

JI-CA-001-001

1 Council; COUNTY OF LOS ANGELES;)
2 PETER SCHABARUM, KENNETH HAHN,)
3 EDMUND EDELMAN, DEANE DANA, and)
4 MICHAEL ANTONOVICH, in their)
5 official capacities as members)
6 of the Los Angeles County Board)
7 of Supervisors; EDDY TANAKA,)
8 in his official capacity as)
9 Director of the Los Angeles)
10 County Department of Public)
11 Social Services; ROBERT CHAFFEE in)
12 his official capacity as the Acting)
13 Director of the Los Angeles)
14 County Department of Children's)
15 Services; County Does 1-25;)
16 and City Does 1-25, inclusive,)
17 Defendants.)
18

19 INTRODUCTION

20 1. This action is brought by a taxpayer,
21 pursuant to California Code of Civil Procedure Section 526a
22 to challenge the unconstitutional, illegal and draconian
23 practice of incarcerating children within the Long Beach
24 City Jail (hereinafter "Jail"). As is more particularly set
25 forth herein, abandoned and castoff children, abused and
26 neglected children, and children accused of nothing more
27 than mere status offenses such as running away, as well as
28 other children, are routinely incarcerated within this adult
Jail, in flagrant violation of their fundamental rights to
due process of law and of the prohibition against cruel and
unusual punishment, guaranteed by the United States and
California Constitutions. More specifically, the
incarceration of abandoned, abused and neglected children
and children detained as mere status offenders in any adult
jail facility under any conditions is a per se violation of
their rights to due process and of the prohibition against

1 cruel and unusual punishment as well as a violation of
2 California State law prohibiting such incarceration.
3 (Welfare & Institutions Code Sections 206 and 207).
4 Furthermore, the incarceration of any children within any
5 adult jail under the conditions which are alleged herein to
6 exist at the Long Beach City Jail violates their rights to
7 due process of law and the prohibition against cruel and
8 unusual punishment, as well as the California statute
9 strictly limiting the conditions of such confinement
10 (Welfare & Institutions Code Section 208). Finally, the
11 Defendants' detention practices are dehumanizing and
12 destructive to such young children's mental, emotional and
13 physical welfare and serve no legitimate state interest or
14 purpose whatsoever. In short, the incarceration of children
15 in adult jails is, in no uncertain terms, state sponsored
16 child abuse. It is perhaps the most insidious form of child
17 abuse because it is perpetuated by the state against already
18 disturbed and troubled children.

19 2. Defendants' practices of incarcerating
20 children as alleged herein constitute an illegal and
21 wasteful expenditure of public funds, and further cause
22 irreparable and substantial harm to Plaintiff, to the
23 children so incarcerated and to the general public.

24 PLAINTIFF

25 3. Plaintiff WERNER A. BAUMGARTNER, Ph.D., is a
26 resident of, and owns property within, the City of Long
27 Beach which is located within the County of Los Angeles,
28 State of California. Within one year of the commencement of

1 this action, he has paid taxes thereon to Defendant City of
2 Long Beach as well as to Defendant County of Los Angeles.

3 DEFENDANTS

4 4. Defendant CITY OF LONG BEACH is an
5 incorporated city located within the County of Los Angeles,
6 State of California. In its capacity as a local unit of
7 government, it has implemented, executed and adopted the
8 policies, practices, acts and omissions complained of
9 herein through formal adoption or pursuant to governmental
10 custom. The policies, practices, acts and omissions
11 complained of herein are customs and usages of Defendant,
12 City of Long Beach.

13 5. Defendant ERNIE KELL is Mayor and a member of
14 the City Council of the City of Long Beach. Defendant KELL
15 is sued herein in his official capacity.

16 6. Defendants MARC A. WILDER, WALLACE EDGERTON,
17 JAN HALL, DR. THOMAS J. CLARK, JAMES H. WILSON, EUNICE N.
18 SATO, EDD TUTTLE, and WARREN HARWOOD are members of the City
19 Council of the City of Long Beach. They are sued herein in
20 their official capacities.

21 7. Defendant CHARLES USSERY is the Chief of
22 Police for the City of Long Beach. Defendant USSERY is sued
23 herein in his official capacity.

24 8. Defendant CITY OF LONG BEACH, acting by and
25 through the Defendants City Council, Mayor and Chief of
26 Police, hereinafter collectively referred to as "City
27 Defendants," is responsible for establishing and carrying
28 out the policies, practices and procedures governing the

1 administration, operation and maintenance of the Long Beach
2 City Jail and the placement, custody and care of the persons
3 incarcerated therein.

4 9. Defendant COUNTY OF LOS ANGELES is a county
5 located in the State of California. In its capacity as a
6 local unit of government, it has implemented, executed and
7 adopted the policies, practices, acts and omissions
8 complained of herein through formal adoption or pursuant to
9 governmental custom. The policies, practices, acts and
10 omissions complained of herein are customs and usages of
11 Defendant, County of Long Beach.

12 10. Defendants PETER SCHABARUM, KENNETH HAHN,
13 EDMUND EDELMAN, DEANE DANA, and MICHAEL ANTONOVICH are
14 members of the Los Angeles County Board of Supervisors. They
15 are sued herein in their official capacities.

16 11. Defendant EDDY TANAKA is the Director of the
17 Los Angeles County Department of Public Social Services and
18 he is sued in his official capacity.

19 12. Defendant ROBERT CHAFFEE is the Acting
20 Director of the Los Angeles County Department of Children's
21 Services and he is sued in his official capacity.

22 13. Defendant COUNTY OF LOS ANGELES, acting by
23 and through the Defendants PETER SCHABARUM, KENNETH HAHN,
24 EDMUND EDELMAN, DEANE DANA, MICHAEL ANTONOVICH, ROBERT
25 CHAFFEE and EDDY TANAKA, hereinafter collectively referred
26 to as "County Defendants," are responsible for establishing
27 and carrying out the policies, practices and procedures
28 relevant to the care, placement and treatment of abused and

1 neglected children.

2 14. Defendants City Does 1 through 25 are other
3 officers, agents or employees of the City of Long Beach also
4 responsible for establishing and carrying out the policies,
5 practices and procedures governing the administration,
6 operation and maintenance of the Long Beach City Jail and
7 the placement, custody and care of persons incarcerated
8 therein. Defendants County Does 1 through 25 are other
9 officers, agents or employees of the County of Los Angeles
10 also responsible for establishing and carrying out the
11 policies, practices and procedures relevant to the care,
12 placement and treatment of abused and neglected children.
13 Plaintiff is ignorant of the true names and capacities of
14 said Doe Defendants and will amend this Complaint to allege
15 the true names and capacities when the same have been
16 ascertained.

17 15. All Defendants act under color of state law
18 in violating the constitutional and statutory rights of
19 children incarcerated in the Jail, as alleged herein.

20 FACTUAL ALLEGATIONS

21 16. The Long Beach City Jail is a secure adult
22 jail facility located at 400 West Broadway in Long Beach,
23 California, and is administered, maintained and operated by
24 the City of Long Beach, by and through Defendants Mayor,
25 City Council and Chief of Police.

26 17. City Defendants use tax revenues collected
27 from Plaintiff and others by the City of Long Beach to
28 administer, operate and maintain Long Beach City Jail.

1 18. For many years prior to the commencement of
2 this action and currently, City Defendants use the Jail to
3 incarcerate children as well as adults. According to the
4 Long Beach Police Department's recent statistics, a total of
5 4,511 children (i.e., persons under 18 years old) were taken
6 into custody and confined in said Jail by the Long Beach
7 police in calendar year 1983.

8 19. City Defendants employ no written and
9 standardized detention criteria to govern the decisions as
10 to which children should be securely detained and which
11 should be diverted to appropriate community-based
12 alternatives or returned to the custody of their parents.

13 20. Children are incarcerated in the Jail absent
14 a prior determination by the judge of the juvenile court
15 that no other proper and adequate facilities exist for the
16 care and detention of such children.

17 21. City Defendants incarcerate children on the
18 fourth floor of the Jail and in dark, unsanitary and unsafe
19 cells measuring approximately 6-1/2 feet by 6 feet by 8
20 feet. This cell size is considerably below minimum
21 standards for adult prisoners. The cells are barred and
22 contain two metal wall bunks, and a sink with an attached
23 and unscreened toilet. The mattresses are thin and
24 unsanitary.

25 22. City Defendants maintain twelve (12) cells
26 for boys and five (5) cells for girls. There are also three
27 (3) holding cells for both boys and girls.

28 23. In the boys area, the City Defendants

maintain one (1) isolation cell and one (1) padded cell as well as the cells in which boys are routinely placed. City Defendants periodically place children in these cells for disciplinary and punishment purposes. These cells are small, dark, and unsanitary and have a solid metal door and a small translucent window, making observation of a child within such isolation or padded cells extremely difficult. City Defendants employ no specific written criteria or standards governing the placement and confinement of children in these isolation and padded cells.

24. In the immediate vicinity of the boys' and girls' cells, City Defendants further maintain a nursery with cribs for the placment of infants and young children, many of whom are abused, neglected or without a caretaker, within their Jail facility. City Defendants do not provide trained staff or adequate facilities to care for the infants placed in the Jail "nursery."

25. Children are frequently held within the Jail under circumstances and conditions alleged herein for extended periods of time and sometimes as much as twenty-four (24) hours or longer.

26. City Defendants routinely incarcerate children accused of so-called status offenses (Welfare & Institutions Code Section 601) -- actions which, if committed by an adult, would not be illegal, but are illegal if committed by a person under the age of eighteen (18) e.g., truancy, incorrigibility, running away from home. According to official reports submitted by the Long Beach

1 Police Department to the California Youth Authority ("CYA"),
2 in the month of September 1984 alone, the City Defendants
3 incarcerated 60 children accused of Welfare & Institutions
4 Code Section 601-type status offenses as well as 204
5 children accused of delinquency offenses (Welfare &
6 Institutions Code Section 602).

7 27. City Defendants routinely incarcerate
8 children who are the unfortunate victims of child abuse and
9 neglect (Welfare & Institutions Code Section 300). These
10 children are incarcerated along with status offenders as
11 well as children accused of delinquency offenses, and they
12 are allowed to come and remain in contact with adult
13 prisoners.

14 28. Children confined in the Jail are brought
15 into contact with adult inmates, (e.g., adult jail trustees)
16 in direct violation of Welfare and Institution Code Section
17 208 and the federal Juvenile Justice Delinquency and
18 Prevention Act of 1974.

19 29. City Defendants fail to adequately train and
20 supervise the Jail staff and employees responsible for the
21 care and custody of the children incarcerated within the
22 Jail.

23 30. City Defendants' fail to adequately monitor
24 and care for the children incarcerated within the Jail.
25 Typically, there is only one duty officer responsible for
26 monitoring all the cells and his station is separated from
27 the cell area by cement walls and a corridor, making
28 continuous observation and monitoring impossible. In fact,

1 City Defendants' duty officer monitors these cells only once
2 every thirty to sixty minutes. Such inadequate monitoring
3 poses a major danger and threat to the children's health,
4 safety and welfare. Thus, for example, on March 18, 1979, a
5 16-year old boy incarcerated for public intoxication (P.C.
6 Section 647f), was able to commit suicide by hanging
7 himself, unobserved and undetected by the officer on duty in
8 the children's wing of the Jail. The conditions at the
9 Jail, including the City Defendants' monitoring practices,
10 have not materially changed since the date of said suicide.

11 31. City Defendants fail to provide adequate
12 supervision and specialized training regarding child and
13 adolescent care to jail staff who deal with children.
14 Furthermore, staff are not specially trained to deal¹ with
15 children who are delivered into their custody in any
16 intoxicated, impaired or otherwise agitated or disoriented
17 condition.

18 32. City Defendants fail to provide adequate
19 medical and mental health services to those children
20 incarcerated within the Jail.

21 33. City Defendants fail to provide adequate
22 opportunity for recreation or exercise to those children
23 incarcerated within the Jail. In fact, children are not
24 allowed out of their cells for any reason whatsoever.

25 34. City Defendants fail to provide regular
26 activities or reading and other materials to occupy the time
27 of the children incarcerated within the Jail.

28 35. City Defendants fail to provide the

1 incarcerated children with food that is of adequate
2 nutritional content necessary for a growing child. Children
3 are, moreover, routinely deprived of soap, towels, pillows
4 and toothbrush.

5 36. City Defendants routinely fail to immediately
6 notify parents when their children are incarcerated in the
7 Jail, and in addition, routinely fail and refuse to
8 facilitate contacts between the children so incarcerated and
9 their parents or other responsible family members.

10 37. City Defendants' placement of youthful status
11 offenders and abused and neglected children in the Jail
12 results in extreme and irreparable physical and
13 psychological injury to such children. These injuries will
14 continue to occur unless and until plaintiff is granted the
15 relief requested herein.

16 38. City Defendants' failure to provide adequate
17 supervision and training of the staff and employees
18 responsible for the care and custody of the children
19 incarcerated within the Jail, and City Defendants failure to
20 adequately monitor and care for the children within the
21 Jail, as described herein, result in extreme and irreparable
22 physical and psychological injury to the children held
23 within the Jail. These injuries will continue to occur
24 unless and until Plaintiff is granted the relief requested
25 herein.

26 39. Defendants COUNTY, TANAKA, CHAFFEE and
27 members of the BOARD OF SUPERVISORS have routinely failed to
28 adequately place abused and neglected children taken into

1 temporary custody into suitable alternative placements.
2 This failure to adequately place has resulted in the
3 incarceration of abused and neglected children in the Jail.

4 40. City and County Defendants' actions and
5 omissions, and the results therefrom, are continuous and
6 ongoing. Therefore, Plaintiff has no plain, speedy or
7 adequate remedy at law and cannot be compensated adequately
8 by money damages. Unless and until City and County
9 Defendants are enjoined from continuing such actions,
10 children will continue to be incarcerated within the Jail
11 under the conditions alleged herein, and said children and
12 Plaintiff will thereby continue to suffer irreparable and
13 substantial harm.

14 FIRST CAUSE OF ACTION

15 (AGAINST CITY DEFENDANTS -- PER SE VIOLATION OF
16 DUE PROCESS BY INCARCERATING NEGLECTED AND
ABUSED CHILDREN AND STATUS OFFENDERS)

17 41. Plaintiff repeats and incorporates by this
18 reference the allegations contained in Paragraphs 1 through
19 40 as if fully set forth herein.

20 42. City Defendants' practices, policies and
21 procedures of incarcerating neglected and abused children
22 and children accused of status offenses within Long Beach
23 City Jail, no matter what the conditions of the Jail,
24 constitute a per se violation of such children's rights to
25 due process of law, guaranteed by the Fourteenth Amendment
26 of the United States Constitution and Section 7 of Article I
27 of the California Constitution.

28 43. City Defendants' expenditures of tax revenues

1 in so incarcerating said children in Long Beach City Jail,
2 in violation of such children's rights to due process of
3 law, constitute illegal as well as wasteful expenditures of
4 said tax revenues.

5 SECOND CAUSE OF ACTION

6 (AGAINST CITY DEFENDANTS -- CONDITIONS OF CHILDREN'S
7 CONFINEMENT VIOLATE DUE PROCESS)

8 44. Plaintiff repeats and incorporates by this
9 reference the allegations contained in Paragraphs 1 through
10 40 as if fully set forth herein.

11 45. City Defendants' policies, practices and
12 procedures as alleged herein, specifically their
13 incarceration of children within Long Beach City Jail under
14 the conditions which exist there, constitute punishment of
15 such children in violation of their right to due process of
16 law as embodied in the Fourteenth Amendment to the United
17 States Constitution and in Section 7 of Article I of the
18 California Constitution.

19 46. City Defendants' expenditures of tax revenues
20 in so incarcerating said children under such conditions in
21 the Long Beach City Jail, in violation of such children's
22 rights to due process of law, constitute illegal as well as
23 wasteful expenditures of such tax revenues.

24 THIRD CAUSE OF ACTION

25 (AGAINST CITY DEFENDANTS -- PER SE CRUEL
26 AND UNUSUAL PUNISHMENT BY INCARCERATING
NEGLECTED AND ABUSED CHILDREN AND STATUS OFFENDERS)

27 47. Plaintiff repeats and incorporates by this
28 reference the allegations contained in Paragraphs 1 through

1 40 as if fully set forth herein.

2 48. City Defendants' practices, policies and
3 procedures of incarcerating neglected and abused children
4 and children accused of status offenses within Long Beach
5 City Jail, no matter what the conditions of the Jail,
6 constitute a per se violation of such children's rights to
7 be free from cruel and unusual punishment in violation of
8 the Eighth and Fourteenth Amendments of the United States
9 Constitution and Section 17 of Article I of the California
10 Constitution.

11 49. City Defendants' expenditures of tax revenues
12 in so incarcerating said children in Long Beach City Jail,
13 in violation of the prohibitions against cruel and unusual
14 punishment, constitute illegal as well as wasteful
15 expenditures of said tax revenues.

16 FOURTH CAUSE OF ACTION

17 (AGAINST CITY DEFENDANTS -- CONDITIONS
18 OF CHILDREN'S CONFINEMENT VIOLATE PROHIBITION
AGAINST CRUEL AND UNUSUAL PUNISHMENT)

19 50. Plaintiff repeats and incorporates by this
20 reference the allegations contained in Paragraphs 1 through
21 40 as if fully set forth herein.

22 51. City Defendants' policies, practices and
23 procedures as alleged herein, specifically their
24 incarceration of children within Long Beach City Jail under
25 the conditions which exist there constitute cruel and
26 unusual punishment in violation of the Eighth and Fourteenth
27 Amendments to the United States Constitution and of Section
28 17 of Article I of the California Constitution.

1 52. City Defendants' expenditures of tax revenues
2 in so incarcerating said children under such conditions in
3 the Long Beach City Jail, in violation of the prohibitions
4 against cruel and unusual punishment, constitute illegal as
5 well as wasteful expenditures of said tax revenues.

6
7 FIFTH CAUSE OF ACTION

8 (AGAINST CITY DEFENDANTS -- ADULT CONTACT
9 VIOLATES WELFARE & INSTITUTIONS CODE SECTION 208)

10 53. Plaintiff repeats and incorporates by this
11 reference the allegations contained in Paragraphs 1 through
12 40 as if fully set forth herein.

13 54. City Defendants' practice of allowing
14 children confined in Long Beach City Jail to come or remain
15 in contact with adult inmates directly violates California
16 Welfare and Institutions Code Section 208.

17 55. City Defendants' expenditures of tax revenues
18 in administering, operating and maintaining the Long Beach
19 City Jail in violation of the requirements of California
20 Welfare and Institutions Code Section 208 constitute illegal
21 as well as wasteful expenditures of said tax revenues.

22 SIXTH CAUSE OF ACTION

23 (AGAINST CITY DEFENDANTS -- INCARCERATING DEPENDENT
24 CHILDREN IN THE JAIL VIOLATES
25 WELFARE & INSTITUTIONS CODE SECTION 206)

26 56. Plaintiff repeats and incorporates by this
27 reference the allegations contained in Paragraph 1 through
28 40 as if fully set forth herein.

57. City Defendants' practice of confining in the
Jail children taken into custody pursuant to Welfare &

1 Institutions Code Section 300 is a per se violation of
2 Welfare & Institutions Code 206.

3 58. City Defendants' expenditures of tax revenues
4 in administering, operating and maintaining the Long Beach
5 City Jail in violation of the requirements of California
6 Welfare & Institutions Code Section 206 constitute illegal
7 as well as wasteful expenditures of said tax revenues.

8
9 SEVENTH CAUSE OF ACTION

10 (AGAINST CITY DEFENDANTS -- FAILURE TO MAKE
11 PRIOR JUDICIAL DETERMINATION OF ALTERNATIVE
PLACEMENT BEFORE JAILING CHILDREN VIOLATES
WELFARE & INSTITUTIONS CODE SECTION 207)

12 59. Plaintiff repeats and incorporates by this
13 reference the allegations contained in paragraphs 1 through
14 40 as if fully set forth herein.

15 60. City Defendants' practice of incarcerating
16 children in the Jail absent a prior judicial determination
17 that there are no other proper and adequate facilities for
18 the care and detention of such persons violates Welfare &
19 Institutions Code Section 207.

20 61. City Defendants' expenditures of tax revenues
21 in administering, operating and maintaining the Long Beach
22 City Jail in violation of the requirements of California
23 Welfare & Institutions Code Section 207 constitute illegal
24 as well as wasteful expenditures of said tax revenues.

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1 EIGHTH CAUSE OF ACTION

2 (AGAINST CITY DEFENDANTS -- INCARCERATING STATUS
3 OFFENDERS IN THE JAIL VIOLATES WELFARE & INSTITUTIONS
4 CODE SECTION 207)

5 62. Plaintiff repeats and incorporates by this
6 reference the allegations contained in Paragraphs 1 through
7 40 as if fully set forth herein.

8 63. City Defendants' practice of confining in the
9 Jail children accused of status offenses pursuant to Welfare
10 & Institutions Code Section 601 is a per se violation of
11 Welfare & Institutions Code Section 207 which prohibits such
12 children from being locked in adult jails.

13 64. City Defendants' expenditures of tax revenues
14 in incarcerating status offenders in the Long Beach City
15 Jail in violation of Welfare & Institutions Code Section 207
16 constitute illegal as well as wasteful expenditures of said
17 tax revenues.

18 NINTH CAUSE OF ACTION

19 (AGAINST COUNTY DEFENDANTS -- FAILURE TO ADEQUATELY
20 PLACE ABUSED AND NEGLECTED CHILDREN IN
21 SUITABLE ALTERNATIVES)

22 65. Plaintiff repeats and incorporates by this
23 reference the allegations contained in Paragraphs 1 through
24 40 as if fully set forth herein.

25 66. The practice of County Defendants in allowing
26 abused and neglected children to be placed in the Jail
27 violates Welfare & Institutions Code Section 202.5, 206,
28 272, 306, 16501, 16502, 16504, 16504.1, California DSS
Manual-SS, chapter 30-100 and Los Angeles County Ordinance
No. 84-0125.

1 67. County Defendants' expenditures of tax
2 revenues in violation of the above-cited statutes,
3 regulations and ordinance constitute an illegal as well as
4 wasteful expenditure of those tax revenues.

5
6 WHEREFORE, Plaintiff respectfully prays that this
7 Court:

8 1. Restrain, prohibit and otherwise forever enjoin
9 City Defendants, from:

10 A. Confining and incarcerating any abused and
11 neglected children (Welfare & Institutions Code Section
12 300), and any status offenders (Welfare & Institutions
13 Code Section 601) under any circumstances in the Long Beach
14 City Jail;

15 B. Confining and incarcerating any children
16 accused of criminal acts (Welfare & Institutions Code
17 Section 602) in the Long Beach City Jail; or, in the
18 alternative, confining and incarcerating any children
19 accused of criminal acts (Welfare & Institutions Code
20 Section 602) in the Long Beach City Jail until such time as
21 City Defendants remedy each and every constitutional and
22 statutory violation complained of herein; and

23 C. Confining and incarcerating any children in
24 the Long Beach City Jail in violation of Welfare &
25 Institutions Code Section 207, requiring prior judicial
26 determinations in each such case that no other "proper and
27 adequate facilities for the care and detention" of such
28 children exists.

1 2. Restrain, prohibit and otherwise forever enjoin
2 City and County Defendants from failing to develop,
3 promulgate and comply with written and standardized
4 detention criteria and procedures governing the detention of
5 children.

6 3. Restrain, prohibit and otherwise forever enjoin
7 County Defendants from failing to develop and maintain an
8 adequate and sufficient number of non-penal alternatives for
9 children in custody.

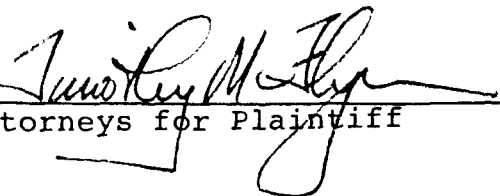
10 4. Award plaintiff the costs of suit, including
11 reasonable attorneys' fees; and

12 5. Grant such other and further relief as the Court
13 deems necessary and proper.

14 DATED: June 5, 1985

Timothy McFlynn
Randall L. Gephart
PUBLIC JUSTICE FOUNDATION

Loren W. Warboys
Greer M. Smith
Carole Schauffer
Mark I. Soler
YOUTH LAW CENTER

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