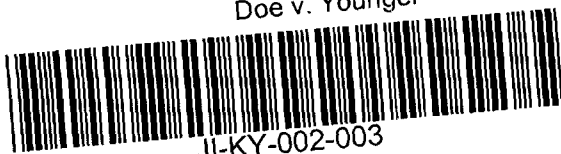


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Doe v. Younger



JI-KY-002-003

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT COVINGTON

EASTERN DISTRICT of KENTUCKY

FILED

JUL 26 1996

AT COVINGTON
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

CIVIL ACTION NO. 91-187

JOHN DOE, ET AL

VS.

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

PLAINTIFFS

DEFENDANTS

DON YOUNGER, ET AL

I. INTRODUCTION

This is a civil rights class action brought pursuant to 42 U.S.C. § 1983 in which plaintiffs challenge the constitutionality of the conditions of their confinement at the Kenton County Detention Center in Covington, Kentucky.

This case presents the court with the formidable task of balancing significant conflicting interests -- the due process rights of incarcerated juveniles, the rights of the public to have the problem of juvenile crime or misbehavior addressed, and the separation of federal and state powers.

The plaintiffs, through able counsel, have presented evidence of a juvenile holding facility that is substandard, and they have further demonstrated that juveniles who have committed no crime are confined there under punitive conditions.

Yet, in our constitutional system, under principles of federalism, the responsibility for local law enforcement lies with the states and their political subdivisions. A federal court may interfere only if the federal constitution or a federal statute is violated.

An ideal juvenile facility such as advocated by the plaintiffs costs money -- taxpayers' money. This court has not been elected the governor of any state, the county judge/executive of any county, or appointed superintendent of any state or local school system. It is on these officials that our constitution imposes the obligation of operating effective juvenile justice systems. If they choose to operate substandard facilities, as they have here, this court may not intervene unless the shortfall is so extreme as to violate federal constitutional standards.

In this case, the evidence shows that juveniles, who may not have committed any crime, are confined in a prison under harsh conditions, hereinafter described.

Plaintiffs ask the court to close this institution. After careful reflection, the court has concluded that such an extreme act would violate the principles of judicial restraint and federalism. But the court has also concluded that confining a juvenile there for an extended period -- more than fifteen (15) days, unless there is probable cause to believe that the juvenile can be treated as an adult charged with a crime -- is punishment without due process of the law. What one can bear for a short period can be intolerable if prolonged.

The court also holds that inadequate staffing in certain particulars exposes the juveniles to unconstitutional physical risks and other unconstitutional conditions. The conditions of close confinement and lack of exercise are particularly objectionable.

Although the court finds that the facility is not per se unconstitutional, it nevertheless urges the state officials to upgrade it to the extent possible and voluntarily close it as soon as possible. The institution is unworthy of a dynamic and progressive community such as ours.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiffs' Claims

Plaintiffs filed this action for declaratory and injunctive relief in 1991 pursuant to 42 U.S.C. § 1983, the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq., and Kentucky law, alleging unconstitutional conditions of confinement at the Kenton County Detention Center (KCDC) in Covington, Kentucky. Plaintiffs' allegations encompass various conditions and practices at the KCDC, including staffing, classification, supervision, isolation, fire safety, recreation, sanitation, medical and mental health care, and clothing and bedding. Defendants, in turn, have consistently denied that any of the conditions or practices at the KCDC violate plaintiffs' constitutional rights.

B. The Parties

Plaintiffs Jean and John Doe bring this action on behalf of themselves and all other juveniles similarly situated who are or will in the future be confined in the KCDC.

Defendant Clyde Middleton is the County Judge Executive of the Kenton County Fiscal Court.

Defendant Don Younger is the current jailer of the KCDC.¹

Defendant Jack Lewis is the Secretary of the Corrections Cabinet which has supervisory authority over juvenile facilities in Kentucky.

Defendant Viola Miller is the Secretary of the Kentucky Cabinet for Families and Children ("CFC" or "Cabinet"), the primary state agency for operating human services programs. The CFC, created by the Governor of Kentucky in 1995, is the successor agency to the former Kentucky Cabinet for Human Resources ("CHR"). Since 1990, the CHR/CFC has contracted with the KCDC to house juveniles committed to its custody and awaiting placement in Cabinet treatment facilities.

Defendant Wilmer Cody is the Commissioner of the state Department of Education and has primary statutory responsibility for the education of all school-age children in Kentucky.

Defendant Covington Independent Public Schools ("CIPS") was dismissed from this action on July 22, 1996 in light of recent legislation placing responsibility for all education in juvenile holding and detention facilities on the Commonwealth of Kentucky. See Order of July 22, 1996.

Defendant Paul Patton is the duly elected Governor of the Commonwealth of Kentucky and, in that capacity, is responsible by

¹ Younger replaced James Knauf, who was jailer when this action commenced. Middleton, the Fiscal Court, and Younger are referred to collectively as "the county defendants."

statute for the resolution of conflicts between state agencies. Kentucky Revised Statutes Annotated ("KRS") (Michie 1992) § 12.100.

C. Procedural History

Plaintiffs filed this action on November 21, 1991. Since that date, they have filed three amended complaints resulting in the current roster of defendants and claims now before the court. The court granted the motion for class certification on January 13, 1993.

Motions for summary judgment were briefed, argued, and denied in September 1995. On October 16, 1995, the court, accompanied by counsel for all parties, visited the KCDC to examine the facility and the conditions therein.

At the pretrial conference held on March 22, 1996, the court bifurcated the conditions of confinement issues from the education issues in this case. A bench trial on the conditions of confinement issues was held on April 15, 16, & 19, 1996.² At the conclusion of trial, the court ordered that all parties submit post-trial briefs. In addition, the court ordered plaintiffs to designate a facility within 125 miles of the court that they feel illustrates an acceptable juvenile holding facility.³

² This opinion thus addresses only the conditions of confinement claims.

³ On May 3, 1996, plaintiffs designated the Henry County Youth Center in New Castle, Indiana as a facility which "meets and in many ways far exceeds the minimum constitutional and statutory standards for juvenile holding and detention facilities that the Kenton County juvenile facility fails to meet." Plaintiffs' Designation Brief, at 2. Defendant Kenton County objected to this

Having heard the evidence presented at trial and having reviewed the parties' post-trial briefs, the court now makes the following Findings of Fact and Conclusions of Law pursuant to Fed. R. Civ. P. 52.

III. FINDINGS OF FACT

A. The Physical Facility

1. The Kenton County Detention Center is a secure juvenile holding facility located in Covington, Kentucky. Juveniles are housed on the eighth floor of the KCDC in an area physically separated from adult inmates.⁴

2. The KCDC juvenile facility consists of the following areas: four 4-person cells; four 2-person cells accessible to and from a small dayroom area; three isolation cells; one holding cell; a booking area; a multi-purpose room used for educational instruction and leisure activities; a strip search and shower room; a visiting room; a control room; and a storage area.

designation on the ground that the Henry County facility is a juvenile detention facility, rather than a holding facility, as defined by the Kentucky statutes and regulations.

Defendants' objections to close comparisons between the Indiana facility and the KCDC are well-taken. Nevertheless, for the purposes of this opinion, the court finds that this facility illustrates the feasibility of maintaining a juvenile facility that is secure and functional without replicating the stark, penal atmosphere of an adult prison.

⁴ In this opinion, the juvenile holding facility portion of the KCDC will itself be referred to as the "KCDC."

3. The outdoor recreation area of the KCDC is a rooftop basketball court with solid walls. Wire mesh covers the top, but other than that the area is open to the sky.

4. The KCDC is a stark prison-like facility. It impresses one as a place of punishment rather than rehabilitation. The guards wear uniforms, and the juveniles wear prison jumpsuits. The juveniles reside in cells rather than rooms. The court has toured federal penitentiaries for convicted adult felons which were less foreboding. The court particularly notes the close confinement of the residents and their inability to be outdoors (other than having a view of the sky in the recreation enclosure) at any time during their confinement.

B. Staffing and Supervision

5. On weekdays from 8:00 am to 5:00 pm, there are at least three staff members on duty in the KCDC juvenile area, including the teacher.

6. On weekdays from 5:00 pm to 8:00 am, there is only one deputy on duty on the juvenile floor of the KCDC. On weekends, there is only one deputy on duty at all times. This results in many problems as described below.

C. Isolation and Lockdown

7. Deputies at the KCDC use isolation for multiple purposes, including varying levels of discipline; the protection of youth who

are vulnerable, homosexual, or suicidal, and the quarantine of children with communicable diseases or lice.

8. Deputies at the KCDC use leather restraints on the hands and ankles of some juveniles placed in isolation.

9. When juveniles are admitted to the KCDC, they are not given any written document explaining when they may be placed in isolation.

10. Only juveniles held in the 4-person housing area numbered 874 have access to the dayroom from their cells.

11. Juveniles in isolation at the KCDC remain in the cell for at least sixteen hours a day, from 4:00 pm to 8:00 am, except that they may be allowed to attend certain religious programs. The cell is artificially lit at all times, but has no natural light. There is no bed or cot in the cell, but a mattress is provided. It has all the characteristics of a punishment cell, although as noted, juveniles are frequently placed in it who have committed no infractions.

D. Fire Safety

12. There are no sprinklers in the living areas of the KCDC juvenile facility. There are sprinklers in the administrative space and elevator lobby.

13. Floors one through seven of the KCDC building have sprinklers.

14. The eight floor of the KCDC has fire safety features including in-duct smoke detectors, a smoke control system, a Fire

Emergency Automatic Release System ("FEAR")⁵, and a staff-operated gang release system.

15. During fire drills, the detained youth are not removed from their cells.

16. Mattresses in the living areas of the KCDC are not composed of highly flammable or explosive materials.

17. There is a sharp conflict among the expert witnesses as to whether this facility is safe should there be a fire.

E. Recreation and Activities

18. Juveniles at the KCDC are allowed one hour per day for "recreation," which includes any outdoor exercise and use of the multi-purpose room. Juveniles are permitted to exercise in their cells and play cards or watch television in the dayroom.

19. There is no regularly-scheduled outdoor exercise for female youth in the KCDC.

20. Outdoor recreation is provided on a "weather-permitting" basis; no outdoor recreation is provided when the temperature is below 50 degrees. The outdoor recreation area is on the roof, covered by netting and open to the sky. Its walls are solid masonry.

21. The multipurpose room in the KCDC contains equipment including a Nautilus weight machine, punching bag, ping pong table, exercise bike, board games, record player, computer, art supplies,

⁵ The FEAR system automatically unlocks certain designated doors in the event that the fire alarm sounds.

and an electronic keyboard. Nevertheless, the atmosphere of the room is spartan. This modestly-sized room also doubles as the facility's classroom.

F. Medical and Mental Health Services

22. Kenton County contracts with Dr. Alvarez, a licensed physician, to provide medical care to juveniles in the KCDC on an as-needed basis. This does not include regularly-scheduled visits to the facility.

23. Kenton County contracts with Mark Kroger, M.S., to provide counseling services to juveniles in the facility on an as-needed basis. This does not include regularly-scheduled visits to the facility.

24. There is a nurse at the KCDC who divides her time between the adult and juvenile parts of the facility.

25. The KCDC deputies complete medical screening forms on each juvenile upon his or her admission to the facility.

G. Sanitation and Environmental Conditions

26. Youth at the KCDC wear prison jumpsuits issued to them by the facility.

27. Deputies issue clean underwear to the juveniles three times a week.

28. Juveniles at the KCDC must purchase shampoo, soap, deodorant, and toothpaste from the canteen.

29. The KCDC has a pest control contract with an outside agency.

H. KCDC Confinement Statistics⁶

30. From October 1, 1994 through July 31, 1995, a total of 742 juveniles were held in the KCDC. The lengths of stay for those juveniles were as follows:

LENGTH OF DETENTION IN KCDC	NUMBER OF JUVENILES	PERCENTAGE
5 days or less	504	68%
10 days or less	608	82%
15 days or less	658	87%
16 days or more	84	11%
30 days or more	44	6%
50 days or more	20	3%
100 days or more	10	1%

31. Of the 742 juveniles detained in the KCDC from October 1, 1994 through July 31, 1995, 420 (57%) were held for contempt of court and/or status offenses. Conduct underlying contempt of court charges included truancy, dependency, failure to pay restitution, runaway status, and public offenses.

⁶ These statistics are derived from evidence introduced at trial by plaintiffs and compiled from KCDC records provided by the county defendants. See Pl. Exh. 46-49.

IV. CONCLUSIONS OF LAW

A. Jurisdiction of the Court

1. This court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1343(a)(3), (4). Declaratory and injunctive relief are authorized pursuant to 28 U.S.C. §§ 2201(a), 2202 and Fed. R. Civ. P., Rules 57 and 65.

2. This action is properly maintained as a class action under Fed. R. Civ. P. 23(b)(2).

B. Responsibility of the Defendants

3. The Department of Corrections ("DOC") supervises conditions at the KCDC pursuant to KRS § 196.030(1)(a), KRS § 441.057, and 501 Ky. Admin. Regs. ("KAR") 9:010-9:150 (1995).⁷ See James v. Jones, 148 F.R.D. 196, 204 (W.D. Ky. 1993) (discussing authority of DOC and Justice Cabinet with respect to confinement of juveniles in Kentucky).

4. The Cabinet for Families and Children ("CFC" or "Cabinet") is responsible for the conditions in which juveniles committed to its custody are held pursuant to KRS § 605.100. The CFC, by annual contract, arranges for some juveniles committed to its custody to be housed at the KCDC while awaiting placement in Cabinet treatment facilities. The CFC/KCDC contract clearly states

⁷ KRS § 441.057 directs the Department of Corrections to issue and enforce administrative regulations governing the operation of juvenile holding facilities. Under the same statute, the Department of Corrections is responsible for inspecting and monitoring the KCDC.

that legal custody of juveniles placed in the KCDC "shall at all times remain with the Cabinet." 1995 Contract at 2a.⁸

5. The county defendants are also responsible for the conditions at the KCDC. The Kenton County Fiscal Court owns the building in which the KCDC is located and, pursuant to KRS § 67.0831, is responsible for appropriating money to provide for the maintenance of the facility and suitable conditions for juveniles confined therein. Official-capacity defendant Clyde Middleton is the County Judge Executive of the Kenton County Fiscal Court, and official-capacity defendant Don Younger is the current jailer of the KCDC.

C. Statutory Provisions Relevant to the KCDC

6. The KCDC is a "juvenile holding facility" as that term is defined in KRS § 600.020(30):

⁸ The CFC's argument that Deaton v. Montgomery County, 989 F.2d 885 (6th Cir. 1993), relieves them of liability for plaintiffs' claims is unavailing. In Deaton, the Sixth Circuit held that a county that owned a jail facility could not be held to have adopted the policy of the city that actually operated the jail because there was no evidence that the county knew or should have known of the unconstitutional strip searches allegedly conducted there. Id. at 888-89. The court indicated, however, that evidence that the county was on notice of the allegedly unconstitutional actions by the city could constitute the necessary "deliberate indifference" to satisfy the "policy or practice" requirement of a 42 U.S.C. § 1983 claim. Id. at 890. Specifically, the court stated that notice through the lawsuit itself might suffice. Id.

In the case at bar, the CFC/CHR has been on notice of plaintiffs' claims regarding the conditions at the KCDC since 1991; nevertheless, it has contracted with the facility every year since then to house juveniles committed to its custody there. Thus, Deaton does not relieve the CFC of liability under 42 U.S.C. § 1983 for the unconstitutional conditions at the KCDC.

"Juvenile holding facility" means a physically secure setting, approved by the Justice Cabinet, which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas and which is staffed exclusively by sufficient certified juvenile holding facility staff to provide twenty-four (24) hours per day supervision. Employees of jails who meet the qualifications of the Justice Cabinet may supervise juvenile as well as adult prisoners.

(emphasis added). See also KRS § 15A.200(3) (same definition).

The underlined language highlights the difference between juvenile holding facilities and "secure detention facilities" which may not be "part of or attached to any facility in which adult prisoners are confined or which shares staff with a facility in which adult prisoners are confined." KRS § 600.020(43); KRS § 15A.200(4).

7. Youths who may be held in juvenile holding facilities such as the KCDC include: (1) children age sixteen or older who are alleged to have committed, are convicted of committing, or who have pled guilty to committing, a moving motor vehicle offense (KRS § 610.010(a)); (2) juveniles charged with committing an offense detained pending adjudication (KRS § 610.200(5)(d); KRS § 610.220); (3) any child accused of committing or found to have committed a status or public offense, or accused or found to be in contempt of court (KRS § 610.265; KRS § 635.055; KRS § 635.060(3)); (4); juveniles over the age of fourteen (14) charged with or convicted of a felony in which a firearm was used (KRS § 635.020(4)); and (5) juveniles under the age of eighteen (18) alleged to be "youthful offenders" and who are unable to make bail or meet the conditions of release (KRS § 640.020(1)).

8. "Status offenders" are juveniles who: (1) are habitual runaways from their parents or from persons exercising custodial control or supervision over them; (2) have not subjected themselves to the reasonable control of their parents or guardians; or (3) are habitually truant from school. KRS § 610.010(1)(a), (3); KRS § 630.020.

9. Behavior constituting a status offense is not considered criminal or delinquent. KRS § 600.020(48).

10. Alleged status offenders may not be held in a juvenile holding facility, prior to adjudication, for more than ten (10) days unless the child waives this limitation and the court considers such waiver to be in the child's best interest; with a waiver, an alleged status offender may not be held more than ten (10) additional days. KRS § 630.090. The same time limits and waiver provision apply to adjudicated status offenders held pending disposition. KRS § 630.100. Post-disposition, no status offender may be held in a juvenile holding facility for more than an additional twenty-four (24) hour period. KRS § 630.130.

11. "Public offenders" are those juveniles found to have committed certain felonies, misdemeanors, or violations which, if committed by an adult, would be crimes. KRS § 635.020; KRS 600.020(37).

12. Juveniles over the age of sixteen (16) adjudicated as "public offenders" may not be held in a juvenile holding facility for more than thirty (30) days. KRS § 635.060(4).

13. "Youthful offenders" are those juveniles charged with committing certain serious offenses, defined in KRS § 640.010 and KRS § 635.020, who are tried and convicted in the Circuit Court as adults. KRS § 600.020(52); KRS § 635.020; KRS § 640.010.

14. It is clear, then, that many juveniles can be and are held in the KCDC for many days who are not charged with a crime and who have not been afforded the rights of those who are so charged.

D. Constitutional Challenges to Conditions in Juvenile Facilities: The Appropriate Legal Standard

As several courts faced with suits of this nature have recognized, the Supreme Court of the United States has not definitively stated whether standards governing cases involving conditions of confinement for juveniles are to be derived from the Eighth Amendment to the Constitution, prohibiting cruel and unusual punishment, or from the Due Process Clause of the Fourteenth Amendment. See A.J. v. Kierst, 56 F.3d 849, 854 (8th Cir. 1995) (citing Ingraham v. Wright, 430 U.S. 651, 669 n.37 (1977)); Gary H. v. Hegstrom, 831 F.2d 1430, 1431 (9th Cir. 1987); Alexander S. v. Boyd, 876 F. Supp. 773, 795 D.S.C. 1995. Nor has the United States Court of Appeals for the Sixth Circuit addressed this issue. Cf. Horn by Parks v. Madison County Fiscal Court, 22 F.3d 653 (6th Cir.), cert. denied, 115 S. Ct. 199 (1994) (individual action for damages by juvenile injured in suicide attempt while detained brought under Eighth Amendment).

The majority of courts that have dealt with this question have employed the due process clause on the ground that those detained

for juvenile offenses have not been convicted of any crime and that the purpose of their confinement is rehabilitative rather than penal.⁹ See, e.g., Kierst, 56 F.3d at 854; Hegstrom, 831 F.2d at 1432; Santana v. Collazo, 714 F.2d 1172, 1179-80 (1st Cir. 1983), cert. denied, 466 U.S. 974 (1984); Boyd, 876 F. Supp. at 796; D.B. v. Tewksbury, 545 F. Supp. 896, 905 (D. Or. 1982).

Like the state juvenile systems at issue in these cases, the Kentucky juvenile system also has rehabilitation as its objective. See KRS § 600.010(d); 605.100(1).

As pertinently observed by the court in Kierst:

In applying the due process standard to juveniles, we cannot ignore the reality that assessments of juvenile conditions of confinement are necessarily different from those relevant to assessments of adult conditions of confinement. . . . Juveniles subject to pretrial detention have not yet had a judicial determination of probable cause which the Fourth Amendment requires as a prerequisite to extended restraint of liberty following arrest; . . . are, in some instances, before the court on charges in unverified petitions, e.g., delinquency petitions filed on information and belief . . . ; and are in a system whose purpose is rehabilitative, not penal, in nature. . . . In addition, juveniles are frequently detained for reasons entirely separate from those associated with adjudication of charges. Some are detained as a result of neglect or abusive home environments and are held in protective custody, e.g., are "status offenders"; some are runaways; some are simply undisciplined. For these reasons, we conclude that, as a general matter, the due process standard applied to juvenile pretrial detainees should be more liberally construed than that applied to adult detainees.

⁹ For instance, many juveniles detained in the KCDC are status offenders, of whom the Kentucky statute states:

Detention of status offenders in secure juvenile detention facilities or juvenile holding facilities should only be used for very specific and constructive purposes, when all other less restrictive alternatives to detention have been attempted and are not feasible.

KRS § 630.010(3).

Kierst, 56 F.3d at 854 (citations and internal quotations omitted) (emphasis added).

Under the due process clause, confined juveniles have the right to reasonable personal safety, including protection from attacks of other juveniles; freedom from unreasonable personal restraint; and the right to rehabilitative treatment and appropriate programming, at least in longer term institutions. Boyd, 876 F. Supp. at 796-97. The flexibility of this Fourteenth Amendment standard is well-suited to the juvenile context, where the special needs of children must be weighed against the state's interest in dealing with disruptive individuals. Id. at 798 n.44; Hegstrom, 831 F.2d at 1432 (noting that the Constitution requires a "reasonable balance between liberty interests [of juveniles] and the institution's operational needs").

Nevertheless, the court does not have unlimited authority to impose as constitutional standards those ideal criteria proposed by experts or advocacy groups. As stated by Judge Anderson in Boyd, supra:

The court must emphasize that its role in this litigation is to identify minimally acceptable standards for treatment and rehabilitation. In other words, it is not necessary that the state provide the best possible training and services to the Plaintiffs. The test is whether the state is providing minimally adequate or reasonable services and training necessary to ensure the protected interests of the Plaintiffs. It is not appropriate that the state be held to a standard which imposes an affirmative duty to succeed in the purpose of correcting the juveniles' behavior. Although such a standard may be desirable, it is not constitutionally mandated. All that is required is that the juveniles be housed under conditions that provide them with a reasonable opportunity to correct their behavior. Obviously, this standard incorporates the security,

program, and service functions that are basic to juvenile corrections. These basic services include sufficient numbers of adequately trained staff so that the purpose of the confinement may be advanced, minimal levels of programming reasonably geared toward aiding juveniles to correct their behavior, and other services that are minimally necessary to give the Plaintiffs a reasonable opportunity to accomplish the purpose of the confinement while protecting the other recognized interests in safety and reasonable restraint.

In deciding minimum constitutional requirements for the institutions under challenge here, this court is not bound by standards promulgated by organizations such as the American Correctional Association. As noted by the United States Supreme Court in Bell v. Wolfish, 441 U.S. 520, 543 n.27, 99 S. Ct. 1861, 1876 n.27, 60 L.Ed.2d 447 (1979), "[W]hile the recommendations of these various groups . . . may be instructive in certain cases, they simply do not establish the constitutional minima; rather, they establish goals recommended by the organization in question." Lower courts have also rejected efforts to impose ACA standards as constitutional minima.

Boyd, 876 F. Supp. at 798-99 (emphasis added). See also Gary H. v. Hegstrom, 831 F.2d 1430, 1433 (9th Cir. 1987) (rejecting "wholesale adoption of various professional associations' concepts for model institutions"); Santana v. Collazo, 714 F.2d 1172, 1181 (1st Cir. 1983), cert. denied, 466 U.S. 974 (1984).¹⁰

Just as the court need not adopt professional standards advocating certain conditions, neither does it view the compliance

¹⁰ At trial, plaintiffs presented the testimony of four expert witnesses: Dr. David Roush, who testified on the programming and procedures at the KCDC; Dr. Cheryl Polk, who testified about the mental health needs of juveniles; Thomas Jaeger, who testified about fire safety; and Ward Duel, who testified about the environmental conditions in the facility.

These experts made specific reference to various professional standards and codes including those issued by the American Correctional Association ("ACA"); the National Academy of Corrections ("NAC"); the National Juvenile Detention Association ("NJDA"); the National Commission on Correctional Health Care ("NCCHC"); and the National Fire Prevention Association ("NFPA").

with or violation of state statutes or regulations by defendants as dispositive of the constitutionality of their practices or policies at the KCDC.

Furthermore, when considering cases of this kind, the court is also mandated by the recently-enacted Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321, 18 U.S.C. § 3626(a)(1)(A) (1996) to:

give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by [prospective injunctive] relief.

Thus, the court must address plaintiffs' claims and the evidence received within the context of these varying considerations, standards, and policies.

E. Conditions at the KCDC as a Whole

Although plaintiffs advert to particular conditions in the KCDC which they assert are unconstitutional, their main complaint, as viewed by the court, is to the facility as a whole. Namely, plaintiffs contend that the various conditions taken as a whole make the KCDC a punitive jail rather than an institution suitable for the rehabilitation or safe-keeping of juveniles.

That plaintiffs are correct in this respect cannot be doubted. The court's own inspection verifies this characterization of the facility. The eighth floor of the KCDC has bars, multiple occupancy cells, and catwalks. The juveniles are dressed in prison garb. They never go outside except to a small, solidly-walled, rooftop basketball court. They are locked down in cells for long

periods of time, especially on the weekends. They are placed in isolation for discipline, for their own physical security, or for suicide protection. Rehabilitation, programming, and training are minimal or nonexistent. The interior of the facility is stark and depressing. Indeed, prior to its physical renovation in the 1980s, the portion of the eighth floor occupied by the juveniles was simply another part of the adult jail.

The court would have little hesitation in holding that the KCDC juvenile facility was unconstitutional as a whole if it were a long-term facility. It is saved by the fact that only 11% of the juveniles are held there longer than fifteen days. Two-thirds are released or transferred in less than five days. However, 6% of juveniles are confined there for longer than thirty days, and a few for almost a year.

To confine a juvenile not charged or convicted of a crime (who has therefore not received the constitutional safeguards of those so charged) for more than a brief time in this barren facility constitutes infliction of punishment without due process of law.

The court therefore holds that it is a violation of due process to confine in the KCDC facility a juvenile who has not been indicted for or convicted of a crime as an adult, for longer than fifteen (15) days.

The court notes that only 11% of juveniles at the KCDC are confined there for longer than this period at present. Thus, the court holds that this relief takes due note of the needs of the

criminal justice system as required by the Prison Litigation Reform Act, supra.

Turning to the specific conditions complained of, the court further holds as follows:

1. Staffing

Low staff-to-detainee ratios in juvenile facilities understandably give rise to a variety of institutional problems: inadequate supervision and increased conflicts between confined youths; excessive confinement to cells and isolation; infrequent exercise and programming opportunities; slow response time in emergency situations; and difficulty in performing routine facility functions.

At the KCDC, only one guard is on duty during the weekday night shift and throughout the weekends. This results in the juveniles being locked down with no opportunity for exercise or recreation for the entire weekend. More importantly, the juveniles are exposed during this time to an unconstitutional safety risk in that the response time to break up fights or to react to emergency conditions is unacceptably lengthened. See D.B. v. Tewksbury, 545 F. Supp. 896, 905 (D. Or. 1982).

Therefore, the court holds that due process requires that a minimum of two guards, one male and one female (when there are female detainees), must be on duty at all times.¹¹

¹¹ The court notes that even with two deputies on duty at all times, a full capacity population of juveniles in the KCDC puts the staff-to-detainee ratio at 1:12, below the ratios recommended by relevant professional standards. See 1993 Report of David W. Roush, Pl. Exh. 42b, at 8.

However dedicated the individual staff members of the KCDC may be, the court agrees with plaintiffs that their training is essentially that of guards and thus insufficient to enable them to fulfill the rehabilitative purpose of juvenile detention. Nevertheless, given the time limits on the confinement of juveniles ordered herein, inadequate staff training does not rise to the level of unconstitutionality so as to warrant independent relief.

2. Recreation

Plaintiffs challenge several practices related to the lack of opportunity for physical exercise for juveniles in the KCDC. First, plaintiffs do not dispute that the size of the rooftop recreation area is adequate; they contend simply that juveniles have infrequent use of it. Plaintiffs also challenge the lack of planned activities and the reliance on television as a means of "recreation" for detained youth in the KCDC.

Common sense, in addition to the testimony of plaintiffs' experts, indicates that forced idleness and a lack of exercise compound juveniles' feelings of frustration, anger, and malaise. Such feelings, in turn, lead to more behavioral problems and a greater need for disciplinary measures such as isolation. This dynamic creates a vicious cycle of inactivity with negative consequences for both juveniles and staff. See Alexander S. v. Boyd, 876 F. Supp. 773, 790 (D.S.C. 1995) (noting that programming improves juveniles' behavior and reduces need for disciplinary lock-up).

If prolonged, the court holds that this situation would violate due process. However, by shortening the length of confinement and providing for additional staff, the court has reduced the impact of the inadequate recreation to a minimally acceptable level. Thus, the court orders only that the facility shall ensure that both male and female juvenile residents are provided an opportunity for recreation and physical exercise -- excluding television -- for one hour a day, seven days a week.

The court urges the defendants to voluntarily increase the opportunities for recreation, especially outdoor recreation. The court notes that a new facility is being planned and advises special attention to this problem in its design.

3. Isolation and Lockdown

The Kentucky Administrative Regulations are silent on the use of isolation in juvenile holding facilities. The regulation governing facility design, for example, lists the various areas of a holding facility, but it does not include isolation cells. See 501 KAR 9:050 § 6. In contrast, the regulations governing juvenile detention facilities provide specific rights for detained youth in relation to being put on "room restriction" or "confinement status" for disciplinary infractions. See 500 KAR 6:120 § 1(6). The comparable holding facility regulations provide no such guidance on official policy in this area.

The Policies and Procedures Manual of the KCDC describes the use of isolation in several contexts, such as where a resident is

violent or as a penalty for minor, major, or serious offenses. These policies provide the first indication that isolation and lockdown are overused at the KCDC. For example, these policies permit "cell confinement" for up to forty-eight hours for even minor offenses such as profanity or horseplay. Also, juveniles guilty of no offense are placed in isolation for their own protection.

The physical deficiencies of the KCDC facility itself appear largely to blame for the heavy reliance on isolation as a means of discipline, as well as a means of administrative segregation. A complete absence of single occupancy cells, for example, means that staff seeking to separate juveniles have only the holding and isolation cells at their disposal. The trial testimony of juveniles Chris and Kim¹² support plaintiffs' contention that KCDC juvenile detainees are subject to long periods in isolation with little or no notice as to what conduct will lead to such measures or for how long.

Due process includes the right to freedom from unnecessary bodily restraint and from measures not reasonably related to legitimate security or safety needs of the institution. See Santana v. Collazo, 714 F.2d 1172, 1180-81 (1st Cir. 1983), cert. denied, 466 U.S. 974 (1984). Although the court is of the opinion that the conditions of isolation are too stringent, the court is reluctant to forbid isolation of vulnerable juveniles because it

¹² Juveniles' last names have been sealed in the record for their protection.

may be the only feasible way to protect them given the existing facility. The limit on the duration of the length of stay will at least alleviate the overuse of isolation to some extent. Again, the court would urge that the design of the new facility reflect these concerns.

4. Fire Safety

Fire safety in Kentucky juvenile holding facilities is governed by the 1981 edition of the NFPA Life Safety Code ("the Code"). 501 KAR 9:070 § 2(1). Under these standards, "equivalency concepts" allow the "authority having jurisdiction" -- here, the Department of Corrections -- to approve alternative safety systems or devices in lieu of those required by the Code.¹³ The Code provides that the sufficiency of such alternative measures is to be judged under the Fire Safety Evaluation System ("FSES").

The evidence presented at trial regarding fire safety consisted of the testimony of plaintiffs' expert, Thomas Jaeger, who is president of Gage-Babcock & Associates and a member of the NFPA Life Safety Code Technical Committee; defendants' expert, Richard Stephens, Correctional Program Administrator, Kentucky

¹³ The NFPA Code 101-3 states:

1.5 Nothing in this Code is intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety to those prescribed by this Code, providing technical documentation is submitted to the authority having jurisdiction to demonstrate equivalency and the system, method, or device is approved for the intended use.

Department of Corrections; and defendants' witness, Cheryl Roberts, also of the Kentucky Department of Corrections.

Mr. Jaeger testified that the majority of fires in detention and correctional settings originate within the housing units and that the biggest threat to residents' personal safety in the event of fire is smoke. He further testified that there are several deficiencies in the fire safety features of the KCDC. Specifically, Mr. Jaeger stated that the juvenile floor of the facility lacks adequate smoke compartmentalization; that the absence of sprinklers in the juvenile living areas would allow a fire originating there to spread quickly to other parts of the eighth floor and the building; that the in-duct smoke detection and exhaust system offered as an alternative to living area sprinklers is grossly inadequate for that purpose; that the absence of smoke detectors in the cells poses a serious threat to the safety of juveniles; and that the KCDC has inadequate fire evacuation plans and capabilities.

In sum, Mr. Jaeger found the KCDC to be substantially out of compliance with the NFPA Code and the purported alternative safety devices and measures to be insufficient to satisfy the Code's equivalency provisions and to ensure the safety of KCDC residents.

Defendants' expert, Robert Stephens, testified that the KCDC exceeds the standards of the NFPA Code by virtue of the alternative devices therein such as the in-duct smoke detectors, the smoke control system, the Fire Emergency Automatic Release System, and the staff-operated gang release system. Defendants also emphasize

that sprinklers are ineffective to combat the rapid spread of smoke, that they can be used by juveniles attempting suicide by hanging, and that they are easily disabled by tampering. Lastly, Mr. Stephens testified that the use of the alternative systems was approved by individuals from the Department of Corrections who determined that they met the requirements of the NFPA Code when the eighth floor was renovated in the 1980s. Defendants have not, however, produced any documentary evidence that these alternatives were considered under the Code's FSES system or that they were ever approved by the state fire marshal.

The court finds the testimony of Mr. Jaeger persuasive, particularly in view of his qualifications and experience with detention and correctional institutions. On the other hand, the court is disturbed that the Kentucky Department of Corrections is essentially self-regulating in the sense that it both sets the fire safety feature standards for the KCDC -- through its choice of alternatives to the measures recommended by the NFPA Code -- and then also determines whether those standards are sufficient.

Defendants emphasize that there has never been an injury as a result of a fire in the KCDC¹⁴; however, the court obviously cannot rely on this fact alone if other evidence indicates that fire safety measures in the facility are inadequate to protect its occupants' reasonable personal safety.

¹⁴ There had never been a fire death at the Beverly Hills Supper Club until May of 1977; then there were 165 in one evening. See In re Beverly Hills Fire Litigation, 695 F.2d 207 (6th Cir. 1982), cert. denied sub nom, Bryant Elec. Co. v. Kiser, 461 U.S. 929 (1983).

Therefore, the expert testimony being in sharp conflict, the court will appoint its own expert pursuant to Fed. R. Evid. 706 to examine the fire safety aspects of the KCDC and report his or her findings to the court. The court thus reserves any ruling on the fire safety claims until such time as that independent report can be reviewed.

5. Classification

The Fourteenth Amendment due process standard affords juveniles the right to be free from unreasonable threats to their physical safety. See Youngberg v. Romeo, 457 U.S. 307, 315-16 (1982). In the context of the case at bar, this right is implicated by defendants' alleged failure to classify and separate juveniles properly upon their admission to the KCDC. Classification "is the process of separating aggressive juveniles from passive ones and determining appropriate levels of restraint for each juvenile based upon the threat the juvenile presents to other juveniles and to the public." Alexander S. v. Boyd, 876 F. Supp. 773, 787 (D.S.C. 1995).

Appropriate and effective classification at the KCDC is difficult, if not impossible, due to the inadequacies of the facility itself. Other than the multiple occupancy cells, deputies have only one holding cell and three isolation cells at their disposal for segregating juveniles who require protection or who pose a threat to others. Moreover, these four cells must be used for status offenders, suicidal youth, vulnerable youth, children

with medical problems, and juveniles being disciplined. Thus, at any given time, there are more juveniles in need of segregation than there are appropriate rooms to accommodate them.

Like other conditions discussed herein, the classification capabilities of the KCDC fall far short of what the state should strive to provide for children committed to its custody for purportedly rehabilitative purposes. Nevertheless, the court holds that these conditions are not unconstitutional on a short-term basis. In addition, the extra staffing ordered herein should also increase the level of supervision of juveniles in the KCDC and thus alleviate to some degree any problems arising from these classification inadequacies.

6. Other Conditions and Practices

As to the other conditions challenged by plaintiffs, the court finds no constitutional infirmities. There is no evidence of a lack of cleanliness or unsanitary food handling practices in the KCDC that would violate constitutional standards. Likewise, while the medical and mental health services at the KCDC are not ideal, considering the shortened stay ordered herein, they do not violate constitutional standards.

V. CONCLUSION

The vast majority of the challenged conditions in the Kenton County Detention Center stem from the deficiencies of the physical plant itself. These conditions are antithetical to the

institutional objective of providing juveniles with an environment reasonably suited to the goal of rehabilitation. At the same time, however, except in the areas noted, they do not violate plaintiffs' constitutional rights.

The court emphasizes that this conclusion obtains only if juveniles not indicted for or convicted of a crime as an adult are held in the KCDC for a short period of time. Thus, the court believes that the time limit ordered herein is the best remedy possible in the face of weighty policy considerations which prevent it from ordering the facility closed or physically altered.

Institutional reform cases such as this one inevitably bring such opposing considerations into conflict. The desired objective of rehabilitating troubled youth and the need to protect society from those same youth who demonstrate a propensity for violence cannot always be fully accommodated.

Thus, while the court may consider other changes in this facility highly desirable, it can order only such relief as is necessary to prevent any further constitutional violations. The defendants are urged, however, to implement further reforms and to discontinue the use of the facility, in favor of the new facility, as soon as possible.

Therefore, the court being advised,

IT IS HEREBY ORDERED:

(1) that the motion to supplement the deposition of William Von Strohe (doc. #397) be, and it is hereby, **GRANTED;**

(2) that the motion of defendant Middleton for judgment as a matter of law (doc. #426) be, and it is hereby, DENIED;

(3) that the motion to supplement the record based on the enactment of the Prison Litigation Reform Act of 1995 (doc. #433) be, and it is hereby, GRANTED;

(4) that effective August 15, 1996, no juvenile not indicted for or convicted of a crime as an adult shall be held in the present Kenton County Detention Center for more than 15 days;

(5) that effective August 1, 1996, the facility shall have on duty a minimum of two guards -- one male and one female (when there are female detainees) -- at all times;

(6) that effective August 1, 1996, the facility shall ensure that both male and female juvenile residents are provided an opportunity for recreation and physical exercise -- excluding television -- for one hour a day, seven days a week.

(7) the court reserves its ruling on the fire safety claims until such time as it can appoint its own expert to examine the KCDC and review that expert's findings and opinions; by August 15, 1996, the parties shall agree on a fire expert not previously involved in this case and submit his or her name to the court for appointment.

A separate judgment shall enter concurrently herewith granting permanent injunctive relief as outlined above.

This 26th day of July, 1996.

William O. Bertelsman
WILLIAM O. BERTELSMAN, CHIEF JUDGE