Department agrees to:
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24 A. communicate to all staff a vision of the treatment and education model
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for the institution;

- B. consult with education staff when decisions that directly relate to education have to be made concerning educational resources, deployment of education staff, and levels of education service;
- C. maintain a commitment to providing quality special education services to all eligible students;
- D. develop a standardized system for monitoring pupil progress and a means of providing a school report card for the community;
- E. continue the process of developing long-range plans for the educational program, including developing a mission statement for the school and an operating philosophy;
- F. develop community-based liaisons that can identify and facilitate education and vocational placements for students in the community upon discharge;
- G. provide adequate opportunities for staff development that include instructional skills, behavior management, and transition of students into community settings;
- H. provide adequate instructional material and space for educational programs;
- I. make all reasonable efforts to provide adequate teaching salaries that reflect the twelve month school term, including using the expertise and support of the School Board authorized by Arizona Revised Statutes to

seek appropriate levels of support for education.

4. The Department shall achieve and maintain accreditation of its educational program by the North Central Association of Colleges and Secondary Schools.

IX. Work Program

1. The Department shall develop a work program which complies with A.R.S. §41-2822. Work programs for youth must be:
 - A. reasonably related to groundskeeping, housekeeping or hygiene, or
 - B. part of an approved vocational program, or
 - C. performed for compensation under contract with a private firm pursuant to A.R.S. §41-2822 (E).
 - D. implemented in a manner that does not interfere with the educational programs set forth in Section VIII.

X. Orientation/Youth Handbook

1. The Department shall provide each committed youth with a copy of a youth handbook. The purpose of this handbook is to advise youth of their rights and inform them about the institutional program, applicable rules of conduct, and potential sanctions for violations of rules. The Department shall make the handbook available in Spanish.
2. The Department shall also provide an orientation for every committed youth. The orientation shall include information on the rights of youth in the institutional program, responsibilities of youth in secure confinement, rules of conduct, and potential sanctions.

XI. Staff

1. The Department shall employ qualified casework, recreation, direct child-care, and other staff in sufficient numbers and with sufficient training.
2. A sufficient number of direct child-care workers means not less than 1 worker to 8 youth during the afternoon shift, and not less than 1 worker to 16 youth during normal sleeping hours.
3. Qualifications for direct-care staff shall include, at a minimum, six months of experience working with youth in organized activities or programs. Successful completion of fifteen (15) semester hours of studies in social or behavioral sciences applicable to a bachelors degree may substitute for the required experience.
4. The Department shall provide adequate training appropriate to the job assignment for administrative staff, youth caseworkers, specialist employees, support staff, and part-time staff.

XII. Protection from Arbitrary Punishments

1. Exclusion

- A. Exclusion is removal of a youth from regular programming or contact with other youth by confinement in a locked room, except during normal sleeping hours. The room may or may not be the youth's own room. Exclusion may be used only for a "cooling off" period, not for punishment or the convenience of staff, and shall not exceed 2 hours. Staff shall explain the reasons for exclusion and provide an opportunity

1 for the youth to explain his/her behavior. The Department's goal is to
2 limit the use of exclusion and, when youth must be excluded, to limit the
3 time in exclusion. Staff shall interact with youth in exclusion at least
4 every 30 minutes to attempt to return the youth to the regular cottage
5 program.

6 2. Separation

7 A. Separation is confinement in a designated security unit to segregate youth
8 from the general population. Separation is a serious and extreme
9 measure which staff shall not impose unless necessary to protect the
10 youth or others from imminent risk of injury, to prevent imminent and
11 substantial destruction of property, to prevent imminent and substantial
12 disruption of the facility, or where there are reasonable grounds to
13 believe that a youth is a serious and continuing escape risk. It may not
14 be imposed as punishment for infractions of institutional rules, or for the
15 convenience of staff. The Department may separate a youth who
16 requests separation and does not meet these criteria, but must release
17 such youth upon request unless they meet these criteria. [Note: Medical
18 isolation is not separation and is not governed by this section.]
19

20 B. The Department shall designate Crisis Management Teams composed of
21 staff specially trained in crisis intervention techniques. These teams shall
22 attempt to avoid the use of separation by mediating conflicts involving
23 youth. If less restrictive efforts to resolve conflicts are unsuccessful or
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impractical, the Crisis Management Team may escort youth to separation.

Youth may be admitted to separation with the approval of the responsible

supervisor or responsible caseworker present at the youth's institution.

Staff shall not routinely apply restraint devices to youth while escorting them to separation.

C. When a youth is admitted to a separation unit, staff shall immediately develop an action plan to resolve the conflict so that the youth may return to the cottage program. The action plan shall include release criteria. The action plan shall also identify the behaviors which must be addressed for the youth to be released from separation and the way in which the Department will encourage these behaviors, including goals and timetables leading to release. Staff shall release youth from separation when they have met the release criteria as outlined in the action plan, and shall not impose by policy or practice minimum periods of time in separation for designated behaviors or offenses. Stable, cooperative behavior and meeting the release criteria indicate that separation is unnecessary.

D. The Department shall not confine any youth in separation for longer than 24 hours without providing a hearing within 24 hours to determine whether continued separation is necessary to protect the youth or others from imminent risk of injury, to prevent imminent and substantial property damage, to prevent substantial disruption of the facility, or there

1 are reasonable grounds to believe that the youth is a serious and
2 continuing escape risk. In making that determination, the hearing officer
3 shall review the action plan for reasonableness and the youth's progress
4 toward meeting the release criteria. The Department shall provide youth
5 with written and verbal notification of its reasons for continued sepa-
6 ration, and shall make available an advocate to assist the youth in
7 presenting information at the hearing. The youth has a right to contact
8 a parent or guardian, to speak on his own behalf or remain silent, to
9 present evidence, and to question witnesses. The Department shall not
10 confine a youth in separation longer than 24 hours unless an impartial
11 hearing officer makes written findings supporting specific separation
12 criteria based upon information presented at the hearing. The Depart-
13 ment shall provide an opportunity for prompt review of the decision of
14 the hearing officer and shall provide the youth with written notification
15 of the outcome of the review and the reasons.

17 E. The youth's caseworker shall review the action plans, and the youth's
18 progress towards release, at least daily for all youth held in separation
19 longer than 48 hours. The Deputy Director or designee must approve
20 continued confinement of a youth daily after the fifth day. The Director,
21 or in the Director's absence, the Deputy Director, must approve
22 continued confinement daily after the tenth day.

24 F. The size, furnishings, lighting, heat and ventilation of the separation
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rooms shall approximate the conditions in the regular living cottages.

Absent a documented need to remove an item to protect a youth, the Department shall provide youth in separation with a bed, mattress, pillow, sheets, blankets, regular clothing, and reading materials. The Department shall also allow a youth in separation to send and receive mail, to visit with parents, guardians and attorneys, and to participate in educational and recreational programs, except in those unusual circumstances when doing so would jeopardize safety and security.

- G. The Department shall maintain a log which records the name of every youth confined in separation, the date and time of confinement, the reasons for confinement, including specific descriptions of the youth's behavior, the name of the individual who has approved separation, and the date and time of release. The signatures of the persons who have approved separation and its extension shall be maintained in the youth's security file.

3. Mechanical Restraints

- A. The use of restraint devices is an extreme and exceptional measure which shall be used only when a youth is out of control and other less restrictive means to bring the youth under control have failed. Members of the Crisis Management Team or other staff who are specially trained in the use of restraint devices and crisis intervention techniques may restrain a youth to protect the youth or others from imminent harm or to

prevent substantial property damage. Staff shall remove the restraint devices when they are no longer necessary to protect the youth or others from imminent harm or to prevent substantial property damage.

B. Staff must continuously observe youth in restraint devices and a licensed medical staff person must check the youth immediately after restraints are applied and at least every 30 minutes thereafter. A licensed psychologist must authorize the use of restraints after two hours, and a psychiatrist must authorize the use of continued restraints after three hours.

C. Youth shall not be restrained to each other or to fixed objects, except that a youth's arms and legs may be secured to a bed frame with soft restraints if authorized by the psychologist or on-call Central Office Administrator. Staff may contact the psychologist or on-call Central Office Administrator for authorization immediately subsequent to restraining the youth, if the youth's behavior actively poses immediate physical harm to self or others.

D. The Department shall maintain a log containing the names of each youth placed in restraint devices, the time the youth was restrained, the time the restraints were removed, a description of the events leading to the use of restraints, and the name of the individual who has approved restraints. The signatures of the persons approving the use of mechanical restraints and its extension shall be maintained in the youth's security file.

1 E. The Department shall not routinely restrain youth during transportation
2 to or from secure facilities, but may restrain youth during transportation
3 when staff have reasonable grounds to believe that use of restraint
4 devices is necessary to protect the safety of the youth or others. Youth
5 restrained during transportation may not be restrained to one another, but
6 are not subject to the other provisions of subsections A, B, C and D of
7 this section.

8 XIII. Parole Revocation

- 9 1. When the Department believes that a youth has violated a term of conditional
10 liberty, it may initiate revocation proceedings pursuant to A.R.S. §41-2819. The
11 Department may take a youth into custody pursuant to A.R.S. §41-2819 or may
12 serve the youth with a citation to appear at a probable cause hearing. The
13 Department shall inform any youth served with a warrant or citation of the
14 reasons for the initiation of the revocation proceedings and the youth's rights
15 related to the proceedings.
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17 2. Within 72 hours of a youth's return to a secure facility, the Department shall
18 provide or ensure a hearing to determine whether there is probable cause to
19 believe that the youth has violated a term of conditional liberty and whether or
20 not the youth shall remain in a secure facility to assure attendance at a
21 revocation hearing and/or for community safety, or the safety of the youth.
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23 3. The Department shall provide or ensure a hearing for youth within 10 business
24 days of detention to determine whether conditional liberty should be revoked.
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1 The Department shall provide specially trained, impartial hearing examiners,
2 acting under the direct supervision of an attorney, to hear parole revocations.
3 The Department shall make available an attorney, or an advocate acting under
4 the direct supervision of an attorney, to assist youth at parole revocation
5 hearings. Hearing examiners and advocates shall not be supervised by the same
6 attorney. Youth shall have a right to written notice of the charges, to remain
7 silent, to call witnesses, and to question adverse witnesses. The hearing
8 examiner shall make written findings of fact.

9 XIV. Implementation and Monitoring

- 10 1. The Department shall prepare a plan or plans within 90 days to implement this
11 Consent Decree. The implementation plan(s) shall include a description of the
12 tasks to be accomplished, personnel (individuals or job titles) responsible for the
13 tasks, and timetables for completion of the tasks.
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15 2. A Committee of Consultants (Committee) composed of one person designated
16 by the plaintiffs, one person designated by the Department, and one person
17 jointly designated by the parties whose designation will be subject to Court
18 approval, shall review the adequacy of the plan(s) implementing all sections of
19 this Consent Decree and shall monitor for the Department's compliance with the
20 plan(s). The Committee shall also consult with the Department as requested and
21 mediate disputes between the parties concerning compliance. The Department
22 anticipates a cooperative relationship with the Committee.
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24 3. The Committee shall inspect each of the Department's secure institutions at least
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every six months, but may inspect more often with the agreement of the Director, which shall not be unreasonably withheld, or to observe Departmental action in response to problems identified and acknowledged as problems by the Director. The Committee need not inspect every 6 months if the Committee and the parties agree that such inspections are not necessary.

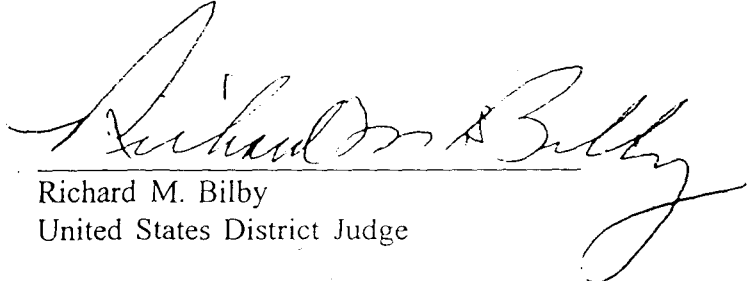
4. The Committee shall issue a written report within 30 days of any inspection describing the Department's progress in achieving compliance with this Consent Decree and its implementation plans. The Committee shall provide copies of its report to the Court and the parties. Any party may respond to any report filed by the Committee.
5. Either party may raise questions of compliance with this Consent Decree with any member of the Committee and the Committee shall attempt to resolve the questions informally. If the Committee is unable to resolve the questions informally, either party may request that the Committee make formal findings of fact. Either party may respond to the Committee's findings of fact. The findings of the Committee shall be final and binding unless either party files objections with the Court within 30 days. The Court shall hear the matter *de novo* and the burden of persuasion shall be on the party filing the objections.
6. The Departments shall provide copies of any existing documents or access to records, files and reports maintained by the Departments concerning youth that the Committee considers necessary to evaluate compliance. Members of the Committee may discuss matters related to this Consent Decree with any youth

1 confined by the Department or any employee. The Departments may designate
2 liaisons to respond to the requests of the Committee. The State of Arizona,
3 acting on behalf of the Departments, shall be responsible for the reasonable
4 expenses of the members of the Committee.

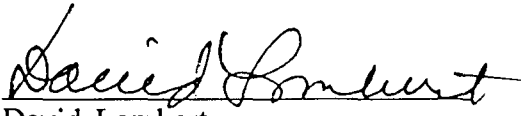
5 XV. Dismissal

- 6 1. This Consent Decree shall take effect on the date of its approval by the Court,
7 pursuant to Rule 23, Fed. R. Civ. Pro., and shall remain in effect for 4 years
8 from that date. This case shall be dismissed with prejudice 4 years from that
9 date unless the parties agree to an extension or the plaintiffs object to dismissal
10 and the Court orders an extension. In the event the plaintiffs object to dismissal,
11 they shall designate the paragraph(s) of this Consent Decree they contend the
12 Department has breached. The parties shall exhaust the informal dispute
13 resolution mechanisms described in paragraph XIV(6) above before plaintiffs
14 move the Court for an extension, and the date of dismissal shall be extended
15 while such informal dispute resolution mechanisms are pending. The Court shall
16 extend this Consent Decree only as to the paragraph(s) for which the Court
17 determines that the Departments are not in compliance.
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19

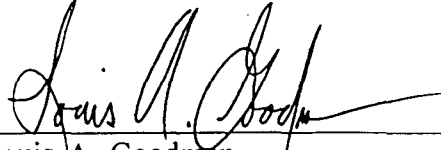
20 Dated: This 5 day of May, 1993.

21
22
23 
24 Richard M. Bilby
25 United States District Judge
26

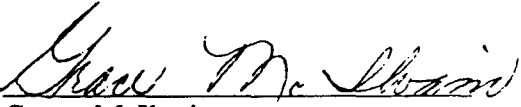
Approved:

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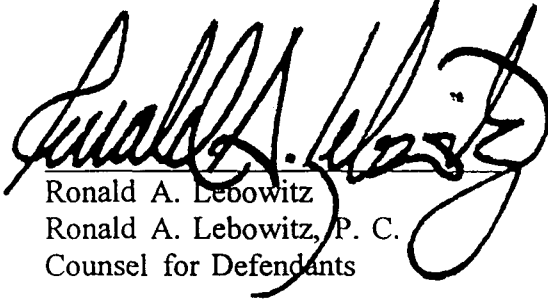
4 David Lambert
5 National Center for Youth Law
6 Counsel for Plaintiffs



Louis A. Goodman
Ronald A. Lebowitz, P. C.
Counsel for Defendants

7
8 

9 Grace McIlvain
10 Miller, Pitt & McAnally, P.C.
11 Counsel for Plaintiffs



Ronald A. Lebowitz
Ronald A. Lebowitz, P. C.
Counsel for Defendants