

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

D.W., by and through his next friend;	)
Devonsha Fairley, K.V. by and through her	)
next friend Sina Matheny; A.R., by	)
and through her next friend Laura Reed;	)
J.P., by and through his next friend Theresa	)
Pope; A.B., by and through her	)
next friend Bernadette Brossett; W.R. by	)
and through his next friend, Calister	)
Blackmon; on behalf of themselves and all	)
persons similarly situated; MISSISSIPPI	)
PROTECTION AND ADVOCACY	)
SYSTEM, INC.,	)
	)
Plaintiffs,	)
	)
v.	)
	)
HARRISON COUNTY, MISSISSIPPI,	)
	)
Defendant.	)

Case No. 1:09 cv 267 LG-RHN

AMENDED COMPLAINT

AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is a civil action pursuant to 42 U.S.C. § 1983 to vindicate the rights of children imprisoned in the Harrison County Juvenile Detention Center (“Juvenile Detention Center”) under the Eighth and Fourteenth Amendments to the United States Constitution. The Plaintiffs represent a class of children who have suffered horrific physical and mental abuse and live in dangerously unsafe and unsanitary conditions at the Juvenile Detention Center. The abusive conditions at the Juvenile Detention Center include punitive shackling, staff-on-youth assaults, 22-24 hour a day lock-down in filthy jail cells, unsanitary conditions resulting in widespread contraction of scabies and staph infections, dangerous overcrowding that forces many youth to

sleep on the concrete floor, and inadequate mental health care. Harrison County has contracted with the Mississippi Security Police to operate the Juvenile Detention Center. Mississippi Security Police is a for-profit, private corporation with headquarters in Pascagoula, Mississippi. In exchange for operating this facility, Mississippi Security Police receives over \$1.6 million per year in County funds.

2. On behalf of themselves and all similarly situated children, the named Plaintiffs seek declaratory, preliminary and permanent injunctive relief ordering the Defendant to cease all unconstitutional policies and practices at the Juvenile Detention Center and to provide class members with constitutionally required care and living conditions. The children are joined in this action by the Mississippi Protection & Advocacy System, Inc. ("MPAS"), a non-profit agency with a federal mandate to protect the rights of children with disabilities who are confined in the Juvenile Detention Center. MPAS asserts its right to meet with children who are confined inside the Juvenile Detention Center and to conduct regular monitoring of the facility. Plaintiff MPAS seeks declaratory, preliminary and permanent injunctive relief preventing the Defendant from denying MPAS, as authorized by its federal enabling statutes, full, complete, timely and unaccompanied access to the children detained at the Juvenile Detention Center, Juvenile Detention Center facilities, facility staff, as well as full, complete, timely access to records.

PARTIES

3. Plaintiff D.W. is a seventeen year-old male currently imprisoned in the Juvenile Detention Center. On behalf of himself and all similarly situated children, he brings this action by and through his next friend and mother, Devonsha Fairley. He is confined at the Juvenile Detention Center while he waits for his disposition before the Harrison County Youth Court. For almost two months, D.W. has been held at the Juvenile Detention Center, where he has endured a

brutal physical assault from adult staff members, spent 23 hours a day locked in a filthy vermin-infested jail cell, and been forced to sleep on the floor of an overcrowded cell with only a thin mat that smells of urine. Unsurprisingly, during D.W.'s imprisonment, his mental health has deteriorated rapidly. He tried to commit suicide by hanging himself in his cell, yet he has received no mental health treatment or counseling. These conditions are neither isolated incidents nor restricted to D.W.

4. Plaintiff K.V. is a sixteen-year-old girl who is currently imprisoned in the Harrison County Juvenile Detention Center. On behalf of herself and all similarly situated children, she brings this action by and through her next friend and mother, Sina Matheny. She is confined at the Juvenile Detention Center while she waits for her delinquency proceedings before the Harrison County Youth Court. For the past month and a half, K.V. has been confined to her cell for 23 hours a day, and denied all access to physical exercise, educational services or rehabilitative services.

5. Plaintiff A.R. is a seventeen-year old girl who is currently imprisoned in the Harrison County Juvenile Detention Center. On behalf of herself and all similarly situated children, she brings this action by and through her next friend, grandmother, and guardian Laura Reed. She is confined at the Juvenile Detention Center while she waits for her delinquency proceedings before the Harrison County Youth Court. A.R.'s serious mental illness was recently exacerbated by her mother's unexpected death in December 2009. During the two weeks she has been confined at the Juvenile Detention Center, she has not received adequate mental health care. She is confined to her cell for 23 hours a day, and is denied all access to physical exercise, educational services or rehabilitative services.

6. Plaintiff J.P. is a sixteen-year old male who is currently imprisoned in the Harrison County Juvenile Detention Center. On behalf of himself and all similarly situated children, he brings this action by and through his next friend, and mother, Theresa Pope. J.P. lives with a serious mental illness, and his symptoms have worsened since his detention. He is confined at the Juvenile Detention Center while he waits for his delinquency proceedings before the Harrison County Youth Court. He is confined to his cell for 23 hours a day, and is denied all access to physical exercise, educational services or rehabilitative services.

7. Plaintiff A.B. is a fifteen-year-old girl who is currently imprisoned in the Harrison County Juvenile Detention Center. On behalf of herself and all similarly situated children, she brings this action by and through her next friend, and mother, Bernadette Brossett. A.B. lives with Bipolar Disorder, Attention Deficit Hyperactivity Disorder, and Depression. She is confined at the Juvenile Detention Center while she waits for her delinquency proceedings before the Harrison County Youth Court. She is confined to her cell for 23 hours a day, and is denied all access to physical exercise, educational services or rehabilitative services.

8. Plaintiff W.R. is a seventeen-year-old male, who is currently imprisoned in the Harrison County Juvenile Detention Center. On behalf of himself, and all similarly situated children, he brings this action by and through his next friend and mother, Calister Blackmon. He has been confined at the Juvenile Detention Center for the past two months while he waits for his delinquency proceedings before the Harrison County Youth Court. Upon information and belief, he is confined to his cell for 23 hours a day, and is denied all access to physical exercise, educational services or rehabilitative services. Plaintiff W.R.'s rights were further violated when Juvenile Detention Staff denied his request to meet with the attorney whom his mother and

guardian had retained to represent him in connection with his conditions of confinement at the Juvenile Detention Center.

9. The Plaintiffs' plight echoes the stories of over thirty youth interviewed by attorneys. All of these children uniformly describe the Juvenile Detention Center as a squalid, over-crowded facility that is infested with insects, where jail officials frequently resort to violence and the inappropriate use of restraints. These conditions violate the constitutional rights of the named Plaintiffs and all similarly situated children, all of whom are entitled to reasonably safe and sanitary conditions of confinement, freedom from unreasonable bodily restraint, and protection from harm.

10. Plaintiff Mississippi Protection & Advocacy System, Inc. ("MPAS") is a nonprofit organization with a federal mandate to protect and advocate for the rights of persons with disabilities in Mississippi. Federal law extends this mandate to children with disabilities who are confined to juvenile detention centers. Through a contracted agent, MPAS devotes considerable resources to investigating conditions of confinement and advocating on behalf of youth housed in juvenile facilities across the state of Mississippi. MPAS and its contracted agent have made numerous efforts to gain access to the children with disabilities who are confined at the Juvenile Detention Center. Despite the Plaintiff's federal right to access the Juvenile Detention Center and its residents and Plaintiff's good faith efforts to reach an agreement on access with the individuals responsible for operating the Juvenile Detention Center, the Defendant refuses to grant MPAS access. The Defendant's actions prevent MPAS from fulfilling its federal mandate to protect and advocate for the civil rights of youth with disabilities confined to the Juvenile Detention Center. This violates Plaintiff's right to function as an effective protection and advocacy system for the State of Mississippi and also violates the rights of youth with disabilities

at the Juvenile Detention Center who are entitled to receive protection and advocacy services. MPAS files this complaint in its own name to redress injuries to itself and on behalf of its clients.

11. Defendant Harrison County is the governmental entity with the responsibility to “establish and maintain detention facilities, shelter facilities . . . or any other facility necessary to carry on the work of the youth court.” Miss. Code Ann. § 43-21-109. Under the terms of a contract executed by Harrison County, Mississippi Security Police, a private, for-profit company is responsible for the daily operations of the Juvenile Detention Center. But Harrison County is the entity with ultimate responsibility to protect and secure the rights of children detained in the Juvenile Detention Center.

12. The Defendant ignores well-established law and acts with deliberate indifference by subjecting the named Plaintiffs and all similarly situated children to shockingly inhumane conditions of confinement, physical abuse, and inadequate mental health care.

JURISDICTION AND VENUE

13. The named Plaintiffs’ cause of action arises under the Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

14. Plaintiff MPAS’s cause of action arises under the Protection and Advocacy for Individuals with Mental Illness Act of 1986 (“PAIMI Act”), 42 U.S.C. §§10801 et seq.; the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (“DD Act”), 42 U.S.C. §§15001, et. seq.; the Protection and Advocacy of Individual Rights Program (“PAIR Act”), 29 U.S.C., §§794e, et. seq.; and 42 U.S.C. §1983.

15. Jurisdiction in this Court is proper pursuant to 28 U.S.C. § 1331 and venue is proper under 28 U.S.C. 1391(b).

CLASS ACTION ALLEGATIONS

16. The named Plaintiffs bring this suit on their own behalf and on behalf of all children who are or who will in the future be incarcerated at the Harrison County Juvenile Detention Center.

17. The class is so numerous that joinder of all members is impractical. The Juvenile Detention Center has the capacity to house 48 youth, and the population often exceeds the maximum capacity. Children remain in the Juvenile Detention Center for varying lengths of time, and the population changes on a daily basis. The class also includes future members whose names are not known. Fed. R. Civ. P. 23(a)(1).

18. There are questions of law and fact common to all class members, including but not limited to the Defendant's failure to protect class members from harm, the Defendant's failure to provide class members with constitutionally safe and humane conditions of confinement and the Defendant's failure to ensure class members' meaningful, effective and adequate access to the courts. Fed. R. Civ. P. 23(a)(3).

19. Because the policies, practices, and customs challenged in this Complaint apply with equal force to the named Plaintiffs and the other members of the class, the claims of the named Plaintiffs are typical of the class in general. Fed. R. Civ. P. 23(a)(3).

20. The named Plaintiffs will fairly and adequately represent the interests of the class. They possess a strong personal interest in the subject matter of the lawsuit and are represented by experienced counsel with expertise in class action litigation in federal court. Counsel have the legal knowledge and resources to fairly and adequately represent the interests of all class members in this action. Fed. R. Civ. P. 23(a)(4).

21. The Defendant has acted and refused to act on grounds generally applicable to the class in that Defendant's policies and practices of violating the Plaintiffs' constitutional rights has affected all class members. Accordingly, final injunctive and declaratory relief is appropriate to the class as a whole. Fed. R. Civ. P. 23(b)(2).

STATEMENT OF FACTS

22. The Harrison County Juvenile Detention Center houses children awaiting adjudication and disposition before the Harrison County Youth Court. Although the majority of children housed at this facility are awaiting their court appearances, state law allows juvenile detention centers to house children for 90 days as a post-adjudication disposition. Miss. Code Ann. § 43-21-605(1)(k).

23. The contract between Harrison County and the Mississippi Security Police requires that Mississippi Security Police "...house and feed up to 48 juveniles in a secure detention facility pursuant to the laws of the state of Mississippi and of the United States and regulations for juvenile detention facilities as set forth by the United States Department of Justice." (See Exhibit 2). Despite the clear terms of this contract, the Defendant has allowed Mississippi Security Police to violate federal and state law by subjecting the children housed in the Juvenile Detention Center to unconstitutional violations.

Protection from Harm Violations: Physical and Psychological Abuse by Staff

24. Defendant has a custom and/or practice of failing to protect children at the Juvenile Detention Center from unconstitutionally malicious and sadistic physical abuse and assaults.

25. On or about March 23, 2009, Plaintiff D.W. was assaulted by two guards while he was in his cell. Guard 1 placed D.W. in a chokehold, slammed him to the ground, and placed him in handcuffs. Once D.W. was lying on the ground restrained with handcuffs, Guard 2 joined in the

assault and one of the Guards pressed his knee into D.W.'s back while the other Guard pushed on D.W.'s neck. These brutal actions crushed D.W.'s face into the concrete floor of his cell, making it difficult for him to breathe and causing him to gasp for air.

26. D.W. sought medical attention for the injuries he suffered as a result of this incident. When his mother visited him, she noticed bruising around his wrists where the guards had tightened the handcuffs in an attempt to deliberately cause D.W. unnecessary pain.

27. Upon information and belief, and based on interviews with over thirty youths who were recently held in the Juvenile Detention Center, such physical abuse is also inflicted with regularity on other putative class members.

Protection from Harm Violations: Inadequate Mental Health Treatment

28. Defendant has a custom and/or practice of being deliberately indifferent to the serious mental health needs of youth confined at the Juvenile Detention Center.

29. At the end of his first week in detention, D.W.'s mental health declined so dramatically that he attempted to kill himself by tying a sheet around his neck and hanging himself on a light fixture in his cell. A staff member intervened before D.W. could cause himself serious harm. However, D.W. has been denied all access to adequate, ongoing mental health treatment.

30. Instead of providing D.W. with adequate mental health services, staff at the Juvenile Detention Center taunted and harassed D.W. by telling him that his mother no longer cared for him and would not come to visit him any more. Staff threatened D.W. that without his mother around, they could do anything to him and get away with it.

31. Plaintiffs A.R., A.B. and J.P. live with serious mental illness. Each child has been denied adequate mental health treatment during his or her confinement in the Juvenile Detention Center. These children are denied access to mental health counseling, and the staff fail to distribute and

monitor the children's medications in compliance with professionally accepted standards of care. Plaintiff A.B. waited nearly two weeks in detention before receiving her prescribed psychotropic medications.

Protection from Harm Violations: Dangerous and Unsanitary Conditions

32. The Defendant has a custom and/or practice of failing to provide sanitary facilities for the children in its care. Toilets and walls are covered with mold, rust, and excrement. Insects have infested the facility, and the Plaintiffs frequently wake up covered by bug bites. The smell of human excrement permeates the children's living quarters. The Plaintiffs frequently have to sleep on thin mats that smell of urine and mold.

33. The Defendant has a custom and/or practice of failing to provide for the appropriate hygiene for the children in its custody. The staff do not provide children with adequate personal hygiene items. The staff often deny female detainees access to feminine hygiene products. When feminine hygiene products are provided, the staff frequently deny female detainees a means to properly dispose of used feminine hygiene products—forcing girls to keep piles of used maxi-pads in their cells for days at a time. The staff often deny girls the ability to shower regularly when they are menstruating. The staff frequently deny all children the ability to shower and clean themselves on a regular basis.

Protection from Harm Violations: Overcrowded Living Conditions

34. The Defendant has a custom and/or practice of allowing the Juvenile Detention Center to become dangerously and unconstitutionally overcrowded. Upon information and belief, the facility has a capacity to house 48 children, and at times holds as many as 60 youth. As a result, some children are forced to sleep on the floor, pressed up against other youth, with nothing but a

thin, filthy mat separating the child from the concrete. Plaintiffs have frequently been forced to sleep on the floor on a thin mat that smells like urine.

Protection from Harm Violations: Excessive Room Confinement

35. The Defendant has a custom and/or practice of confining children to their cells for as long as 22-24 hours a day and of failing to provide children with access to regular physical exercise, recreation or any other rehabilitative programming. The Plaintiffs spend most of their days locked in their cells for 22-24 hours a day.

Protection from Harm Violations: Inadequate Training and Supervision of Staff

36. The Defendant has a custom and/or practice of failing to ensure the proper training and supervision of Juvenile Detention Center staff. Consequently, the safety and security of youth at the Juvenile Detention Center is constantly threatened by the extreme incompetence of staff and the lack of adequate supervision and oversight. Staff frequently resort to physical violence and respond to youths' requests for help or assistance with taunts, profanity, and indifference.

Due Process Violations: Arbitrary and Punitive Disciplinary Practices

37. The Defendant has a custom and/or practice of subjecting youth to arbitrary and excessive discipline that is designed to punish and cause discomfort rather than maintain and restore discipline. Rule violations are punished by placement in "lockdown" for periods ranging from three days to an entire week. While on "lockdown," youth spend 23 to 24 hours per day in their cells. Youth are not permitted to attend school, exercise, bathe regularly, or have any reading or writing materials.

38. The use of lockdown is purely punitive and arbitrary. Youth do not receive any form of due process hearing prior to their placement on lockdown, and the duration of lockdown is not

tailored to respond to the alleged rule violation nor limited to the length of time necessary to restore or maintain order.

39. The Defendant does not make any effort to ensure that prolonged periods of room confinement do not induce any dangerous psychological consequences on youth.

40. The Defendant placed D.W. on lockdown for seven consecutive days for allegedly refusing a staff directive. D.W. did not receive any form of due process prior to being placed on lockdown, and he was only permitted to shower two times during this period. With the exception of the two times D.W. took a shower, D.W. spent 24 hours in his cell each day with absolutely nothing to do.

Due Process Violations: Interference with Children's Ability to Access the Courts

41. The Defendant has a custom and/or practice of failing to provide the Plaintiffs' with meaningful, effective and adequate access to the courts.

42. The Defendant has a custom and/or practice of refusing to allow Plaintiffs to meet with their attorneys unless those attorneys are counsel of record in the Harrison County Youth Court. However, the children in the detention center have a right to meet with attorneys even if those attorneys are not counsel of record in the youth court.

42. The Defendant fails to educate the children about their rights to contact the counsel of their choice for assistance with matters related to their conditions of confinement. The Defendant further fails to provide children with any assistance in contacting counsel for assistance with matters related to their conditions of confinement.

43. On April 26, 2009, Plaintiff W.R. retained Attorneys Vanessa Carroll and Sheila Bedi to represent him in connection with his conditions of confinement. Shortly after executing a valid retainer on behalf of W.R. for this representation, W.R.'s guardian called the Juvenile Detention

Center and informed MSP staff that Attorney Vanessa Carroll was W.R.'s counsel, and that she would be conducting a confidential legal visit with W.R. later that evening. MSP told W.R.'s guardian that Attorney Carroll would be barred from conducting a legal visit with W.H. without the permission of the Harrison County Youth Court.

44. Later that same day, Attorney Carroll went to the Juvenile Detention Center in an attempt to visit with her client, W.R. MSP staff reiterated that children are barred from meeting with their attorneys, in the absence of an order from the Harrison County Youth Court. MSP staff refused to allow Attorney Carroll to meet with her client.

Plaintiff MPAS's Access Authority

45. Congress established protection and advocacy ("P&A") systems in the Developmental Disabilities Assistance and Bill of Rights Act of 1975 ("PADD Act") to protect and advocate for the rights of persons with developmental disabilities. Congress provided P&As with the authority to investigate incidents of abuse and neglect against individuals with disabilities and pursue legal, administrative, and other remedies on their behalf. 42 U.S.C. § 15043(a). Congress has since expanded the scope of the P&A system to provide protection and advocacy services to all persons with disabilities. The Protection and Advocacy for Individuals with Mental Illness Act of 1986 ("PAIMI Act") provides for the protection of rights of individuals with mental illness, 42 U.S.C. §§ 10801 et seq.; and the Protection and Advocacy of Individual Rights Program of 1973 ("PAIR Program") was created to protect the rights of all other individuals with disabilities who are not covered under the PADD and PAIMI Acts. 29 U.S.C. § 794e. Pursuant to federal law MPAS has rights to:

- a. reasonable unaccompanied access, for monitoring and investigatory purposes, to public and private areas of the Juvenile Detention Center facilities. 42 C.F.R. § 51.42(b); 42 C.F.R. § 51.42 (c); 45 C.F.R. § 1386.22(f); 45 C.F.R. § 1386.22(g).
- b. interview facility service recipients, staff and other persons as part of an abuse and neglect investigation when MPAS determines it has probable cause to believe an incident has occurred. 42 C.F.R. § 51.42(b).
- c. provide information and training on individual rights and services provided by the P&A system. 42 C.F.R. § 51.42 (c) and 45 C.F.R. § 1386.22(g).
- d. communicate privately with facility residents. 42 C.F.R. § 51.42 (d) and 45 C.F.R. § 1386.22(h).
- e. access to records of facility residents. 42 C.F.R. § 51.41 and 45 C.F.R. § 1386.22.
- f. access to facility incident reports and investigatory findings. 42 C.F.R. § 51.41(c)(2).

46. To receive federal funding under the PADD, PAIMI, and PAIR Acts, states must have an effective P&A system. MPAS is designated as Mississippi's P&A System. *See Mississippi Protection & Advocacy v. Cotten*, 1989 U.S. Dist. LEXIS 17075 at *3 (S.D. Miss. 1989). Federal law permits MPAS to designate agents with whom it contracts to assist in carrying out its responsibilities under federal law. 42 U.S.C. § 10801(b); § 10805(a)(1); 42 C.F.R. § 51.42.

47. In order to carry out the Congressional mandate to protect and advocate for the rights of individuals with disabilities, the P&A Acts require that the P&A and its authorized agents have physical access to individuals with disabilities, access to individuals' records, and physical access to the facilities housing these individuals. 42 U.S.C. § 15043(a)(2); 42 U.S.C. § 10805(a)(3); 45 C.F.R. § 1386.22(g)-(h); 42 C.F.R. § 51.42(a)-(c). This access includes the right

“to meet and communicate privately” with residents “both formally and informally, by telephone, mail and in person.” 45 C.F.R. § 1386.22(2).

48. Under the PAIMI Act, “any public or private residential setting that provides overnight care accompanied by treatment services” is a facility which a P&A is authorized to access and monitor. “Facilities include, but are not limited to the following: General and psychiatric hospitals, nursing homes, board and care homes, community housing, *juvenile detention facilities*, homeless shelters, and jails and prisons, including all general areas as well as special mental health or forensic units.” 42 C.F.R. § 51.2 (emphasis added). *See also* 45 C.F.R. § 1386.19.

49. The Harrison County Juvenile Detention Center is a covered “facility” as defined under the PAIMI Act and the DD Act. 42 U.S.C. 10802(2); 42 C.F.R. 51.2; 45 C.F.R. § 1386.19.

50. Under the PADD, PAIMI, and PAIR Acts, Congress designated two distinct bases for access to facilities and residents: (1) access for the purpose of investigating allegations of abuse and/or neglect, 42 U.S.C. § 15043(a)(2)(B), 42 U.S.C. § 10805(a)(1)(A), 45 C.F.R. § 1386.22(f), 42 C.F.R. § 52.42(b); and (2) access for the purpose of monitoring the facility and the treatment of its residents, 42 U.S.C. § 15043(a)(2)(H), 42 U.S.C. § 10805(a)(3), 45 C.F.R. § 1386.22(g), 42 C.F.R. § 51.42(c).

51. To carry out its mandate to investigate incidents of abuse and neglect, MPAS is entitled to “reasonable unaccompanied access . . . to all areas of the facility which are used by residents or are accessible to residents . . . [and] shall have reasonable unaccompanied access to residents at all times necessary to conduct a full investigation of an incident of abuse or neglect.” 42 C.F.R. § 51.42(b).

52. To carry out its monitoring duties, MPAS is entitled to reasonable unaccompanied access to all residents of a facility at reasonable times to provide P&A services and contact information, rights information, monitor compliance with respect to the rights and safety of service recipients, and to view and photograph all areas of the facility which are used by residents or are accessible to residents. 42 C.F.R. § 51.42(c); 45 C.F.R. § 1386.22(g).

53. The PAIMI Act states that MPAS has the right of access to all residents of a facility “despite the existence of any State or local laws or regulations which restrict informal access to minors and adults with legal guardians or conservators.” 42 C.F.R. § 51.42(e).

54. The PAIMI and PADD Acts also authorize MPAS to prompt access to all records of any individual who is a client of the system if the individual, or his legal guardian, conservator, or other legal representative, has authorized MPAS to have such access. 42 C.F.R. § 51.41(b)(1); 45 C.F.R. § 1386.22(a)(1).

55. The PAIMI and PADD Acts provide MPAS with access to records of individuals who are in the custody of the state and with respect to whom a complaint has been received by MPAS or with respect to whom there is probable cause to believe that such individual has been subjected to abuse or neglect. 42 C.F.R. § 51.41(b)(2)(ii)-(iii); 45 C.F.R. § 1386.22(a)(2)(ii)-(iii).

56. The PAIMI regulations also require the Defendant to provide MPAS:

Reports prepared by an agency charged with investigating abuse, neglect, or injury occurring at a facility rendering care or treatment, or by or for the facility itself, that describe any or all of the following: (i) Abuse, neglect, or injury occurring at the facility; (ii) The steps taken to investigate the incidents; (iii) Reports and records, including personnel records, prepared or maintained by the facility, in connection with such reports of incidents; or (iv) Supporting information that was relied upon in creating a report, including all information and records used or reviewed in preparing reports of abuse, neglect or injury such as records which describe persons

who were interviewed, physical and documentary evidence that was reviewed, and the related investigative findings.

42 C.F.R. § 51.41(c)(2).

57. The access provisions of the PADD, PAIMI, and PAIR Acts are interrelated and it is clear that Congress intended for the provisions to be applied in a consistent manner, and the PAIR Act expressly incorporates by reference, at 42 U.S.C. § 794e (f), the authority regarding access to facilities and records set forth in the PADD Act.

Denial of Access

58. From September 11, 2008 until March 26, 2009, MPAS and its contractor sent eight letters to Harrison County officials and/or contractors informing them of MPAS's federal access rights and requesting the right to exercise these rights at the Juvenile Detention Center. (*See* Exhibit 1).

59. The Defendant responded to each of Plaintiff's requests with an effective denial. The Defendant therefore unlawfully denied MPAS the right to exercise its federal authority and denied children with disabilities detained at the Juvenile Detention Center the right to access MPAS services.

Necessity for Injunctive Relief

60. The Defendant has acted and continues to act in violation of the law as explained above. The named Plaintiffs and the class they seek to represent do not have an adequate remedy at law. As a result of the policies, practices, acts, and omissions of the Defendant, the named Plaintiffs, and the class they seek to represent, have suffered and continue to suffer serious, imminent, and irreparable physical, mental and emotional injuries.

61. Plaintiff MPAS does not have an adequate remedy at law and will be irreparably harmed if the Defendant is permitted to continue prohibiting MPAS and its agents from:

- a) having reasonable unaccompanied access, for monitoring and investigatory purposes, to public and private areas of the Juvenile Detention Center;
- b) interviewing youth, staff and other persons as part of its duty to monitor the facility and investigate incidents of abuse and neglect;
- c) providing information and training on individual rights and services provided by the P&A system;
- d) communicating privately with facility residents;
- e) accessing facility incident reports and investigatory findings;
- f) accessing residents' records.

EXHAUSTION

62. The named Plaintiffs have exhausted all available administrative remedies.

CAUSES OF ACTION

63. Plaintiffs incorporate by reference all of the above factual allegations to support the following claims:

Count I

64. The conditions of confinement at the Juvenile Detention Center and the Defendant's deliberate indifference to those conditions, considered both individually and in their totality, constitute cruel and unusual punishment and a denial of due process in violation of Plaintiffs' rights under the Eighth and Fourteenth Amendments to the United States Constitution, as enforced through 42 U.S.C. § 1983.

Count II

65. Defendant's refusal to protect children from harm, otherwise keep them physically safe and secure and free from unconstitutional practices like excessive room confinement, excessive use of force, arbitrary and punitive disciplinary practices and excessive use of restraints violates

Plaintiffs' constitutional rights under the Eighth Amendment and the Fourteenth Amendment to the United States Constitution, as enforced through 42 U.S.C. § 1983.

Count III

66. Defendant's deliberate indifference to the children's serious mental health needs violates Plaintiffs' constitutional rights under the Eighth and Fourteenth Amendments to the United States Constitution, as enforced through 42 U.S.C. § 1983.

Count IV

67. Defendants refusal to allow Plaintiffs to meet with their counsel and otherwise facilitate meaningful, effective, and adequate access to the courts, violates the Plaintiffs' First and Fourteenth Amendment rights to free speech and due process of law, as enforced through 42 U.S.C. § 1983.

Count V

68. The policies, procedures, regulations, practices and customs of the Defendant violate and continue to violate the rights of the Plaintiff MPAS to full, complete, timely and meaningful access to the Juvenile Detention Center, staff, residents and their records, in violation of the PAIMI, PADD and PAIR Acts, Protection and Advocacy for Individuals with Mental Illness Act of 1986 ("PAIMI Act"), 42 U.S.C. §§10801 et seq.; the Developmental Disabilities Assistance and Bill of Rights Act of 2000 ("DD Act"), 42 U.S.C. §§15001, et. seq.; Protection and Advocacy of Individual Rights Program ("PAIR Act"), 29 U.S.C., §§794e, et. seq.; and 42 U.S.C. §1983.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Honorable Court grant the following relief:

- a. Declare that the acts and omissions of the Defendant violate the Constitution and federal law;

- b. Enter a preliminary and permanent injunction requiring the Defendant, its agents, employees and all persons acting in concert with them to cease their unconstitutional and unlawful practices;
- c. Grant injunctive relief enjoining the Defendant and its agents and employees from denying MPAS and its contracted agent immediate, full, complete, meaningful and unaccompanied access to the staff, residents, records and facilities at the Harrison County Juvenile Detention Center to conduct monitoring activities and abuse and neglect investigations without advance notice and at any reasonable time, including business and visiting hours, in violation of the PAIMI, PADD and PAIR Acts;
- d. Issue a declaratory judgment that the Defendant's policies, regulations, and practices of denying MPAS and its contracted agent immediate, full, complete, meaningful, and unaccompanied access to the staff, residents, records and facilities at the Harrison County Juvenile Detention Center to monitor and to conduct abuse and neglect investigations, without advance notice and at any reasonable time, including during business and visiting hours, violate the PAIMI, PADD and PAIR Acts;
- e. Award to the Plaintiffs reasonable costs and attorney's fees; and
- f. Grant the Plaintiffs such other relief as the Court deems just.

Respectfully submitted,

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Jackson, Mississippi 39202
601-969-0802 (phone)
601-969-0804 (fax)

Counsel for Plaintiffs

Kay Hardage, Miss. Bar No. 3061
Mississippi Protection and Advocacy Systems, Inc.
5305 Executive Place
Jackson, Mississippi 39206
601-981-8207 (voice)
601-981-8313 (fax)

Of Counsel for Mississippi Protection and
Advocacy Systems, Inc.

Certificate of Service

I hereby certify that on April 27, 2009, a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent by email to all parties by the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

Dated: April 27, 2009

/s/ Sheila A. Bedi, Miss. Bar. No. 101652
Mississippi Youth Justice Project
A Project of the Southern Poverty Law Center
921 N. President St., Suite B
Jackson, Mississippi 39202
601-948-8882 (phone)
601-948-8885 (fax)

EXHIBIT ONE

Exhibit #	Date of Letter	Sender	Recipient
1-A	4-16-09	Attorney Joseph Meadow, Harrison County Board Attorney	Attorney Kay Hardage, MSPA
1-B	2-26-09	Attorney Kay Hardage, MSPA, Attorney Vanessa Carroll, MYJP, Counsel for Plaintiffs	Attorney Joseph Meadow, Harrison County Board Attorney
1-C	2-20-09	Attorney Kay Hardage, MSPA, Attorney Vanessa Carroll, MYJP, Counsel for Plaintiffs	Attorney Tim Holleman, Counsel for Mississippi Security Police
1-D	1-16-09	Gerard F. Smith, Harrison County Youth Court Public Defender	Attorney Vanessa Carroll, MYJP, Counsel for Plaintiffs
1-E	1-15-09	The Honorable Michael Ward, Harrison County Youth Court Judge	Attorney Vanessa Carroll, MYJP, Counsel for Plaintiffs
1-F	12-15-09	Attorney Vanessa Carroll, MYJP, Counsel for Plaintiffs	The Honorable Gaston Hewes, Harrison County Youth Court
1-G	12-12-08	The Honorable Gaston Hewes, Harrison County Youth Court	Attorney Vanessa Carroll, MYJP, Counsel for Plaintiffs
1-H	12-8-08	Attorney Vanessa Carroll, MYJP, Counsel for Plaintiffs	Attorney Tim Holleman, Counsel for Mississippi Security Police
1-I	10-31-08	Attorney Vanessa Carroll, MYJP, Counsel for Plaintiffs	The Honorable Michael Ward, The Honorable Gaston Hewes, Jr. Harrison County Youth Court
1-J	10-14-08	Attorney Vanessa Carroll, MYJP, Counsel for Plaintiffs	Gerard F. Smith, Harrison County Youth Court Public Defender

Exhibit #	Date	Sender	Recipient
1-K	10-13-08	Attorney Vanessa Carroll, MYJP, Counsel for Plaintiffs	William Martin, President Harrison County Board of Supervisors
1-L	9-19-08	Attorney Vanessa Carroll, MYJP, Counsel for Plaintiffs	Attorney Tim Holleman, Counsel for Mississippi Security Police
1-M	9-22-08	Attorney Tim Holleman, Counsel for Mississippi Security Police	Attorney Vanessa Carroll, MYJP, Counsel for Plaintiff
1-N	10-3-08	Gerard F. Smith, Harrison County Youth Court Public Defender	Attorney Vanessa Carroll, MYJP, Counsel for Plaintiff
1-O	9-19-08	Attorney Vanessa Carroll, MYJP, Counsel for Plaintiff	Attorney Tim Holleman, Counsel for Mississippi Security Police
1-P	9-12-08	Attorney Tim Holleman, Counsel for Mississippi Security Police	Attorney Vanessa Carroll, MYJP, Counsel for Plaintiff
1-Q	9-11-08	Attorney Vanessa Carroll, MYJP, Counsel for Plaintiffs	Butch Cummings, Administrator Harrison County Juvenile Detention Center

EXHIBIT 1-A

MEADOWS LAW FIRM

P.O. BOX 1076 : GULFPORT, MISSISSIPPI 39502
1902 21st Avenue : Gulfport, MS 39501
Telephone: (228) 868-7717
Facsimile: (228) 868-7715

JOSEPH R. MEADOWS
jmeadows@datasync.com

KAREN J. YOUNG
kyoung@datasync.com

March 16, 2009

VIA FACSIMILE (601) 981-8313

Kay Hardage, Esq.
Mississippi Protection and
Advocacy System, Inc.
5305 Executive Place
Jackson, MS 39206

March 17, 2009

**RE: Access to Harrison County Juvenile Detention
Center for Mississippi Youth Justice Project**

Dear Ms. Hardage:

I apologize for my delay in responding to yours of February 26, 2009, however, I underwent full knee replacement surgery Friday, February 5, 2009, and due to complications, had to have a second surgery. I have been incapacitated since early February and am just now coming back to work on a very limited basis.

I have reviewed your correspondence as well as the correspondence from Mr. Tim Holleman, attorney for Mississippi Security Police.

The next scheduled meeting of the Harrison County Board of Supervisors will occur on Monday, March 23, 2009.

I plan to present your letter, and the response of the Mississippi Security Police, as we discuss the requested access to the Juvenile Detention Center by the Mississippi Protection and Advocacy System, Inc.

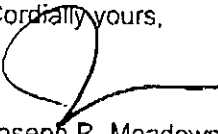
Insofar as I can determine, the Harrison County Youth Court must approve the requested access to the Harrison County Juvenile Detention Center.

Page 2
Kay Hardage, Esq.
March 16, 2009

My recommendation to the Board will be to request the Mississippi Protection and Advocacy System, Inc. petition the Harrison County Youth Court to approve the requested access, subject to such guidelines as the Court deems appropriate.

I will be glad to discuss the matter with you at your convenience.

Cordially yours,

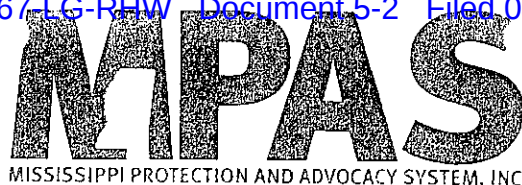


Joseph R. Meadows

JRM:rfs

cc: Tim Holleman, Esq.
Board Members
Pam Ulrich
John McAdams
Claudine Forbes

EXHIBIT 1-B



VIA FACSIMILE AND U.S. MAIL

February 26, 2009

Joseph R. Meadows, Esq.
Counsel, Harrison County Board of Supervisors
Post Office Box 550
Gulfport, MS 39502

Re: Access to Harrison County Juvenile Detention Center for MYJP

Dear Mr. Meadows:

This agency, Mississippi Protection and Advocacy System, Inc. (MPAS) is mandated by statute to monitor facilities in the state of Mississippi which house mentally and/or physically disabled youths. (42 U.S.C. § 15041 and 42 U.S.C. § 10801(b)). We have contracted with the Mississippi Youth Justice Project (MYJP) to perform that essential duty as it relates to juvenile detention facilities.

For approximately the last six (6) months, my colleague, Vanessa Carroll of MYJP has been attempting to gain access to the Harrison County Juvenile Detention Center (the Center). She has written numerous letters to the Harrison County Youth Court Judges and the operator of the Center, Mississippi Security Police. In each instance, the correspondent has indicated a lack of authority to allow access to the Center.

Therefore, as the entity which funds the Center and is ultimately responsible for its operation, we are writing to propose that the Harrison County Board of Supervisors enter into a written access agreement with MPAS/MYJP which will provide a framework for MYJP to conduct monitoring visits to the Center. Because there are many issues which arise in the context of detained juveniles, we believe such an agreement will address any concerns the Board may have and will provide a protocol for both MYJP and Center personnel in conducting visits to the Center. Enclosed is a copy of a model access agreement as an example of what we propose.

A brief history of our agency and the statutory framework may be helpful. Congress created protection and advocacy systems ("P&As") with the passage of the Developmental Disabilities Assistance and Bill of Rights Act of 1975. P&A services have since been expanded to provide legal representation and other advocacy services on behalf of all persons with disabilities.¹ The

¹ The "P&A Acts" consist of the following: Part C of Title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (the "DD Act"), 42 U.S.C. §§15041-15045; the Protection & Advocacy for Individuals with Mental Illness Act of 1986 (the "PAIMI Act"), 42 U.S.C. §§10801 *et seq.*; and the Protection and Advocacy of Individual Rights ("PAIR") Program of the Rehabilitation Act of 1973, 29 U.S.C. § 794e.

Joseph R. Meadows, Esq.
February 26, 2009
Page 2

DD Act provides for a P&A to protect the legal and human rights of individuals with developmental disabilities and the PAIMI Act requires the P&A system to ensure that the rights of individuals with mental illness are protected by monitoring facilities and investigating incidents of abuse and neglect of the mentally ill.

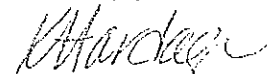
In order to carry out the congressional mandate, the regulations provide that the state's protection & advocacy system, MPAS, and its authorized agents, like MYJP, must have physical access to facilities housing individuals with disabilities. Under the DD Act, "the system and all of its authorized agents shall have unaccompanied access to all residents of a facility [providing care, support, and services to individuals with developmental disabilities] at reasonable times . . ." 45 C.F.R. §1386.22 (g) and this "shall include the opportunity to meet and communicate privately with such individuals regularly, both formally and informally, by telephone, mail and in person." 45 C.F.R. §1386.22(h).

The PAIMI Act provides that the P&A and its agents must have reasonable access to facilities that provide care or treatment to individuals with mental illness. 42 U.S.C. §10805(a)(3). *See also* 42 C.F.R. § 51.42(a) ("Access to facilities and residents shall be extended to all authorized agents of a P&A system.") Furthermore, juvenile detention centers are expressly included in the definitions of facilities. 42 C.F.R. §51.2; 45 C.F.R. §1386.19.

We would request that you consult with the Board to obtain authority to enter into a written access agreement so that MPAS may carry out its legal obligation, through its agent, MYJP, to conduct monitoring visits to the Center. If the Board is not willing to either grant access or enter into good faith negotiations for access, we will have no choice but to file a complaint in federal district court for injunctive and other relief, including attorney's fees and costs pursuant to 28 U.S.C. §2202 and 42 U.S.C. §1988. Please let us hear from you within the next fourteen (14) days.

Thank you for your attention to this matter and we look forward to hearing from you soon.

Sincerely yours,



Kay Hardage
Staff Attorney



Vanessa Carroll
Staff Attorney, MYJP

Enclosure

EXHIBIT 1-C



MISSISSIPPI PROTECTION AND ADVOCACY SYSTEM, INC.

Via Facsimile and U. S. Mail
228.539.9699

February 20, 2009

Tim Holleman, Esq
Boyce Holleman & Associates
1720 23rd Avenue
Gulfport, Mississippi 39501

Re: Access to Harrison County Juvenile Detention Center

Dear Tim:

This letter will follow up previous correspondence from Vanessa Carroll of the Mississippi Youth Justice Project (MYJP) requesting access to the Harrison County Juvenile Detention Center (the Center). It is my understanding that you are counsel for Mississippi Security Police which operates the Center. Our agency, Mississippi Protection and Advocacy System, Inc. (MPAS) is mandated by statute to monitor facilities in the state of Mississippi which house mentally and/or physically disabled youths. (42 U.S.C. § 15041 and 42 U.S.C. § 10801(b)). We have contracted with the MYJP to perform that essential duty as it relates to juvenile detention facilities. I believe you have previously been provided a copy of the contract between our agencies, but am enclosing another copy for your reference.

Ms. Carroll has previously corresponded with the Harrison County Youth Court judges who have expressed the opinion that they do not have the authority to allow the MYJP access to the Center. We believe that Mississippi Security Police, as the operator of the facility is the correct, and indeed the only, entity with which we should be corresponding.

We are writing to propose that your client enter into an Access Agreement with MPAS/MYJP which will provide a framework for MYJP to conduct its monitoring visits to the Center. Because there are many issues which arise in the context of detained juveniles, we believe such an agreement will address any concerns your client may have and will provide a protocol for both MYJP and Center personnel in conducting visits to the Center.

I am enclosing a Model Access Agreement for your consideration. Please discuss this matter with your client and let me know within the next fourteen (14) days whether it will be willing

Tim Holleman, Esq.
February 20, 2009
Page 2

to begin negotiating such an Agreement. If the Center is not willing to either grant access or enter into good faith negotiations for access, we will have no choice but to file a complaint in federal district court for injunctive and other relief, including attorney's fees and costs pursuant to 28 U.S.C. §2202 and 42 U.S.C. §1988.

Since federal law is clear on this matter, we are confident that this can be resolved amicably to avoid costly and timely litigation. We look forward to hearing from you soon.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Kay Hardage".

Kay Hardage
Staff Attorney, MPAS

A handwritten signature in cursive script, appearing to read "Vanessa Carroll" followed by a slanted line and the initials "kh".

Vanessa Carroll
Staff Attorney, MYJP

PROTOCOLS FOR ADVOCACY INCORPORATED'S ACCESS
TO _____ COUNTY JUVENILE DETENTION FACILITY, FACILITY
RESIDENTS, STAFF, AND RECORDS

ADVOCACY, INC. (AI) is the protection and advocacy ("P&A") system authorized under federal law to protect and advocate for the human and legal rights of Individuals with mental illness or developmental and other disabilities, including minors with severe mental illnesses or emotional impairments, pursuant to the Protection and Advocacy for Individuals with Mental Illness ("PAIMI") Act, 42 U.S.C. § 10801, et seq., the Developmental Disabilities Assistance and Bill of Rights ("DD") Act of 2000, 42 U.S.C. § 15001, et seq., and Protection and Advocacy of Individual Rights ("PAIR") Program, 29 U.S.C. § 794e, et seq., and their accompanying regulations (The Acts).

_____ COUNTY JUVENILE BOARD funds, directs, supervises, and operates the _____ County Juvenile Detention Facility (THE FACILITY), which is a secure juvenile pre-adjudication detention and post-adjudication correctional facility operated under the regulatory standards of the Texas Juvenile Probation Commission, in compliance with state law and/or the judicial directives of Texas courts having jurisdiction over juveniles in the care, custody and control of the Facility.

This protocol will be disseminated to all involved staff of both organizations. It shall be used as a guide for Facility Staff and AI staff to streamline AI's access to Facility, Residents, Staff and Records. This agreement will be in force until either party revokes it in writing or as provided by a new agreement of the parties.

The purposes of this protocol are to:

1. Promote the mutual goal of the Facility and AI to protect the human and legal rights of Individuals with mental illness or developmental and other disabilities and to facilitate a constructive working relationship, and
2. Facilitate AI's access to the Facility, its Residents, Staff and records to the fullest extent allowed under federal law.

Therefore, AI and the Facility, in order to fulfill their legal and other responsibilities, and to facilitate a constructive working relationship, hereby agree to and establish the following protocols and procedures for access by AI to the said Facility, to the Residents of the Facility, Facility staff and Records:

I. TERMS

All terms used in these protocols which are defined in the PADD, PAIR or PAIMI Acts and/or their accompanying regulations and related case law will have the meanings given to them in those Acts, regulations and/or case law, unless otherwise stated in this agreement. The following are specialized definitions that shall apply to these protocols.

"ACTIVELY AGGRESSIVE" means that the patient is assaulting others, or is threatening to assault, or the patient is actively harming himself/herself.

"AI STAFF" means any and all AI STAFF and duly authorized AI consultants, contractors, or other duly authorized agent. AI will provide to the Facility Administrator a list of its staff that will or may visit the facility. AI staff must provide the Facility with the sufficient information to allow the Facility to process criminal background checks, which may include TCIC, NCIC and Sex Offender Registration records of the State of Texas. Any person meeting this definition shall, upon request of the facility, execute a general release of liability of the facility for any harm suffered to said person as a result of any actions of a resident of the facility of an Advocacy Client.

"ADVOCACY CLIENT" means any person who resides in the Facility, and who is determined to be suffering from mental illness as that term is defined in 42 CFR § 51.2; a person who has a physical or mental impairment that manifested before the age of 22, is likely to continue indefinitely; and which substantially limits three or more of such person's major life activities as that term is defined in 42 U.S.C. § 15002(8); and/or a person who has a physical or mental impairment which substantially limits one or more of such person's major life activities or has a record of such an impairment or is regarded as having such an impairment as defined in 29 U.S.C. § 706(7)(B). A resident who has been discharged to a community setting within 90 days or who is currently in a community setting, including their own home shall continue for this period to be considered within this definition as being a proper subject for review of records or interview of the individual upon probable cause or complaint.

"COMPLAINTS" OR "REPORTS" of abuse or neglect or other rights violations shall include informed written or oral communications such as telephone calls (including anonymous calls) as well as media reports that, in the judgment of AI, state credible allegations.

"FACILITY" means the _____ County Juvenile Detention Facility.

"GUARDIAN OF THE PERSON" as used in this protocol is the legal parent of a minor, or one who is appointed by the appropriate court of this state to be a legal guardian for a Resident, and who has the authority to consent to physical or mental health care or treatment for the Resident. "Guardian of the Person" as used in this protocol does not include the State or its agencies or those persons acting on behalf of the Resident as guardian of the property of the Resident or an Attorney acting on behalf of the Resident in the criminal matter only.

"PROBABLE CAUSE" to believe that a Resident has been or is in danger of being subject to abuse and neglect exists when AI determines that a reasonable person in a like position, drawing on his or her training and experience, would suspect abuse or neglect.

"RESIDENT" means any person who has been screened by admission procedures and accepted into the Facility. A resident is also a person who has been discharged to a community setting within 90 days or who is currently in a community setting, including their own home shall continue for this period to be considered within this definition as being a proper subject for review of records or interview of the individual upon probable cause or complaint. For purposes of this section, AI shall have access to any records retained by the facility pertaining to individuals presented for admission to the facility but rejected for pre and post detention purposes.

I. CONFIDENTIALITY

AI will not release or disclose to a third party any Resident record or information gathered as a result of an investigation of a complaint or report without the authorization of the Resident's parent, guardian of the person, or attorney, a court order of the juvenile court having jurisdiction of the Resident or in accordance with appropriate regulatory procedures as contained in 42 C.F.R.

AI will maintain the confidentiality of all records to the same extent as is required of the Facility, all provisions of state regulations and law regarding the disclosure of Resident records and in accordance with appropriate laws of the United States, regulatory procedures as contained in 42 C.F.R. §51.45 and §51.46 and. In any instance of conflict between state law and federal law, federal law will prevail.

AI will not release or disclose records to the Resident or their guardian if the mental health professional responsible for supervising the provision of mental health services to the Resident with mental illness or a developmental disability provides AI, at the same time as access to the records containing the information is granted, a written determination that the disclosure of such information to the Resident would be detrimental to the Resident's health. AI will disclose such information to the Resident only upon the determination of another mental health professional, in accordance with the procedure in 42 C.F.R. §51.46, that the disclosure of the information would not be detrimental to the Resident's health.

III. ACCESS GENERALLY

Investigations

AI may access a facility to investigate incidents of abuse and neglect of individuals with mental illness or developmental and other disabilities if incidents are reported to them, if AI has probable cause to believe that an incident of abuse has occurred or if AI determines that there is or may be imminent danger of serious abuse or neglect of an individual with a mental illness or developmental and other disabilities. This access includes access to all residents of the facility as well as records relating to those residents determined to have a mental illness or developmental disabilities.

Access Not Related to an Investigation

AI may also access a juvenile facility for the following purposes: To provide information, education and training regarding Advocacy Incorporated, services and programs; to monitor compliance with respect to the rights and safety of residents which includes the ability to inspect, view and photograph all areas of the facility that are used by residents or are accessible to residents; and to interview residents and staff. Monitoring facility compliance with respect to the rights and safety of Residents' activities may be of a general nature.

IV. AI ACCESS TO THE FACILITY

Notice of AI's Visit to Facility

No notice to the Facility prior to AI's arrival will be required in order for AI to enter the Facility during regular business hours of 8 a.m. to 5 p.m. AI, in its sole discretion, may provide advance notice of its intent to visit the Facility by contacting the Facility administrator or its designee by telephone. AI will provide 24-hour advance notice of

its intent to enter the Facility at any time outside regular business hours by contacting the Facility administrator or its designee by telephone. However, whenever possible AI will attempt to enter the facility between the hours of 8 am and 5 pm. AI will always announce their arrival on facility grounds.

While on Facility premises, for safety reasons, AI staff shall have access, while accompanied by Facility staff, to any part of the Facility which Residents use including, but not limited to, all areas accessible to Residents.

Identification

AI Staff will identify themselves upon arrival to the Facility to a designated Facility Staff person by showing an AI photo identification card or a driver's license and an AI business card. Facility Staff may then notify any other personnel, as their supervisors have directed them. The Facility may deny access to any person who does not present the proper identification as provided herein. AI will upon arrival and prior to access, sign in a log maintained by the facility for this purpose. The log will, in general terms, identify the AI Staff, disclose the purpose of the visit, and/or the general basis for any investigation.

The Facility Administrator shall ensure that all direct care and other appropriate Facility Staff are aware of the right of AI's access to the Facility.

V. AI ACCESS TO RESIDENTS AND STAFF

AI Access to be Reasonable

AI Staff will abide by all security and safety policies and procedures of the Facility.

While on Facility premises, AI staff shall have access, while accompanied by Facility staff, to any part of the Facility which Residents use including, but not limited to, all areas accessible to Residents. This access shall be provided to the maximum extent possible to permit a free exchange of information between the resident and the AI staff member.

AI Staff shall be permitted to inspect, view, or photograph areas of the Facility, which are used by Residents or accessible to Residents.

Photographs of a resident shall not be taken, unless photographs are taken to document evidence of suspected physical abuse or neglect of a resident.

AI Staff will conduct its investigations, Facility monitoring, and communications as well as all other advocacy activities in a manner that:

- A. minimizes interference with the Facility's programs;
- B. honors the privacy interests of Residents and Facility Staff;
- C. honors a Resident's and facility staff's request to terminate an interview; and

- D. does not violate standards or policies of the TJPC or the Facility. These Facility policies will be made available to AI prior to any access. If the Facility and AI have a disagreement as to whether it would violate a standard, the parties may contact TJPC for an interpretation of the standard in question. If in any instance of conflict between state regulations or law and federal regulations or law, federal law will prevail.

In Person Communication with Persons on Facility Premises.

While on Facility premises, AI Staff shall have the authority to speak with Residents, Facility Staff, or other person on Facility property for the purposes of investigation of a complaint or report of abuse and neglect and for general monitoring.

Facility will, pursuant to federal law, permit AI to conduct independent investigations of incidents of abuse and neglect of Residents if the incidents are reported to AI or if there is probable cause to believe that the incidents occurred.

AI Staff and Facility shall make an effort to ensure that the parents and guardians of Residents in the care of the Facility are informed that AI will be monitoring activities at the Facility, and may in the course of such monitoring, have access to the Residents and records. In order to accomplish this the Facility may include a general notice to parents, attorneys and guardians that AI, under the authority given them by federal law, may periodically be monitoring activities at the facility, providing education and training about AI, investigating reports of abuse and neglect and may in the course of such activities have access to the residents or their records.

While engaged in investigation of a complaint or report of abuse and neglect, AI Staff shall be permitted to speak to Residents, Facility Staff or other person on the Facility property reasonably determined to be a witness to the matter under investigation or determined to have relevant information regarding the matter under investigation, and observe the physical environment and review pertinent records.

AI staff will disclose the name of a particular Resident AI reasonably believes to suffer from a mental illness or developmental and other disabilities they wish to visit and the purpose of the visit as necessary to facilitate scheduling or to locate a Resident.

If AI Staff requests an interview with a resident in private, a witness room will be provided for interview purposes at all times and in accordance with A-F below. This means a location that minimizes the possibility of intrusion by other Residents and Staff and affords a reasonable expectation that communications between AI Staff and Residents are confidential.

AI will be provided access to operational manuals detailing disciplinary procedures and provisions that justify the Facility Administrator to lock down the facility.

AI Staff will not be denied access to any Resident they are authorized to access, unless at the time AI Staff seeks access to the Resident:

- A. The Resident in question is engaged in a "therapy session" or other scheduled programming. AI Staff will either wait until the session is completed, or reschedule the visit at a time mutually agreeable to the parties, but no later than forty-eight (48) hours.

- B. The resident in question is Actively Aggressive while in seclusion or restraint. In such an instance, AI Staff will be permitted to observe the Resident to verify that the client is actively aggressive. AI Staff wishing to meet with such Residents shall notify Facility Administrator or its designee. The Facility Administrator or his/her designee may advise the AI Staff person of any security or supervision concerns. AI Staff will then either (1) wait until the Resident's aggressive behavior has stopped and be permitted to communicate with the Resident while Facility staff remain in viewing distance, and Facility staff will afford a Resident requiring restraint and/or seclusion with as much privacy as practicable, given the circumstances of each case, (2) wait until the Resident's aggressive behavior has stopped and be permitted to meet with the Resident out of seclusion or restraint while Facility staff remain in viewing distance, or (3) will reschedule the visit at a time mutually agreeable to the parties, but no later than forty-eight (48) hours.
- C. The Resident is placed on "one-to-one" supervision. In such an instance, AI Staff will be permitted to observe the Resident's behavior that requires such supervision. AI Staff wishing to meet with such Resident shall notify the Facility Administrator or his/her designee. The Facility Administrator or his/her designee may advise the AI Staff person of any security or supervision concerns. AI Staff will then either (1) be permitted to meet privately with the client while Facility Staff remains in viewing distance, (2) wait until the Resident has stabilized, or (3) reschedule the visit at a time mutually agreeable to the parties, but no later than forty-eight hours. If AI staff is permitted to meet privately with a client on one-to-one supervision, Facility Staff will afford as much privacy as practicable, given the circumstances of each case. In any event, AI Staff will at least be allowed to observe the Resident
- D. The access to any Resident would involve a substantial risk of physical harm to AI Staff or to the Resident. In this event, Facility Administrator or his/her designee shall so inform the AI Staff and shall explain the circumstances and any security or supervision concerns. AI Staff will be permitted to observe the Resident. AI Staff wishing to meet with such Resident shall notify the Facility Administrator or his/her designee. Should the Facility Administrator reasonably believe that a one-on-one visit might subject the AI Staff person to potential for injury, the AI Staff person may be required to execute a release of liability claim before being permitted an unsupervised visit with the resident. AI Staff will then either (1) be permitted to meet privately with the client while Facility Staff remain in viewing distance, (2) wait until the Resident has stabilized, or (3) reschedule the visit at a time mutually agreeable to the parties, but no later than forty-eight hours. If AI Staff is permitted to meet with the Resident, Facility Staff will afford as much privacy as practicable, given the circumstances of each case. In any event, AI Staff will at least be allowed to observe the Resident. In conformity with 42 C.F.R. §51.43, the Facility under these circumstances will provide a prompt written statement of the basis and grounds for such exclusion from the Facility to AI.
- E. The Resident declines to meet with AI Staff. A Resident who does not wish to talk with AI Staff shall communicate this directly and privately to AI Staff. AI Staff will honor a Resident's request to terminate an interview.
- F. The Facility is experiencing a situation that justifies the Facility Administrator to lock down the Facility. Situations that justify a Facility Administrator to lock down the Facility include situations that create a risk to security such as natural disasters, riot, rebellion, escape, other situations that require assistance from city, county or state law enforcement agencies or situations as described in previously established written policies or procedures. At such time the Facility Administrator in the best

interest of the Facility security will request AI Staff to vacate the Facility and AI Staff will adhere to the request. In conformity with 42 C.F.R. §51.43, the Facility under these circumstances will provide a prompt written statement of the basis and grounds for such exclusion from the Facility to AI.

The Facility shall permit Residents to request an appointment with AI Staff and a meeting shall be set within forty-eight hours of the request which complies with attorney/client communications, facility standards and minimally disrupts scheduled program activities.

In their in-person communications, AI Staff will minimize interference with Facility programs and honor the privacy interests of Residents and Facility Staff, and will honor a Resident or Facility Staff's request to terminate an interview.

AI may take no formal action on behalf of the Resident or initiate a formal attorney-client or advocate-client relationship without appropriate consent as defined in the PAIMI, PADD or PAIR regulations

AI Staff will not give Residents medical, psychiatric or clinical advice.

Communication with Staff

AI Staff may meet privately with the Facility Administrator or his/her designee to advise him or her of the nature of an investigation and to request an interview with a staff member. The Facility shall make every reasonable effort to allow for the availability of its staff for investigation related interviews. Interviews will be arranged at times so as not to interfere with the staff's work responsibilities.

Facility shall permit Staff to talk openly with AI representatives concerning Resident issues, concerns and problems including, but not limited to, investigations of incidents of abuse and neglect of Residents without retaliation. Facility Staff may have the Facility administrator, or a legal representative of the Facility, accompany them in interviews with AI if the Facility Staff so desires.

Phone and Mail

With regard to Residents who wish to contact AI, Facility shall conform to existing standards regarding resident communications applied to attorney/client communications.

Literature prepared by AI intended for dissemination to Facility's Residents shall be made available upon request of the resident.

The Facility or Facility Staff shall not hinder mail or telephone communications between AI and Residents so long as such communications comply with applicable standards and policies of the Facility and/or the Texas Juvenile Probation Commission as applicable to attorney/client communications.

VI. ACCESS TO RECORDS

On-site Review of Records

AI has legal authority to review the records of a Resident when there is written authorization (if required), a complaint has been received, or there is probable cause

to believe that the Resident has been subject to abuse or neglect. AI has no general right of access to a Resident's records absent these criteria.

When these criteria are met, AI Staff will have immediate access to review records which are available at the Facility provided that the requirements of authorization described below, if any, have been met.

AI Staff will have access to review records in conformity with applicable state or federal law or regulatory guidelines. If there is a conflict between federal and state law, the federal law shall apply. Under no circumstances will AI Staff remove the original record or any part thereof from the control of the Facility or add or make changes to the record.

After pulling the requested records, continued oversight on the part of Facility Staff will not be required because AI is designated by the Governor of the State of Texas, operates under federal law, and is fully aware of its obligation to leave Resident and Facility records intact. Any problems with an AI Staff's handling of the records should be reported to the Facility Administrator and AI Coordinator.

A resident shall be identified as an AI Client before resident records are provided. For the purpose of conducting an investigation of abuse and neglect, AI will be provided relevant records upon request.

Copies of Records

Copies will be provided to the AI Staff making the request, promptly. The Facility may charge a reasonable rate, not exceeding the fee permitted under the Texas Open Records Act. Copies will be provided to the AI Staff making the request within 24 hours.

When feasible, the records request should be honored on the day the request is received, but in any event not more than three (3) working days from the date received. When feasible, copies of records should be provided on the same day on which access is provided to the records, but in any event, not less more than three (5) working days from the date the request was received.

Parental or Guardian Contact Information.

Upon identification of a resident AI reasonably deems to be an Advocacy client as defined herein, the Facility shall promptly provide AI the name, address and phone number of that Resident's parent or guardian, referring court or jurisdiction, and any attorney of record. The information shall be provided within at least one working day of AI's request.

Form of Written Authorizations for Access to a Resident's File

AI may utilize their own form or the Facility's form, or a written statement of authorization made by the Resident or their legal guardian. It is AI's responsibility to maintain valid authorization for release of records. Objection to the fact that such authorization may not be on a form used by the Facility shall not delay processing the requested information.

VI DISPUTE RESOLUTION

This operating interim protocol should guide the actions of both AI Staff and the Facility Staff. If at any point problems arise concerning access of AI Staff to Facility, Records or Residents under this protocol, effort shall be made to resolve the problem informally in the following manner:

1. Any complaint concerning access by AI Staff shall be immediately brought to the attention of the Facility administrator or his/her designee. Any complaint concerning AI Staff shall be immediately brought to the attention of the Director of AI or his/her designee. The Facility administrator or his/her designee and the Director of AI or his/her designee shall resolve any complaints as expediently and as informally as possible.
2. If the Facility Administrator or his/her designee and the Director of AI or his/her designee cannot informally resolve the complaints or issues regarding AI Staff access to Facility either party may pursue any legal or enforcement action allowed by state or federal law.
3. This agreement is intended to carry out the provisions of the Acts and, therefore, in the event of any ambiguity in this agreement or any conflict between this agreement and federal law, federal law shall control.

Signed this _____ day of _____, 2004.

Mary S. Faithfull
Executive Director
Advocacy, Incorporated

Judge _____
_____ County Juvenile Board

The Texas Juvenile Probation Commission Legal Division and Advocacy Incorporated Legal Counsel in concert with participating chief juvenile probation officers have prepared this Model Access Protocol Agreement for use by county juvenile boards. Final execution of this protocol should be with the approval of your county attorney. This model protocol agreement is consistent with TJPC standards.

EXHIBIT 1-D

THE YOUTH COURT
OF HARRISON COUNTY

CINDY L. ALEXANDER
COURT ADMINISTRATOR

GAYLE PARKER
CIRCUIT CLERK

GASTON H. HEWES, JR.
JUDGE

ROBIN ALFRED MIDCALF
JUDGE

MICHAEL H. WARD
JUDGE

ELIZABETH W. CASEY
ASSISTANT COURT ADMINISTRATOR

RHONDA L. SNELL
ASSISTANT COURT ADMINISTRATOR

January 16, 2009

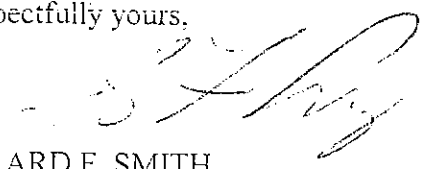
Vanessa Carroll, Esq.
Mississippi Youth Justice Project
P.O. Box 9283
Jackson, MS 39286

Dear Ms. Carroll:

I am in receipt of a copy of the January 15, 2009 letter sent to you from Michael H. Ward, Harrison County Youth Court Judge. He rightfully has indicated to you that if there is any person you need help with, in regard to carrying out any programs with the inmates at the detention center, it would be this advocate.

We met on a previous occasion, and I believe that I showed you all of the facilities here at the Court. This included a general outline as to the procedures the individual go through when they come in contact with the Youth Court. If there is anything specifically that you would like to do or have questions about, particularly in regard to my clients, I am certainly willing to cooperate with you. I believe that this would have to be handled on an individual basis however, according to the circumstances of that person. I would therefore respectfully request that all future correspondence be directed to this writer for more prompt attention. I remain,

Respectfully yours,


GERARD F. SMITH
Harrison County Youth Court Public Defender

cc: Judge Gaston H. Hewes, Jr.
Judge Michael H. Ward

EXHIBIT 1-E

MICHAEL H. WARD

JUDGE OF COUNTY COURT JUDGE OF YOUTH COURT
HARRISON COUNTY
POST OFFICE BOX 7017
GULFPORT, MISSISSIPPI 39506
(228) 865-7000
FAX: (228) 865-7045

January 15, 2009

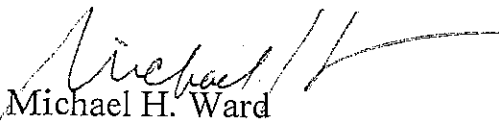
Vanessa Carroll, Esq.
Mississippi Youth Justice Project
P.O. Box 9283
Jackson, MS 39286

Dear Ms. Carroll:

I have absolutely no idea what it is you expect me to do. I don't run detention and neither, for that matter, does Judge Hewes. We do, however, appoint the Youth Court Public Defender (Mr. Gerard Smith, with whom you have corresponded) for all children detained who do not have retained counsel (most do not retain counsel). I suggest you contact him so that you may access HIS clients.

Courts act when properly requested so to act (by way of pleadings).

Sincerely,



Michael H. Ward

cc Judge Gaston H. Hewes, Jr.
Gerard Smith, Esq.
Tim Holleman, Esq.

EXHIBIT 1-F

MISSISSIPPI YOUTH JUSTICE PROJECT

921 North President St., Suite B, P.O. Box 9283, Jackson, MS 39286
601 948 8882 voice 601 948 8885 fax

December 15, 2008

Honorable Gaston Hewes
Judge of County Court
Harrison County
P.O. Box 973
Gulfport, MS 39502
Fax: 228-865-7012

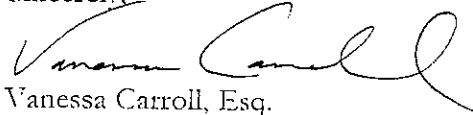
Via Facsimile & U.S. Mail

Dear Judge Hewes:

Thank you for your letter clarifying your communication with the Mississippi Youth Justice Project. I did indeed receive a message from you on November 3 directing me to contact Judge Ward regarding this matter, and I apologize for failing to acknowledge this in my letter to Mr. Holleman. Please be assured that when I stated in my letter to Mr. Holleman that I had not received a response from the Youth Court, I only meant to convey that I had not received a response on how to actually obtain access to the Detention Center. After I received your message, I continued to make attempts to follow up with Judge Ward, and I have not yet received a response. Since you advised me to contact Judge Ward on this matter, my statement referred to these additional attempts and only pertained to him.

Once again, I apologize for failing to acknowledge your communication with my office, and I appreciate your clarification.

Sincerely,



Vanessa Carroll, Esq.

Cc. Honorable Michael Ward
Tim Holleman, Esq.

EXHIBIT 1-G

GASTON H. HEWES, JR.
JUDGE OF COUNTY COURT
HARRISON COUNTY
POST OFFICE BOX 973
GULFPORT, MISSISSIPPI 39502

December 12, 2008

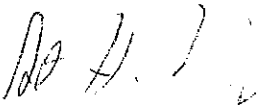
Hon. Vanessa Carroll
Mississippi Youth Justice Project
P. O. Box 9283
Jackson, MS 39286

Dear Ms. Carroll:

I am in receipt of a copy of your letter dated December 8, 2008 addressed to Honorable Tim Holleman.

The part of your correspondence that relates to me is untrue. I did, in fact, call your office on November 3 and left a message that advised you to contact Judge Michael Ward with regard to your inquiry due to the fact that he is the primary Youth Court Judge. I am only at the Youth Court a few days a month.

Sincerely,



GASTON H. HEWES, JR.

GHHjr/dm

xc: Hon. Michael Ward
Hon. Tim Holleman

EXHIBIT 1-H

MISSISSIPPI YOUTH JUSTICE PROJECT

921 North President St. Suite B, P.O. Box 9285 Jackson, MS 39286
601 948 8882 voice 601 948 8885 fax

December 8, 2008

Tim Holleman, Esq.
Joyce Holleman & Associates
1720 23rd Avenue
Gulfport, MS 39501
Fax: 228-863-9829

Via Facsimile & U.S. Mail

Dear Mr. Holleman:

I am writing once again to ask that the Harrison County Juvenile Detention Center comply with federal law and provide the Mississippi Youth Justice Project (MYJP) with access to all disabled youth at the Detention Center. As an authorized agent of Mississippi Protection & Advocacy, MYJP not only has the right to access disabled youth at the Detention Center, but in fact must have access in order to fulfill our statutory obligation to protect and advocate on behalf of disabled youth in state custody.

In previous correspondence you declined to grant MYJP access based upon the belief that your client, the Mississippi Security Police (MSP), does not have the authority to grant or deny access to the Detention Center. Rather, you urged me to contact the Youth Court and the Board of Supervisors since the youth at the Detention Center are under the jurisdiction of the Harrison County Youth Court. You also expressed concern that MYJP's attorneys would violate the Rules of Professional Conduct by meeting with youth already represented by counsel.

While I disagree with your position that MSP does not have the ability to negotiate access, I have made a good faith effort to contact the Youth Court and the Board of Supervisors. Since the date of my last letter to you, I have sent two (2) letters to the Youth Court judges and one (1) letter to the Board of Supervisors, and I have also made numerous phone calls to both parties to discuss MYJP's request. As of today's date, I have not received a response from either the Youth Court or the Board of Supervisors.

I have also corresponded with Gerard Smith, the County Public Defender. While MYJP does not need his consent to engage in protection and advocacy monitoring of the Detention Center, I extended the courtesy of meeting with him in-person on October 29 to introduce myself and explain MYJP's protection and advocacy authority. And while I disagree with your belief that protection and advocacy monitoring would result in a violation of the Rules of Professional Conduct, I addressed Mr. Smith's concerns about MYJP meeting with his clients, and assured him that our monitoring would in no way interfere with his representation. MYJP will maintain clear boundaries between our work and a youth's pending youth court matter, and we will promptly consult with the youth's lawyer if the youth informs us of anything pertaining to her youth court case. After meeting with me, Mr. Smith seemed satisfied with my assurances, and he did not voice any objection to MYJP meeting with youth at the Detention Center.

I would like to offer a few more comments on the interplay between the P&A Acts and the Rules of Professional Conduct. First, and most importantly, federal law grants individuals with disabilities the right to receive protection and advocacy services; and representation by counsel does not and can not interfere with that individual's right to receive protection and advocacy services. Secondly, these services are not necessarily contemplated as legal services per se, and in many cases, lay advocates provide the services. In our case, it is most likely that an MYJP attorney will provide the protection and advocacy services. However, it is important to keep in mind that protection and advocacy services are entirely independent from a child's youth court matter, and disabled youth have a right to receive these services, even if they are provided by an attorney.

Finally, since MYJP has made a good faith effort to negotiate access with the entities you deem appropriate, and this effort has not been successful, I am also writing to you to explain my disagreement with your position that MSP can not grant access, and to demand that MYJP receive access within the next ten (10) days.

Although I have not had the opportunity to review the contract between MSP and Harrison County, I believe that MSP has the authority to grant access because it is a private entity performing a fundamentally governmental function, and I believe that MSP stands in a very similar position to Cornell Companies, the private entity responsible for operating Walnut Grove Youth Correctional Facility (WGYCF). When MYJP initially approached WGYCF to negotiate protection and advocacy access, Cornell Companies stated that since it was a private company, it could not grant MYJP access to the facility. However, following a series of correspondence between MYJP and Cornell's attorneys, and a final demand letter from MYJP, MYJP successfully negotiated access to the facility.

Our success with this matter was based in part on the "public function" test, which holds a private entity liable in the same capacity as a public entity when the private company performs a government function. See *Rosborough v. Management and Training Corp.*, 350 F.3d 459 (5th Cir. 2003)(finding that a private prison-management company performs a fundamentally governmental function and can be liable for 8th Amendment violations); *Skelton v. Pri-Cor, Inc.*, 963 F.2d 100 (6th Cir. 1991)(stating that a private company administering a state corrections facility was performing a function traditionally reserved for the state and could be sued under 42 U.S.C. § 1983). Although negotiating P&A access is not the same as 8th Amendment or § 1983 liability, the public function test suggests that a private entity can not accept the responsibility of performing a governmental function, but then evade certain responsibilities and liabilities that stem from performing that function. As a contracted agent of Harrison County, MSP presumably has the authority to manage and operate the Detention Center in the same way that Harrison County would if the County had not outsourced this service to a private company. MSP therefore stands in the shoes of Harrison County, and must grant MYJP access for the purpose of conducting protection and advocacy monitoring.

In support of your argument that MSP is not the appropriate entity to grant or deny access, you also point out that all of the children at the Detention Center are under the jurisdiction of the Youth Court, and therefore the Youth Court is responsible for granting or denying access to youth. I must again respectfully disagree with this point. Although the Youth Court does have jurisdiction over court-involved youth, the Youth Court does not have the authority to in any way regulate or abridge the federal right of disabled youth to receive protection and advocacy services. Just as it would be improper for the Youth Court to regulate how and when youth may contact an attorney or access

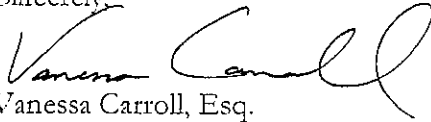
medical care, it would be equally improper for the Youth Court to have the authority to limit P&A access to youth simply because that youth is under its jurisdiction.

Since federal law is clear on this matter, MYJP is demanding access to the facility within ten (10) working days. If the Detention Center does not grant access or enter into good faith negotiations on this matter within that time, MYJP is prepared to file a complaint in federal district court to obtain access.

While I feel confident that MSP is the proper entity to grant access, I am copying the Youth Court and the Board of Supervisors on this letter. Since neither the Youth Court nor the Board of Supervisors has responded to my letters or phone calls, I have no way of knowing their position on MYJP's request. However, I have copied them in the event that they wish to weigh in on this matter and provide written confirmation of the appropriate entity to negotiate access to the Detention Center.

Since federal law is clear on this matter and detained youth with disabilities undoubtedly have the right to receive protection and advocacy services, I am confident that we will be able to resolve this matter amicably and avoid costly and wasteful litigation. Please do not hesitate to contact me to discuss further.

Sincerely,


Vanessa Carroll, Esq.

Cc. Honorable Michael Ward
Honorable Gaston Hewes
William Martin, President, Harrison County Board of Supervisors
Mike Everett, Mississippi Protection & Advocacy

EXHIBIT 1-I

MISSISSIPPI YOUTH JUSTICE PROJECT

921 North President St. Suite B P.O. Box 9283 Jackson, MS 39286
601 948 8882 voice 601 948 8885 fax

October 31, 2008

Honorable Michael Ward
Honorable Gaston H. Hewes, Jr.
Harrison County Youth Court
P.O. Box 7017
Gulfport, MS 39506
Fax: 228-865-7012

Via Facsimile and U.S. Mail

Dear Judge Ward and Judge Hewes:

I am writing to follow up on my letter of October 13, 2008, in which I submitted a request to conduct a protection and advocacy visit at the Harrison County Juvenile Detention Center.

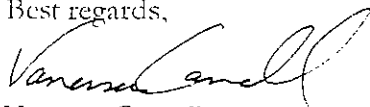
Earlier this week, I met with Gerard Smith, the Harrison County Public Defender, to address his concerns about attorneys from the Mississippi Youth Justice Project ("MYJP") speaking with some of his clients at the Detention Center. After speaking with Mr. Smith and explaining protection and advocacy access in greater detail, he no longer expressed any objections or concerns about MYJP meeting with disabled youth at the Detention Center.

Accordingly, I am writing to you to determine whether the Youth Court is the proper authority to grant MYJP access to the detention center. If that is the case, I would greatly appreciate your assistance in scheduling a monitoring visit as soon as possible. In the alternative, if you do not believe that the Youth Court is the proper authority to grant or deny access to the Detention Center, I would greatly appreciate your guidance with identifying the appropriate authority.

I will be out of the office next week, but will follow up by phone when I return on November 10, 2008.

Thank you for your attention to this matter, and for all you do for Mississippi's youth.

Best regards,



Vanessa Carroll, Esq.

Cc. William Martin, President, Harrison County Board of Supervisors
Gerard Smith, Harrison County Public Defender
Tim C. Holleman, Esq.
Mike Everett, Mississippi Protection & Advocacy

EXHIBIT 1-J

MISSISSIPPI YOUTH JUSTICE PROJECT

921 North President St. Suite B, P.O. Box 9283 Jackson, MS 39286
601 948 8882 voice 601 948 8885 fax

October 14, 2008

Gerald F. Smith, Public Defender
Harrison County Youth Court
P.O. Box 7017
Gulfport, MS 39506
Fax: 228-865-7012

Via Facsimile and U.S. Mail

Dear Mr. Smith:

I am in receipt of your letter dated October 3, 2008, in which you express some questions and concerns about the Mississippi Youth Justice Project ("MYJP") conducting protection and advocacy ("P&A") monitoring visits at the Harrison County Juvenile Detention Center. I agree that a sit-down meeting between the two of us would be most beneficial, and I am happy to schedule a meeting with you some time next week. Right now, I would like to take the opportunity to address your questions and concerns.

First, and most importantly, I would like to stress to you that MYJP is sensitive to your concern about your clients meeting with another attorney while their youth court case is pending. However, as a P&A, it is not our mission or objective to interview youth about their pending youth court case, or to provide them with legal information, advice, or representation on their pending youth court matter. In fact, to do so would go beyond the federal P&A mandate, which authorizes a P&A to monitor juvenile facilities in order to ensure that youth with disabilities receive the care, treatment, and services to which they are entitled under state and federal law. The P&A mandate does not contemplate providing youth with legal advice or representation on criminal or youth court matters, and MYJP does not intend to go beyond the scope of our P&A authority. I can assure you that if a youth raises any questions or concerns about their youth court case, I will refrain from offering information or advice, and instead direct the youth to consult with you or their privately-retained attorney. I would also be happy to contact you following a monitoring visit to let you know about any questions or concerns raised by youth that you would need to address as that child's defense attorney.

Additionally, I am happy to expand upon the definition of "disabled." For the purposes of a P&A, disability is best understood within the context of the three P&A programs: Developmental Disabilities Assistance and Bill of Rights Act of 2000 (the "DD Act"), 42 U.S.C. §§ 15041-15045, which covers individuals with developmental disabilities; the Protection and Advocacy for Individuals with Mental Illness Act of 1986 (the "PAIMI Act"), 42 U.S.C. §§ 10801 *et seq.*, which applies to individuals with mental illness; and the Protection and Advocacy of Individual Rights ("PAIR") Program, 29 U.S.C. § 794(e), which

applies to all other individuals with disabilities not otherwise covered under the DD and PAIMI Acts.

Both the DD and PAIMI Acts provide specific guidance on the individuals covered under each act. The DD Act defines a developmental disability as “a severe, chronic disability of an individual” that:

- (i) is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (ii) is manifested before the individual attains age 22;
- (iii) is likely to continue indefinitely;
- (iv) results in substantial functional limitations in 3 or more of the following areas of major life activity:
 - (I) Self-care.
 - (II) Receptive and expressive language.
 - (III) Learning.
 - (IV) Mobility.
 - (V) Self-direction.
 - (VI) Capacity for independent living.
 - (VII) Economic self-sufficiency; and
- (v) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

42 U.S.C. § 15002(8). Any individual with this type of disability is eligible for P&A services under the DD Act.

The PAIMI Act states that a person with a mental illness is anyone who has been diagnosed with a significant mental illness or emotional impairment by a licensed mental health professional. 42 U.S.C. §10802(4). Therefore, any individual with a mental health diagnosis is eligible for P&A services under the PAIMI Act.

Since the PAIR Program was designed to reach all other individuals with disabilities not covered under the DD or PAIMI Acts, Congress relied on a general definition of disability to identify the individuals eligible for services under the PAIR Program. In general, a disability is defined as “a physical or mental impairment that substantially limits one or more major life activities.” 29 U.S.C.S. §705(9)(B). Major life activities include but are not limited to learning, working, and caring for oneself. 45 C.F.R. 84.3(j)(2)(ii). Since learning is considered a major life activity, and the PAIR Program covers individuals with disabilities not covered under the DD Act or PAIMI Act, children with disabilities entitled to special education services under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1401(3), are considered disabled and eligible for protection and advocacy services under the PAIR Program.

In your letter, you also asked whether I have received specific allegations of abuse or neglect at the Harrison County Juvenile Detention Center. MYJP monitors a number of different facilities throughout the state, and in the course of this monitoring we have received reports of unacceptable conditions at the Detention Center. In particular, we have heard that the Detention Center is unsanitary, youth do not receive adequate education services, staff fail to protect youth from harm, and youth are forced to spend excessive periods of time in their cell. These reports are obviously disturbing, and MYJP is responding to these reports by requesting P&A access to the Detention Center to ensure the safety and well-being of detained youth with disabilities.

Finally, with regard to your inquiry about the type of access and monitoring anticipated by MYJP, it may be helpful to describe again the access authority granted to P&As under federal law. Under both the DD Act and the PAIMI Act¹, Congress designated two distinct sources for access to facilities: 1) access for the purpose of investigating allegations of abuse and/or neglect, 42 U.S.C. § 15043(a)(2)(B), 42 U.S.C. § 10805(a)(1)(A), 45 C.F.R. § 1386.22(f), 42 C.F.R. § 51.42 (b); and 2) access for the purpose of monitoring the facility and the treatment of residents. 42 U.S.C. § 15043(a)(2)(H), 42 U.S.C. § 10805(a)(3), 45 C.F.R. § 1386.22(g), 42 C.F.R. § 51.42 (c). Federal courts in the 5th Circuit have recognized both types of P&A access authority. *See Miss. Protection & Advocacy System v. Cotten*, 1989 U.S. Dist. LEXIS 17075 (S.D. Miss. 1989); *aff'd*, 929 F.2d 1054 (5th Cir. 1991).

A facility must grant a P&A investigatory access when the P&A receives a complaint or allegation of abuse, 45 C.F.R. § 1386.22(f), 42 C.F.R. § 51.42(b)(1); *or* when the P&A has probable cause to believe that an incident of abuse has occurred. 45 C.F.R. § 1386.22(f), 42 C.F.R. § 51.42(b)(3). A complaint includes any formal or informal communication alleging abuse, 42 C.F.R. § 51.2; and the P&A is responsible for making the probable cause determination. *See* 42 C.F.R. § 51.31(g) (“Determination of ‘probable cause’ may result from P&A system monitoring or other activities, including observation by P&A system personnel”) Further, when investigating allegations of abuse, a P&A “shall have reasonable unaccompanied access to residents at all times necessary to conduct a full investigation of an incident of abuse or neglect.” 42 C.F.R. § 51.42(b).

P&As also have authority to access a facility and its residents for the purpose of monitoring conditions – even absent a report of an incident of abuse or neglect or probable cause to believe that such an incident has occurred. *Michigan Protection and Advocacy, Inc. v. Miller*, 849 F. Supp. 1202 (W.D. Mich. 1994) (holding that beyond allowing the investigation of specific complaints, the state must also provide P&A with reasonable access to juvenile facility so that P&A may engage in monitoring activities.) In addition to access for investigating suspected incidents of abuse and neglect, P&As are also entitled to “reasonable unaccompanied access to facilities including all areas which are used by residents, are accessible to residents and to programs and their residents at reasonable times, which at a minimum shall include normal working hours and visiting hours.” 42 C.F.R. § 51.42 (c); *see*

¹ Congress intended for the three P&A programs to be applied consistently, and the PAIR Program expressly incorporates by reference the DD Act’s Access provisions. *see* 42 U.S.C. 794e(f)(2). Accordingly, the access provisions of the DD Act and the PAIMI Act apply with equal force to individuals with disabilities eligible for P&A services under the PAIR Program.

also 45 C.F.R. § 1386.22(g). The purpose of this access is providing residents with educational programming on mental health, individual rights, and protection and advocacy services; "monitoring compliance with respect to the rights and safety of residents; and . . . inspecting, viewing and photographing all areas of the facility which are used by residents or are accessible to residents." 42 C.F.R. § 51.42(c) (1)-(3); see also 45 C.F.R. § 1386.22(g).

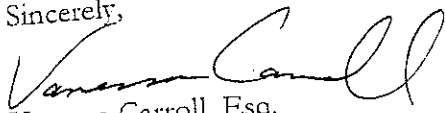
The P&A is not required to furnish a facility with the name or other identifying information regarding the residents(s) with whom it plans to meet, or of the individuals that reported incidents of abuse or neglect. See *Cotton*, 929 F.2d at 1056-57. Similarly, the P&A does not need to justify or explain its contacts with residents to the facility. See *Cotton*, 929 F.2d at 1056-1057. Indeed, federal courts widely recognize that a P&A is "the final arbiter of probable cause" for the purpose of investigating abuse or neglect. See *Arizona Ctr. For Disability Law v. Allen*, 197 F.R.D. 689, 693 (D.Ariz. 2000); see also *Office of Prot. & Advocacy for Persons with Disabilities v. Armonstrong*, 266 F. Supp. 2d 303, 321-22 (D. Conn. 2003) (holding that P&A is entitled to make its probable cause determination independent of any other agency or third party review).

With that said, MYJP intends to conduct regular monitoring visits to the Detention Center, and the frequency of these visits will be determined by what we observe at the Detention Center and the reports we receive from detained youth. Should the need arise, we will also conduct additional visits to investigate any specific allegations of abuse and neglect.

As you requested, I am also enclosing for you a copy of my September 11, 2008 letter, as well as a copy of MYJP's contract with Mississippi Protection & Advocacy.

In terms of a meeting date, I have some dates and times available next week, and I will call you soon to set up a convenient time. Thank you for your interest in this matter, and I look forward to meeting with you soon.

Sincerely,


Vanessa Carroll, Esq.

Enclosures (2)

Cc. Mike Everett, Mississippi Protection & Advocacy

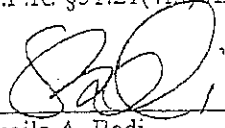
Cooperative Agreement Between Mississippi Protection & Advocacy System, Inc. and the
Mississippi Youth Justice Project, a project of the Southern Poverty Law Center

This is a contract between Mississippi Protection and Advocacy, "MS P&A," and the Mississippi Youth Justice Project, a project of the Southern Poverty Law Center "MYJP." This contract is intended to provide MYJP with access to correctional and mental health facilities housing individuals with mental illness, developmental disabilities, and/or other disabilities under the age of 21. Pursuant to federal law and this agreement, MYJP will have all of the access rights and privileges afforded to MS P&A, subject only to the limitations explained below.

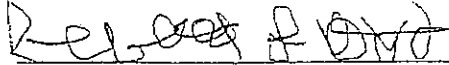
1. Pursuant to 42 U.S.C. § 10804 (a) (1)(A-B), MS P&A has the authority to contract with non-profit organizations that 1) operate throughout the state of Mississippi; 2) are independent of any agency that provides treatment or services to individuals with disabilities; and 3) have the capacity to protect and advocate for the rights of individuals with disabilities. MYJP operates throughout the state of Mississippi, does not provide treatment services to individuals with disabilities, and has the capacity to protect and advocate for the rights of individuals with disabilities.
2. Pursuant to the above and 42 C.F.R. §51.21(3)(i), MYJP is authorized to provide the following protection and advocacy services: to investigate incidents of abuse and neglect concerning individuals with mental illness, developmental disabilities, and/or other disabilities who are incarcerated at the Walnut Grove Youth Correctional Facility, any county jail detention center or juvenile detention center housing children under the age 21, the Oakley Training School, and the Columbia Training School; to investigate incidents of abuse and neglect concerning individuals with mental illness, developmental disabilities, and/or other disabilities under the age of 21 committed to any facility operated by the Department of Mental Health, including, but not limited to the Juvenile Rehabilitation Facility and the Specialized Treatment Facility for Youth with Emotional Disturbances; and to monitor the above mentioned facilities for compliance with respect to the rights and safety of service recipients as outlined in 45 C.F.R. §1386.22(g) and 42 C.F.R. § 51.42(c)(2).
3. Pursuant to 42 U.S.C. § 10806, this contract authorizes MYJP to have access to all records of any person with a disability who is incarcerated or committed in any institution in which MYJP conducts monitoring visits.
4. MYJP is authorized to pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness, developmental disabilities, and/or other disabilities in the above-mentioned facilities. MYJP will provide notice to MS P&A before it initiates any formal legal action.
5. MYJP will establish a schedule of monitoring visits and will provide notice to MS P&A at least twenty-four hours in advance of every visit. MYJP will also provide MS P&A with a written report of each visit within 48 hours of the visit.
6. Pursuant to 42 C.F.R. §51.21, MYJP submits the following information: MYJP attorneys, community organizers, and interns routinely advocate for children with mental illness, developmental disabilities, and/or other disabilities and their families and conduct investigations on their behalf. 42 C.F.R. §51.21(ii). In the course of monitoring and/or investigation, MYJP will conduct interviews with clients and facility staff and review the relevant records. 42 C.F.R. §51.21(iii). While there is no deadline for this contract, it may be cancelled by either party upon

written notification of cancellation provided two weeks in advance. 42 C.F.R. §51.21(iv). MYJP will use its own resources to fulfill the contract and will not seek monetary support from MS P&A. §51.21(v).

7. MYJP will abide by the federal law that establishes MS P&A and will meet all applicable terms and conditions of MS P&A's grant of authority. 42 C.F.R. §51.21(vi). All work conducted pursuant to this contract will be executed under the supervision of Sheila Bedi, an attorney and co-director of the MYJP. MYJP's liability insurance will cover all MYJP work conducted pursuant to this contract. 42 C.F.R. §51.21(vii). MYJP attorneys, community organizers, and interns routinely advocate for children with mental illness, developmental disabilities, and/or mental or physical handicaps and their families and conduct investigations on their behalf. 42 C.F.R. §51.21(viii)-(ix).



Sheila A. Bedi
Co-Director, MYJP



Rebecca A. Floyd
Executive Director, MPAS

4/26/07

Date

4/27/07

Date

EXHIBIT 1-K

MISSISSIPPI YOUTH JUSTICE PROJECT

921 North President St. Suite B, P.O. Box 9283, Jackson, MS 39286
601 948 8882 voice 601 948 8885 fax

October 13, 2008

William Martin, President
Harrison County Board of Supervisors
P.O. Drawer CC
Gulfport, MS 39502
Fax: 228-865-4206

Via Facsimile & U.S. Mail

Dear Mr. Martin:

I am writing to you at the suggestion of Tim C. Holleman regarding the Mississippi Youth Justice Project's ("MYJP") recent request to conduct a protection and advocacy visit to the Harrison County Detention Center. According to Mr. Holleman, the Mississippi Security Police, which operates the Detention Center, does not possess the legal authority to grant access to the facility. It is his understanding that the Harrison County Youth Court or the County Board of Supervisors has the authority to grant access. He therefore recommended that I contact you directly to seek access to the facility.

As described in much greater detail in the enclosed letter to Mr. Holleman dated September 19, 2008, MYJP is an authorized agent of Mississippi Protection & Advocacy ("MP&A"). As an agent of a federally-mandated protection and advocacy system, MYJP has the authority under federal law to access youth with disabilities in detention centers in order to monitor their conditions of confinement and provide them with protection and advocacy services. I encourage you to read the enclosed correspondence for a much more detailed description of protection and advocacy systems and the federal laws that guarantee protection and advocacy systems access to facilities like the Harrison County Detention Center.

I have also enclosed a copy of MYJP's contract with Mississippi Protection & Advocacy for your review. I would greatly appreciate it if you would review the enclosed materials and let me know the best way for MYJP to arrange a P&A monitoring visit to the Detention Center. I am more than happy to meet with you in person to discuss MYJP's intentions and address any questions you may have. I will contact you early next week to arrange a convenient time for us to meet. In the meantime, please do not hesitate to contact me with any questions or concerns.

Sincerely,


Vanessa Carroll, Esq.

Enclosures (2)

cc: Honorable Gaston H. Hewes, Jr.
Honorable Robin Alfred Midcalf
Honorable Michael Ward
Herbert W. Wilson, County Prosecutor
Gerald F. Smith, Harrison County Public Defender
Tim C. Holleman, Esq.
Mike Everett, Mississippi Protection & Advocacy

EXHIBIT 1-L

MISSISSIPPI YOUTH JUSTICE PROJECT

921 North President St. Suite B, P.O. Box 9283, Jackson, MS 39286
601 948 8882 voice • 601 948 8885 fax

September 19, 2008

Tim C. Holleman, Esq.
Boyce Holleman & Associates
1720 23rd Ave.
Gulfport, MS 39501
Fax: 228-863-9829

Dear Mr. Holleman:

Thank you for your prompt response to my letter dated September 11, 2008. I understand that you may not be familiar with the federal laws governing protection and advocacy systems ("P&A's"), which is why you are hesitant to allow the Mississippi Youth Justice Project (MYJP) to conduct a protection and advocacy visit to the Harrison County Juvenile Detention Center. I would therefore like to take this opportunity to further explain what a P&A does, and why federal law requires the Harrison County Juvenile Detention Center to grant MYJP access to the Detention Center to provide all disabled youth with P&A services.

Congress created P&As with the passage of the Developmental Disabilities Assistance and Bill of Rights Act of 1975; and P&A services have since been expanded to provide legal representation and other advocacy services on behalf of all persons with disabilities.¹ The DD Act provides for a P&A to protect the legal and human rights of individuals with developmental disabilities. 42 U.S.C. § 15041; and the PAIMI Act recognizes that "individuals with mental illness are vulnerable to abuse and serious injury . . . [and] subject to neglect, including lack of treatment, adequate nutrition, clothing, health care, and adequate discharge planning." 42 U.S.C. § 10801(a). PAIMI requires the P&A system to ensure that the rights of individuals with mental illness are protected by monitoring facilities and investigating incidents of abuse and neglect of the mentally ill. 42 U.S.C. § 10801(b). Finally, the PAIR Program was created to protect the rights of all other individuals with disabilities who are not covered under the DD and PAIMI Acts. 29 U.S.C. § 794e.

In order to carry out the congressional mandate to protect the rights of individuals with disabilities, the P&A Acts provide that the state's protection & advocacy system, and its authorized agents, like MYJP, must have physical access to facilities housing individuals with disabilities.

Under the DD Act, "the system and all of its authorized agents shall have unaccompanied access to all residents of a facility [providing care, support, and services to individuals with developmental disabilities] at reasonable times . . ." 45 C.F.R. § 1386.22 (g) and this "shall include the opportunity to meet and communicate privately with such individuals regularly, both formally and informally, by telephone, mail and in person." 45 C.F.R. §1386.22(h). P&A's have access to facilities for the

¹ The "P&A Acts" consist of the following: Part C of Title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (the "DD Act"), 42 U.S.C. §§15041-15045; the Protection & Advocacy for Individuals with Mental Illness Act of 1986 (the "PAIMI Act"), 42 U.S.C. §§10801 *et seq.*; and the Protection and Advocacy of Individual Rights ("PAIR") Program of the Rehabilitation Act of 1973. 29 U.S.C. § 794e.

purpose of:

- (1) Providing information and training on, and referral to, programs addressing the needs of individuals with developmental disabilities, and the protection and advocacy services available from the system, including the name, address, and telephone number of the system and other information and training about individual rights; and
- (2) Monitoring compliance with respect to the rights and safety of service recipients.

45 C.F.R. § 1386.22(g).

The PAIMI Act similarly provides that the P&A and its agents must have reasonable access to facilities that provide care or treatment to individuals with mental illness. 42 U.S.C. § 10805(a)(3). *See also* 42 C.F.R. § 51.42(a) (“Access to facilities and residents shall be extended to all authorized agents of a P&A system.”) P&A’s are entitled to “reasonable unaccompanied access to facilities [which render care and treatment for people with mental illness] including all areas which are used by residents, are accessible to residents and to programs and their residents at reasonable times, which at a minimum shall include normal working hours and visiting hours.” 42 C.F.R. § 51.42 (c). The purpose of this access is providing residents with educational programming on mental health, individual rights, and protection and advocacy services; “monitoring compliance with respect to the rights and safety of residents; and . . . inspecting, viewing and photographing all areas of the facility which are used by residents or are accessible to residents.” 42 C.F.R. § 51.42(c) (1)-(3).

Congress intended that the respective access authorities under the three protection and advocacy programs be applied in a consistent manner, and the PAIR program expressly incorporates by reference (at 42 U.S.C. 794(e)(f)) the authority regarding access to facilities and records (as well as the other general authorities granted protection and advocacy systems) set forth in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (PADD). Specifically, the PAIR statutory language provides that protection and advocacy systems under the PAIR Program “have the same general authorities, including access to records . . . as set forth” in PADD. 29 U.S.C. § 794e(f)(2). Thus, PADD’s access authority applies with equal force under the PAIR Program.

The population served under the PAIR program includes all individuals who have a physical or mental impairment that substantially limits one or more major life activity. 29 U.S.C. § 705(9)(B). Major life activities include learning, and thus individuals with learning disabilities who receive services under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401(3), are also entitled to receive P&A services.

MYJP is entitled to access the Harrison County Juvenile Detention Center because both PAIMI and PADD include “juvenile detention centers” in the definition of facilities covered by P&A authority. 42 C.F.R. § 51.2; 45 C.F.R. § 1386.19. The Harrison County Juvenile Detention Center clearly falls under this category.

Federal law grants P&A’s two distinct sources for access to facilities: 1) access for the purpose of investigating allegations of abuse and/or neglect, 42 C.F.R. § 51.42 (b); and 2) access for the purpose of monitoring the facility and the treatment of residents. 42 C.F.R. § 51.42 (c). Federal courts in the

5th Circuit have recognized both types of P&A access authority. See *Miss. Protection & Advocacy System v. Cotten*, 1989 U.S. Dist. LEXIS 17075 (S.D. Miss. 1989); *aff'd*, 929 F.2d 1054 (5th Cir. 1991). MYJP seeks access pursuant to both P&A's monitoring and investigative authorities. 45 C.F.R. 1386.22(g)(ii); 42 C.F.R. 52.42(c)(2).

MYJP seeks access to the Detention Center pursuant to both our monitoring and investigative authorities. Through our contact with youth at other facilities in Mississippi, we have received reports from youth formerly detained in the Harrison County Juvenile Detention Center about abusive conditions within the facility. This provides MYJP with probable cause to visit the facility and conduct an investigation.

But even absent probable cause, P&A's and its agents "shall have unaccompanied access to all residents of a facility at reasonable times, which at a minimum shall include normal working hours and visiting hours, for the purpose of . . . monitoring compliance with respect to the rights and safety of service recipients." 45 C.F.R. § 1386.22(g). See also 42 C.F.R. § 51.42(c)(2). We seek access to the Harrison County Detention Center and to the names of youth whom are receiving mental health services, special education services, or whom have a disability as defined by the Rehabilitation Act of 1973 under the authority that grants MS P&A and MYJP access to the Detention Center in order to monitor compliance with the rights and safety of these youth.

Of course, it is entirely possible that there are some youth housed at the Detention Center who the facility has not yet identified as disabled. MS P&A's right to access these youth is similarly well established. See *Michigan Protection & Advocacy Services v. Miller*, 849 F.Supp. 1202 (W.D. Mich. 1994) (finding that denying P&A full access prevents the advocacy organization from bringing in their own mental health professionals to ascertain whether the residents suffer from mental illness when studies showed the prevalence of mental illness in training schools and detention centers.).²

With regard to your concern that P&A access by an attorney would violate the Rules of Professional Conduct, I respectfully disagree. Under the U.S. Constitution, detained and committed youth have a fundamental right to access the courts to challenge the conditions of their confinement. *Cornett v. Donovan*, 51 F.3d 894, 897 (9th Cir. 1995) ("The right of access helps ensure that the unlawfully detained obtain their freedom, and that the lawfully detained have recourse for violation of fundamental constitutional rights.") (citation omitted); see also *Wolff v. McDonnell*, 418 U.S. 539, 580 (1974) (The right of access to the courts is "founded in the Due Process Clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights.") Moreover, this right is not limited to adults – it applies with equal force to children. See *John L. v. Adam*, 969 F.2d 228, 230 (6th Cir. 1992) (holding that juveniles have constitutional right to access courts); *Morgan v. Sproat*, 432 F. Supp. 1130, 1158 (S.D. Miss. 1977) (same).

² See also, *Connecticut P&A v. Hartford Board of Education*, 355 F. Supp. 2d 649 (D. Conn. 2005) (stating the purpose of PAIMI and PADD to provide protection and advocacy services is defeated if P&A is not allowed to ascertain whether students have a mental illness); *Georgia Advocacy Office Inc. v. Camp*, 172 F.3d 1294 (11th Cir. 1999) (finding that a facility that offered the services of a psychiatrist and psychologist as well as mental health screenings, evaluations, counseling, medication supervision, and education may have residents who were "mentally ill" under the PAIMI Act.); *Georgia Advocacy Office v. Borison*, 520 S.E.2d 701 (Ga. Ct. App. 1999) (holding P&A could have access to records of subjects of fraudulent drug studies even though P&A did not have knowledge of whether any particular individual had a disability.)

It is my understanding that the youth detained at the Detention Center are represented by counsel in connection with a youth court proceeding. In contrast, MYJP is seeking to provide detained youth with services pertaining to their conditions of confinement. I am not aware of any youth court defenders that routinely provide youth with this type of representation. Even if they did, I am not aware of any Rule of Professional Conduct that prohibits a client from speaking with an attorney capable of providing representation on separate legal issues.

Finally, with regard to any concerns about confidentiality and parental consent, these matters are also addressed by the P&A Acts. The PAIMI Act specifically states that

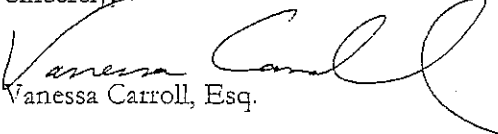
The right of access . . . shall apply despite the existence of any State or local laws or regulations which restrict informal access to minors and adults with legal guardians or conservators. The system shall make every effort to ensure that the parents of minors or guardians of individuals in the care of a facility are informed that the system will be monitoring activities at the facility and may in the course of such monitoring have access to the minor or adult with a legal guardian.

42 C.F.R. § 51.42(e). To the extent that Mississippi state law protects the identities of minors and requires parental consent, this confidentiality is preempted by federal authority to monitor these facilities.

Indeed, MYJP and MS P&A have negotiated access agreements with the Department of Corrections, the Department of Human Services, and the Department of Mental Health to access disabled youth at Walnut Grove Correctional Facility, Columbia Training School (while it was still in operation), Specialized Treatment Facility, and Juvenile Rehabilitation Facility. All three state agencies expressed similar concerns when we first approached them with a P&A request, and we were able to reach an amicable resolution in each case. We look forward to making a similar arrangement with the Harrison County Juvenile Detention Center.

Please do not hesitate to call me to discuss any concerns that you may have. I would also be happy to arrange for a conference call between you, the Detention Center staff, and MYJP to clear up any remaining confusion about P&A access authority.

Sincerely,


Vanessa Carroll, Esq.

Cc. Butch Cummings, Administrator
Mike Everett, Mississippi Protection & Advocacy

Cooperative Agreement Between Mississippi Protection & Advocacy System, Inc. and the Mississippi Youth Justice Project, a project of the Southern Poverty Law Center

This is a contract between Mississippi Protection and Advocacy, "MS P&A," and the Mississippi Youth Justice Project, a project of the Southern Poverty Law Center "MYJP." This contract is intended to provide MYJP with access to correctional and mental health facilities housing individuals with mental illness, developmental disabilities, and/or other disabilities under the age of 21. Pursuant to federal law and this agreement, MYJP will have all of the access rights and privileges afforded to MS P&A, subject only to the limitations explained below.

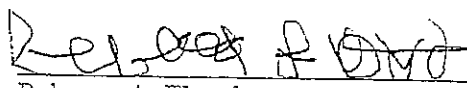
1. Pursuant to 42 U.S.C. § 10804 (a) (1)(A-B), MS P&A has the authority to contract with non-profit organizations that 1) operate throughout the state of Mississippi; 2) are independent of any agency that provides treatment or services to individuals with disabilities; and 3) have the capacity to protect and advocate for the rights of individuals with disabilities. MYJP operates throughout the state of Mississippi, does not provide treatment services to individuals with disabilities, and has the capacity to protect and advocate for the rights of individuals with disabilities.
2. Pursuant to the above and 42 C.F.R. §51.21(3)(i), MYJP is authorized to provide the following protection and advocacy services: to investigate incidents of abuse and neglect concerning individuals with mental illness, developmental disabilities, and/or other disabilities who are incarcerated at the Walnut Grove Youth Correctional Facility, any county jail detention center or juvenile detention center housing children under the age 21, the Oakley Training School, and the Columbia Training School; to investigate incidents of abuse and neglect concerning individuals with mental illness, developmental disabilities, and/or other disabilities under the age of 21 committed to any facility operated by the Department of Mental Health, including, but not limited to the Juvenile Rehabilitation Facility and the Specialized Treatment Facility for Youth with Emotional Disturbances; and to monitor the above mentioned facilities for compliance with respect to the rights and safety of service recipients as outlined in 45 C.F.R. §1386.22(g) and 42 C.F.R. § 51.42(c)(2).
3. Pursuant to 42 U.S.C. § 10806, this contract authorizes MYJP to have access to all records of any person with a disability who is incarcerated or committed in any institution in which MYJP conducts monitoring visits.
4. MYJP is authorized to pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness, developmental disabilities, and/or other disabilities in the above-mentioned facilities. MYJP will provide notice to MS P&A before it initiates any formal legal action.
5. MYJP will establish a schedule of monitoring visits and will provide notice to MS P&A at least twenty-four hours in advance of every visit. MYJP will also provide MS P&A with a written report of each visit within 48 hours of the visit.
6. Pursuant to 42 C.F.R. §51.21, MYJP submits the following information: MYJP attorneys, community organizers, and interns routinely advocate for children with mental illness, developmental disabilities, and/or other disabilities and their families and conduct investigations on their behalf. 42 C.F.R. §51.21(ii). In the course of monitoring and/or investigation, MYJP will conduct interviews with clients and facility staff and review the relevant records. 42 C.F.R. §51.21(iii). While there is no deadline for this contract, it may be cancelled by either party upon

written notification of cancellation provided two weeks in advance. 42 C.F.R. §51.21(iv). MYJP will use its own resources to fulfill the contract and will not seek monetary support from MS P&A. §51.21(v).

7. MYJP will abide by the federal law that establishes MS P&A and will meet all applicable terms and conditions of MS P&A's grant of authority. 42 C.F.R. §51.21(vi). All work conducted pursuant to this contract will be executed under the supervision of Sheila Bedi, an attorney and co-director of the MYJP. MYJP's liability insurance will cover all MYJP work conducted pursuant to this contract. 42 C.F.R. §51.21(vii). MYJP attorneys, community organizers, and interns routinely advocate for children with mental illness, developmental disabilities, and/or mental or physical handicaps and their families and conduct investigations on their behalf. 42 C.F.R. §51.21(viii)-(ix).



Sheila A. Bedi
Co-Director, MYJP



Rebecca A. Floyd
Executive Director, MPAS

4/26/07

Date

4/27/07

Date

EXHIBIT 1-M

Boyce
HOLLEMAN & ASSOCIATES
A Professional Association Attorneys at Law
 Since 1950

September 22, 2008

Vanessa J. Carroll, Esq.
 Mississippi Youth Justice Project
 921 N. President Street, Suite B
 Jackson, MS 39202

Via Facsimile Only (601) 948-8885

Re: "Protection and Advocacy Visit"

Dear Ms Carroll:

Perhaps you misunderstood my letter of September 12, 2008. Your request should be directed to the Harrison County Youth Court or possibly the Harrison County Board of Supervisors. Your request is directed to the wrong entity. For the reasons previously stated, Mississippi Security Police has no authority to grant your request. I do not have a disagreement regarding your request or the law as stated in your letter. I was merely pointing out that you need to make your request to the appropriate authority. In fact, your letter states that your organization has "negotiated access agreements" granting access with the appropriate agencies such as the "Department of Corrections, the Department of Human Services, and the Department of Mental Health." These were the appropriate authorities to negotiate such.

Mississippi Security Police is a private contractor and has absolutely no authority under the law, State or Federal, to negotiate any "access agreements" to the Harrison County Youth Detention Center. We were merely advising you that you need to contact the appropriate entities with authority to "negotiate" access, as you have done before with the above-mentioned State departments.

Please contact the Board of Supervisors of Harrison County, Mississippi and/or the Harrison County Youth Court. By copy of this letter, I am providing a copy of your most recent letter to the persons noted below.

Thank you for your understanding in this regard. With best regards, I am

Sincerely,

BOYCE HOLLEMAN & ASSOCIATES

Tim C. Holleman
 Tim C. Holleman *by gmg*

TCH/gmg

cc: Honorable Gaston H. Hewes, Jr. (w/ enclosure)
 Honorable Michael H. Ward (w/ enclosure)
 Honorable Robin A. Midcalf (w/ enclosure)
 Herbert W. Wilson, Esq. (w/ enclosure)
 Joseph R. Meadows, Esq. (w/ enclosure)
 William Martin, President (w/ enclosure)

Jesse Boyce Holleman
 1924-2003

Tim C. Holleman
 tim@boyceholleman.com

L. Dean Holleman
 dean@boyceholleman.com

D. Jeffrey White
 jeff@boyceholleman.com

1720 23rd Avenue • Boyce Holleman Blvd. • Gulfport, MS 39501 • P.O. Drawer 1030 • Gulfport, MS 39502
 Office: 228-863-3142 • Toll Free: 1-888-863-3140 • Fax: 228-863-9829 • www.boyceholleman.com

EXHIBIT 1-N

THE YOUTH COURT

OF HARRISON COUNTY

CINDY L. ALEXANDER
COURT ADMINISTRATOR

GAYLE PARKER
CIRCUIT CLERK

GASTON H. HEWES, JR.
JUDGE

ROBIN ALFRED MIDCALFE
JUDGE

MICHAEL H. WARD
JUDGE

ELIZABETH W. CASEY
ASSISTANT COURT ADMINISTRATOR

RHONDA L. SNELL
ASSISTANT COURT ADMINISTRATOR

October 3, 2008

Vanessa J. Carroll, Esq.
Mississippi Youth Justice Project
921 N. President Street, Suite B
Jackson, MS 39202

RE: "Protection and Advocacy Visit"

Dear Ms. Carroll:

My name is Gerard F. Smith. I am the Public Defender for the minors who come before the Harrison County Youth Court, on all criminal matters. I have had an opportunity to meet with Herbert W. Wilson, the County Prosecutor, and the Right Honorable Michael H. Ward, County Court Judge, Youth Court Division. I am also in receipt of your letter of September 19th, addressed to Timothy C. Holliman, Esq. and his September 22nd response to you.

I would ask that all future correspondence involving Youth Court juveniles be directed to this advocate. If there is any other correspondence that you would like for me to have knowledge of, please feel free to send it to me as follows:

Gerard F. Smith, Public Defender
Harrison County Youth Court
P.O. Box 7017
Gulfport, MS 39506

Addressing the issues that you raised, in your September 19th correspondence, I must tell you in all candor that I am not familiar with the P & A's and the M.Y.J.P. Project. You would be correct in assuming that I am somewhat hesitant to have my clients visited by your Center. You seemed to indicate that this would only apply to "disabled youth". I would ask that you expand on the definition of "disabled".

I do thank you for your brief summary of the law in regard to Development Disability Assistance and Bill Rights Act of 1975. While I am aware that "individuals with mental illness are vulnerable to abuse and serious injury", I can assure you that every effort is made to make sure that any young individual incarcerated with the Harrison County Youth Court, is provided access to not only a nurse, but is regulated in regard to all medication that they and/or their parents have made the Court aware of, and are scheduled to take.

Page 2

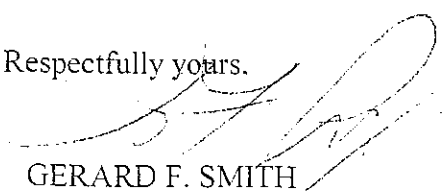
While I do not object to your having physical access to the facilities housing the individuals with disabilities, I would think that the best way to proceed, would be for a sit down visit with myself, so that we can have a better understanding as to what your specific needs would be.

You indicate in your letter that you have an absolute right to visit these facilities and have access to them for the purpose of investigating allegations of abuse and/or neglect. Do you have any specific allegations that you have received, in regard to abuse and/or neglect of individuals that were housed in the Harrison County Youth Detention Facility? You also state that you wish to have access for the purpose of monitoring the facility and the treatment of the residence. I would ask that you define specifically, what type of access and/or "monitoring" you wish to conduct.

You further indicated in your letter that under the U.S. Constitution, detained and committed youth have a fundamental right to access the courts, and to challenge the conditions of their confinement. Do you have any individuals who have challenged the conditions of their confinement. Please understand that in essence, I believe this to be a good program. If there are certain conditions that need to be brought to light, then they should be. I believe that a sit down between the two of us would be mutually beneficial, not only to help you in completing your mission, but also in helping my clients general welfare. Please check your calendar, and at your earliest convenience, I would make myself available upon proper notice, so that we may have a conference in regard to all of the matters discussed in your letter of September 19th correspondence.

I would also ask that you forward to me under separate cover, your letter of September 11th. I am not privy to contents of that letter, and it would help if I were to have all correspondence before me, prior to our meeting. Should you have any questions, please do not hesitate to contact me at (228) 865-7000. I remain,

Respectfully yours,



GERARD F. SMITH
Harrison County Public Defender

c: Honorable Gaston H. Hewes, Jr.
Honorable Michael H. Ward
Honorable Robin A. Midcalf
Herbert W. Wilson, County Prosecutor
Cindy Alexander, Court Administrator

EXHIBIT 1-O

MISSISSIPPI YOUTH JUSTICE PROJECT

921 North President St. Suite B P.O. Box 9283 Jackson, MS 39286
601 948 8882 voice 601 948 8885 fax

September 19, 2008

Tim C. Holleman, Esq.
Boyce Holleman & Associates
1720 23rd Ave.
Gulfport, MS 39501
Fax: 228-863-9829

Dear Mr. Holleman:

Thank you for your prompt response to my letter dated September 11, 2008. I understand that you may not be familiar with the federal laws governing protection and advocacy systems ("P&A's"), which is why you are hesitant to allow the Mississippi Youth Justice Project (MYJP) to conduct a protection and advocacy visit to the Harrison County Juvenile Detention Center. I would therefore like to take this opportunity to further explain what a P&A does, and why federal law requires the Harrison County Juvenile Detention Center to grant MYJP access to the Detention Center to provide all disabled youth with P&A services.

Congress created P&As with the passage of the Developmental Disabilities Assistance and Bill of Rights Act of 1975; and P&A services have since been expanded to provide legal representation and other advocacy services on behalf of all persons with disabilities.¹ The DD Act provides for a P&A to protect the legal and human rights of individuals with developmental disabilities. 42 U.S.C. § 15041; and the PAIMI Act recognizes that "individuals with mental illness are vulnerable to abuse and serious injury . . . [and] subject to neglect, including lack of treatment, adequate nutrition, clothing, health care, and adequate discharge planning." 42 U.S.C. § 10801(a). PAIMI requires the P&A system to ensure that the rights of individuals with mental illness are protected by monitoring facilities and investigating incidents of abuse and neglect of the mentally ill. 42 U.S.C. § 10801(b). Finally, the PAIR Program was created to protect the rights of all other individuals with disabilities who are not covered under the DD and PAIMI Acts. 29 U.S.C. § 794e.

In order to carry out the congressional mandate to protect the rights of individuals with disabilities, the P&A Acts provide that the state's protection & advocacy system, and its authorized agents, like MYJP, must have physical access to facilities housing individuals with disabilities.

Under the DD Act, "the system and all of its authorized agents shall have unaccompanied access to all residents of a facility [providing care, support, and services to individuals with developmental disabilities] at reasonable times . . ." 45 C.F.R. § 1386.22 (g) and this "shall include the opportunity to meet and communicate privately with such individuals regularly, both formally and informally, by telephone, mail and in person." 45 C.F.R. § 1386.22(h). P&A's have access to facilities for the

¹ The "P&A Acts" consist of the following: Part C of Title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (the "DD Act"), 42 U.S.C. §§15041-15045; the Protection & Advocacy for Individuals with Mental Illness Act of 1986 (the "PAIMI Act"), 42 U.S.C. §§10801 *et seq.*; and the Protection and Advocacy of Individual Rights ("PAIR") Program of the Rehabilitation Act of 1973, 29 U.S.C. § 794e.

purpose of:

- (1) Providing information and training on, and referral to, programs addressing the needs of individuals with developmental disabilities, and the protection and advocacy services available from the system, including the name, address, and telephone number of the system and other information and training about individual rights; and
- (2) Monitoring compliance with respect to the rights and safety of service recipients.

45 C.F.R. § 1386.22(g).

The PAIMI Act similarly provides that the P&A and its agents must have reasonable access to facilities that provide care or treatment to individuals with mental illness. 42 U.S.C. § 10805(a)(3). *See also* 42 C.F.R. § 51.42(a) (“Access to facilities and residents shall be extended to all authorized agents of a P&A system.”) P&A’s are entitled to “reasonable unaccompanied access to facilities [which render care and treatment for people with mental illness] including all areas which are used by residents, are accessible to residents and to programs and their residents at reasonable times, which at a minimum shall include normal working hours and visiting hours.” 42 C.F.R. § 51.42 (c). The purpose of this access is providing residents with educational programming on mental health, individual rights, and protection and advocacy services; “monitoring compliance with respect to the rights and safety of residents; and . . . inspecting, viewing and photographing all areas of the facility which are used by residents or are accessible to residents.” 42 C.F.R. § 51.42(c) (1)-(3).

Congress intended that the respective access authorities under the three protection and advocacy programs be applied in a consistent manner, and the PAIR program expressly incorporates by reference (at 42 U.S.C. 794(e)(f)) the authority regarding access to facilities and records (as well as the other general authorities granted protection and advocacy systems) set forth in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (PADD). Specifically, the PAIR statutory language provides that protection and advocacy systems under the PAIR Program “have the same general authorities, including access to records . . . as set forth” in PADD. 29 U.S.C. § 794e(f)(2). Thus, PADD’s access authority applies with equal force under the PAIR Program.

The population served under the PAIR program includes all individuals who have a physical or mental impairment that substantially limits one or more major life activity. 29 U.S.C. § 705(9)(B). Major life activities include learning, and thus individuals with learning disabilities who receive services under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401(3), are also entitled to receive P&A services.

MYJP is entitled to access the Harrison County Juvenile Detention Center because both PAIMI and PADD include “juvenile detention centers” in the definition of facilities covered by P&A authority. 42 C.F.R. § 51.2; 45 C.F.R. § 1386.19. The Harrison County Juvenile Detention Center clearly falls under this category.

Federal law grants P&A’s two distinct sources for access to facilities: 1) access for the purpose of investigating allegations of abuse and/or neglect, 42 C.F.R. § 51.42 (b); and 2) access for the purpose of monitoring the facility and the treatment of residents. 42 C.F.R. § 51.42 (c). Federal courts in the

5th Circuit have recognized both types of P&A access authority. *See Miss. Protection & Advocacy System v. Cotten*, 1989 U.S. Dist. LEXIS 17075 (S.D. Miss. 1989); *aff'd*, 929 F.2d 1054 (5th Cir. 1991).

MYJP seeks access pursuant to both P&A's monitoring and investigative authorities. 45 C.F.R. 1386.22(g)(ii); 42 C.F.R. 52.42(c)(2).

MYJP seeks access to the Detention Center pursuant to both our monitoring and investigative authorities. Through our contact with youth at other facilities in Mississippi, we have received reports from youth formerly detained in the Harrison County Juvenile Detention Center about abusive conditions within the facility. This provides MYJP with probable cause to visit the facility and conduct an investigation.

But even absent probable cause, P&A's and its agents "shall have unaccompanied access to all residents of a facility at reasonable times, which at a minimum shall include normal working hours and visiting hours, for the purpose of . . . monitoring compliance with respect to the rights and safety of service recipients." 45 C.F.R. § 1386.22(g). *See also* 42 C.F.R. § 51.42(c)(2). We seek access to the Harrison County Detention Center and to the names of youth whom are receiving mental health services, special education services, or whom have a disability as defined by the Rehabilitation Act of 1973 under the authority that grants MS P&A and MYJP access to the Detention Center in order to monitor compliance with the rights and safety of these youth.

Of course, it is entirely possible that there are some youth housed at the Detention Center who the facility has not yet identified as disabled. MS P&A's right to access these youth is similarly well established. *See Michigan Protection & Advocacy Services v. Miller*, 849 F.Supp. 1202 (W.D. Mich. 1994) (finding that denying P&A full access prevents the advocacy organization from bringing in their own mental health professionals to ascertain whether the residents suffer from mental illness when studies showed the prevalence of mental illness in training schools and detention centers.).²

With regard to your concern that P&A access by an attorney would violate the Rules of Professional Conduct, I respectfully disagree. Under the U.S. Constitution, detained and committed youth have a fundamental right to access the courts to challenge the conditions of their confinement. *Cornett v. Donovan*, 51 F.3d 894, 897 (9th Cir. 1995) ("The right of access helps ensure that the unlawfully detained obtain their freedom, and that the lawfully detained have recourse for violation of fundamental constitutional rights.") (citation omitted); *see also Wolff v. McDonnell*, 418 U.S. 539, 580 (1974) (The right of access to the courts is "founded in the Due Process Clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights.") Moreover, this right is not limited to adults – it applies with equal force to children. *See John L. v. Adam*, 969 F.2d 228, 230 (6th Cir. 1992) (holding that juveniles have constitutional right to access courts); *Morgan v. Sprad*, 432 F. Supp. 1130, 1158 (S.D. Miss. 1977) (same).

² *See also, Connecticut P&A v. Hartford Board of Education*, 355 F. Supp. 2d 649 (D. Conn. 2005) (stating the purpose of PAIMI and PADD to provide protection and advocacy services is defeated if P&A is not allowed to ascertain whether students have a mental illness); *Georgia Advocacy Office Inc. v. Camp*, 172 F.3d 1294 (11th Cir. 1999) (finding that a facility that offered the services of a psychiatrist and psychologist as well as mental health screenings, evaluations, counseling, medication supervision, and education may have residents who were "mentally ill" under the PAIMI Act.); *Georgia Advocacy Office v. Borison*, 520 S.E.2d 701 (Ga. Ct. App. 1999) (holding P&A could have access to records of subjects of fraudulent drug studies even though P&A did not have knowledge of whether any particular individual had a disability.)

It is my understanding that the youth detained at the Detention Center are represented by counsel in connection with a youth court proceeding. In contrast, MYJP is seeking to provide detained youth with services pertaining to their conditions of confinement. I am not aware of any youth court defenders that routinely provide youth with this type of representation. Even if they did, I am not aware of any Rule of Professional Conduct that prohibits a client from speaking with an attorney capable of providing representation on separate legal issues.

Finally, with regard to any concerns about confidentiality and parental consent, these matters are also addressed by the P&A Acts. The PAIMI Act specifically states that

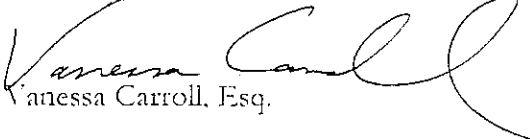
The right of access . . . shall apply despite the existence of any State or local laws or regulations which restrict informal access to minors and adults with legal guardians or conservators. The system shall make every effort to ensure that the parents of minors or guardians of individuals in the care of a facility are informed that the system will be monitoring activities at the facility and may in the course of such monitoring have access to the minor or adult with a legal guardian.

42 C.F.R. § 51.42(e). To the extent that Mississippi state law protects the identities of minors and requires parental consent, this confidentiality is preempted by federal authority to monitor these facilities.

Indeed, MYJP and MS P&A have negotiated access agreements with the Department of Corrections, the Department of Human Services, and the Department of Mental Health to access disabled youth at Walnut Grove Correctional Facility, Columbia Training School (while it was still in operation), Specialized Treatment Facility, and Juvenile Rehabilitation Facility. All three state agencies expressed similar concerns when we first approached them with a P&A request, and we were able to reach an amicable resolution in each case. We look forward to making a similar arrangement with the Harrison County Juvenile Detention Center.

Please do not hesitate to call me to discuss any concerns that you may have. I would also be happy to arrange for a conference call between you, the Detention Center staff, and MYJP to clear up any remaining confusion about P&A access authority.

Sincerely,


Vanessa Carroll, Esq.

Cc. Butch Cummings, Administrator
Mike Everett, Mississippi Protection & Advocacy

EXHIBIT 1-P



September 12, 2008

Vanessa J. Carroll, Esq.
Mississippi Youth Justice Project
921 N. President Street, Suite B
Jackson, MS 39202

SCANNED

Re: "Protection and Advocacy Visit"

Dear Ms Carroll:

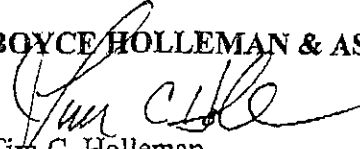
I represent the Mississippi Security Police. The Mississippi Security Police is a private contractor operating the Harrison County Juvenile Detention Center. While we certainly have no objection to your "visit," Mississippi Security Police has no authority to allow you or your project to meet with "eligible youth" at the Harrison County Juvenile Detention Center. These juveniles are under the jurisdiction and authority of the Harrison County Youth Court. Many, if not all, are represented by retained counsel or appointed counsel through the Harrison County Youth Court. It would be a violation of the Mississippi Rules of Professional Conduct for you to "meet with all eligible youth" relating to their cases while represented by counsel. Also, as you know, there are confidentiality laws dealing with minors over which we have no control. If you desire to arrange such a visit, you should contact the Harrison County Youth Court through one of the County Court Judges or the Youth Court Prosecutor, Mr. Herb Wilson.

By copy of this letter and your letter, I am advising the Youth Court Prosecutor, Herb Wilson; Judge Hewes; Judge Midcalf; and, Judge Ward of your request.

Thank you for your understanding in this regard. With best regards, I am

Sincerely,

BOYCE HOLLEMAN & ASSOCIATES


Tim C. Holleman

TCH/gmg

cc: Honorable Gaston H. Hewes, Jr.
Honorable Michael H. Ward
Honorable Robin A. Midcalf
Herbert W. Wilson, Esq.

MISSISSIPPI YOUTH JUSTICE PROJECT

921 North President St. Suite B P.O. Box 9288 Jackson, MS 39286
601 948 8882 voice 601 948 8885 fax

September 11, 2008

By Facsimile and U.S. Mail

Buch Cummings, Administrator
Harrison County Juvenile Detention Center
761 McElroy St.
Biloxi, MS 39530
Fax: (228) 436-8647/(228) 436-8646

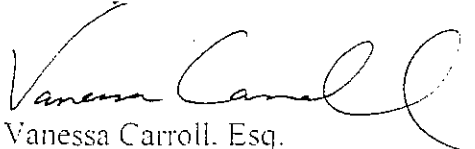
Re: Protection and Advocacy Visit

Dear Mr. Cummings:

I am writing to request a protection and advocacy visit to the Harrison County Juvenile Detention Center some time next week. My organization, the Mississippi Youth Justice Project (MYJP) has contracted with Mississippi Protection and Advocacy (MS P&A) to advocate for the rights of disabled people under 21 who are involved in the juvenile justice system. We have reason to believe that many youth at the Juvenile Detention Center are entitled to protection and advocacy services based upon a mental health diagnosis and/or eligibility for special education services. I am requesting an opportunity to meet with all eligible youth at the Juvenile Detention Center to provide them with information about protection and advocacy services, and to conduct individual meetings with youth that wish to speak to me in private.

For your review, I have attached a copy of our contract with Mississippi Protection & Advocacy, which outlines our access authority under federal law. I will contact you in the next few days to arrange a time when I may conduct an educational visit to your facility. Please contact me if you have any questions about this request or about our access to the youth housed at the Juvenile Detention Center. I can be reached at (601) 948-8882 ex. 22, (601) 519-1994, or vcarroll@spicenter.org. I look forward to speaking with you soon.

Sincerely,



Vanessa Carroll, Esq.

Enclosure (1)

cc: Mike Everett, Mississippi Protection & Advocacy

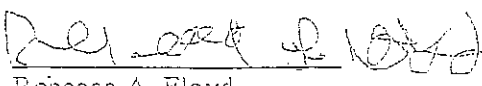
Cooperative Agreement Between Mississippi Protection & Advocacy System, Inc. and the
Mississippi Youth Justice Project, a project of the Southern Poverty Law Center

This is a contract between Mississippi Protection and Advocacy, "MS P & A," and the Mississippi Youth Justice Project, a project of the Southern Poverty Law Center "MYJP." This contract is intended to provide MYJP with access to correctional and mental health facilities housing mentally ill individuals under the age of 21. Pursuant to federal law and this agreement, MYJP will have all of the access rights and privileges afforded to MS P & A, subject only to the limitations explained below.

1. Pursuant to 42 U.S.C. § 10804 (a) (1)(A-B), MS P & A has the authority to contract with non-profit organizations that 1) operate throughout the state of Mississippi; 2) are independent of any agency that provides treatment or services to individuals with disabilities; and 3) have the capacity to protect and advocate for the rights of individuals with disabilities. MYJP operates throughout the state of Mississippi, does not provide treatment services to individuals with disabilities, and has the capacity to protect and advocate for the rights of individuals with disabilities.
2. This contract authorizes MYJP to investigate incidents of abuse and neglect concerning individuals with mental illness, developmental disabilities, and/or other disabilities who are incarcerated at the Walnut Grove Youth Correctional Facility, any county jail detention center or juvenile detention center housing children under the age 21, the Oakley Training School, and the Columbia Training School. This contract further authorizes MYJP to investigate incidents of abuse and neglect concerning individuals with mental illness, developmental disabilities, and/or other disabilities under the age of 21 committed to any facility operated by the Department of Mental Health including, but not limited to the Juvenile Rehabilitation Facility and the Specialized Treatment Facility for Youth with Emotional Disturbances.
3. Pursuant to 42 U.S.C. § 10806, this contract authorizes MYJP to have access to all records of any person with a disability who is incarcerated or committed in any institution in which MYJP conducts monitoring visits.
4. MYJP is authorized to pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness, developmental disabilities, and/or other disabilities in the above-mentioned facilities. MYJP will provide notice to MS P & A before it initiates any formal legal action.
5. MYJP will establish a schedule of monitoring visits and will provide notice to MS P & A at least twenty-four hours in advance of every visit. MYJP will also provide MS P & A with a written report of each visit within 48 hours of the visit.
6. All work conducted pursuant to this contract will be executed under the supervision of Sheila Bedi, an attorney and co-director of the MYJP. MYJP's liability insurance will cover all MYJP work conducted pursuant to this contract.


Sheila A. Bedi
Co-Director, MYJP

11/16/06
Date


Rebecca A. Floyd
Executive Director, MPAS

11/14/06
Date

EXHIBIT TWO

SERVICE AGREEMENT
FOR THE HARRISON COUNTY JUVENILE DETENTION CENTER

THIS AGREEMENT entered into on the last date indicated below by and between MISSISSIPPI SECURITY POLICE INC., a Mississippi corporation, domiciled in Pascagoula, Jackson County, Mississippi, (hereinafter referred to as "MSP") and HARRISON COUNTY, MISSISSIPPI, by and through its Board of Supervisors (hereinafter referred to as "County").

NOW, THEREFORE, for the mutual covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, MSP and County do hereby agree, bind and obligate themselves as follows, to-wit:

ARTICLE 1. GENERAL PROVISIONS

1.1 Purpose - The purpose of this agreement is to establish the terms and conditions of the contractual services to be rendered by MSP to assume the management of and to provide qualified personnel to run the Harrison County Juvenile Detention Center (hereinafter referred to as "HCJDC") located at 765 McElroy Street, Biloxi, Mississippi.

1.2 Term - This agreement shall be in effect from January 1, 2003 until December 31, 2003 unless terminated earlier in accordance with the provisions of Article 4 herein. County may, if both parties agree, renew this contract for an additional one (1) year term by 90 days notice to MSP prior to the expiration of the contract of intent to renew this contract.

ARTICLE 2. FACILITIES

2.1 The County is the owner of the HCJDC located at 765 McElroy Street in Biloxi, Mississippi.

2.2 Said facility has been completely remodeled, refurbished, is fully operational and ready for the housing up to forty-eight (48) juveniles in a secure detention facility pursuant to the laws of the State of Mississippi, United States and in compliance with regulations for juvenile detention facilities as set forth by the United States Department of Justice.

2.3 The County shall be responsible for any major structural repairs and maintenance of the facility during the term of this Contract or any extension thereof upon notification by MSP of the need thereof.

2.4 The County shall provide a fully operational facility at the HCJDC on or before the effective date of this Contract, including but not limited to:

A fully functional kitchen necessary to prepare and feed the juveniles housed therein, including but not limited to utensils, pots, baking sheets, serving dishes, locking knife cabinet, serving carts, garbage cans, trays, cups, bowls, eating utensils, 5 gallon beverage holders and related items to start the kitchen. If replacements are necessary MSP will be responsible therefore;

All necessary student desks, tables, chairs, and book cases necessary for class rooms for juveniles;

All necessary mattresses and other necessary bedding, including but not limited to 50 mattresses, with two sets of sheets, blankets, pillows, and pillowcases for each mattress and 20 dozen towels. If replacements are necessary MSP will be responsible therefore;

All necessary office furnishings and equipment, as specified and agreed prior to MSP accepting the facility;

A telephone system for the building with telephones for the following locations: intake office, office next to break room, director's office, medical examination room, secretarial office, central control room, property room if necessary, staff area on the corridor and any other location that MSP advises a phone is necessary; and

f. Any other equipment or materials necessary to operate the facility as determined by the parties prior to acceptance of the facility by MSP or as required by any regulations for juvenile detention facilities as set forth by the United States Department of Justice.

g. MSP shall have three (3) days from the date of the execution of this agreement to accept the facilities, equipment, or other items set forth above. MSP shall provide the County written acceptance at the end of said three (3) day period, which shall relieve the County of any further obligation with respect to providing any of the items set forth above.

2.5 The County shall pay the line service and local usage for the phone system. MSP shall be responsible for any long distance service.

2.6 The County shall pay all utilities, including but not limited to, electricity gas and water.

2.7 The County shall provide and/or pay for pest control of the property and facility.

2.8 The County shall provide and be responsible for the camera and security control systems in the facility.

2.9 The County shall be responsible for providing or arranging for providing any and all necessary medical care and/or treatment to juveniles housed or detained in the facility.

ARTICLE 3. SCOPE OF SERVICES

3.1 FOR AND IN CONSIDERATION of the payment of One Million Five Hundred Fifty Thousand Six Hundred Fifty Two and 00/100 dollars (\$1,550,652.00) to be paid as hereinafter set forth, and the mutual covenants herein stated, MSP shall provide services as follows:

a. MSP shall provide qualified, trained personnel with law enforcement/corrections experience to manage and operate the HCJDC to house and feed up to forty-eight (48) juveniles in a secure detention facility pursuant to the laws of the State of Mississippi and of the United States and regulations for juvenile detention facilities as set forth by the United States Department of Justice.

b. MSP shall provide all personnel as needed twenty-four (24) hours a day, seven (7) days a week to effectively run, man and staff the HCJDC. The personnel provided by MSP shall provide security, supervision, management, transportation, food services, and any other related

necessary services to the HCJDC. The personnel shall not be employees or agents of Harrison County Mississippi, but at all times shall remain solely employees of MSP. MSP shall at all times have a minimum of three (3) correctional officers on duty. MSP agrees to provide trained, professional personnel to manage and operate the HCJDC to house housing up to forty-eight (48) juveniles in a secure detention facility pursuant to the laws of the State of Mississippi and of the United States. It is understood and agreed by MSP and County that these personnel must be qualified but must not currently be employed in a capacity that would permit them to be active law enforcement officers in Harrison County.

c. It shall be MSP's responsibility to author and implement Standard Operating Procedure, acceptable to Youth Court Judge, for the Youth Court in accordance with the provisions set forth herein and to see that it is properly administered and adhered to. MSP shall adhere to all procedures and regulations for juvenile detention facilities as set forth by the United States Department of Justice.

d. MSP is to totally assume responsibility for the operation and management of the HCJDC and provide all services necessary to adequately effectuate proper management and operation of the HCJDC.

e. MSP will be responsible for providing all training, necessary uniforms, equipment and radios for its correctional officers and personnel.

f. At the request of the Harrison County Youth Court, MSP shall provide a complete list of employees and their qualifications, background and employment history. MSP acknowledges and understands that any additional services not covered by this agreement will require approval on its minutes of the Harrison County Board of Supervisors prior to such being rendered, in order to be paid therefore. It is the responsibility of MSP to obtain such approval before rendering the service or MSP shall not be paid therefore.

g. MSP shall provide for preparation and delivery of food service to the juvenile detainees.

h. MSP shall provide for the sanitation and maintenance for the Facility from and after the date of acceptance of the facility by MSP, except Harrison County will be responsible for major structural repairs and other maintenance as stated above.

i. MSP shall provide for recreational activities for the facility.

j. MSP shall provide for the secure transportation of juveniles from the facility in Biloxi, Mississippi to the Youth Court location in Gulfport, Mississippi as directed by the Youth Court of Harrison County and to appropriate locations within Harrison County, Mississippi, if required, for juveniles to attend or appear in Court or in the case of medical emergencies.

k. MSP shall be responsible for appropriate record keeping and all reporting required by the Harrison County Board of Supervisors or by the Youth Court.

ARTICLE 4. PAYMENT

4.1 For and in consideration of the services to be provided herein, Harrison County, Mississippi shall pay to MSP the balance of One Million Five Hundred Fifty Thousand Six Hundred fifty-two and 00/100 dollars (\$1,550,652.00) for the twelve (12) months of term herein in twelve equal installments of One Hundred twenty-nine Thousand Two Hundred Twenty-one dollars (\$129,221.00) with the first installment being due on February 10, 2003 and continuing thereafter expiration or termination of the Contract.

4.2 MSP shall submit an invoice by the 25th of each month to be approved by the Harrison County Administrator to be paid by the 10th of following month. (e. g. invoice submitted for January on January 25th, 2003 and paid by February 10th, 2003)

ARTICLE 5. CANCELLATION AND TERMINATION

5.1 MSP understands and acknowledges that its inability to fulfill this agreement and/or termination thereof will severely damage Harrison County's ability to operate its HCJDC. Both parties must provide 90 days written notice in order to terminate this agreement. In the event of cancellation by the County, the County shall pay MSP for all charges accrued pursuant to this contract through the actual date of termination.

5.2 Should MSP terminate said agreement not in accordance with Article 4.1 or fail to perform said agreement through no fault of County, MSP may be liable for damages incurred by Harrison County for MSP's failure to perform or early termination.

5.3 If either party breaches this agreement, the breaching party shall be responsible for all attorneys' fees, expenses and costs incurred by the non-breaching party in enforcing the Agreement. The breaching party will further be liable for interest in an amount not to exceed the rate allowed by law.

ARTICLE 6. CHANGES IN SERVICE

The County reserves the right to request that MSP deviate from the agreed upon scope of services and MSP shall be additionally compensated therefore. Any change of scope shall be made part of this agreement by written consent of both parties, which shall require approval by the Harrison County Board of Supervisors reflected upon its minutes.

ARTICLE 7. CONFLICTS OF INTEREST

7.1 MSP certifies that to the best of its knowledge, no circumstances exist which will cause a conflict of interest in performing the services by this contract, that no employee of Harrison County nor any member thereof, not any public agency or official affected by the Agreement, has any pecuniary interest in the business of MSP and that no person associated with MSP has any interest that would conflict in any manner of degree with the performance of the Agreement pursuant to the MS Ethics in Government Act.

7.2 Should MSP become aware of any circumstances, which may cause a conflict of interest during the term of its contract, MSP shall immediately notify the County.

ARTICLE 8. LIABILITY

8.1 Each party to this Agreement shall be liable for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party, its officers, employees, agents or assigns.

8.2 It is understood and agreed that MSP and/or its employees in the performance of work and services pursuant to this Agreement, shall act as and be deemed to be an independent contractor, and not an employee of the County, and shall not obtain any rights or benefits which accrue to employees of the County. MSP further understands and agrees that the County shall

not be responsible for any personal injury or property damage sustained or incurred by the HCJDC detainees while in the custody and care of MSP, MSP, its managers, agents or employees and any other persons while such persons are performing work required by this Agreement.

8.3 MSP agrees to indemnify and save harmless the County, and its respective supervisors, agents, officers, employees, and directors from and against any and all liability, loss, damages, interest, judgments and liens growing out of any and all costs and expenses (including, but not limited to, reasonable attorney fees and disbursements) arising out of or incurred in connection with any and all claims, demands, suits, actions or proceedings, which may be brought against the County by reason of, or as the result of:

- a. Acts or omissions of MSP, its agents, servants, or employees related in any way to or while in, in the performance of this Agreement.
- b. Any act or omission, conduct or misconduct, of MSP; its agents, servants or employees not included in the paragraph above and for which the County, its agents, servants, or employees are alleged to be liable.

8.4 MSP agrees to comply with all Federal Wage and Hours Laws, and all other state and federal laws applicable to employees and shall indemnify and hold harmless the County for its failure to do so.

ARTICLE 9. INSURANCE

9.1 MSP shall procure and maintain during the duration of this contract insurance with limits of not less than One Million dollars (\$1,000,000.00) for General Public Liability and Property Damage Insurance, including general liability coverage, and auto liability, insuring MSP from all claims from personal injury, including death, and claims for negligence, wrongful acts, and omissions, wrongful termination, slander, libel, civil rights violations, destruction or damage to property arising out of or in connection with any operations under this contract, whether such operations are by MSP or by an employee, agent or subcontractor of MSP and said insurance shall name the County as an additional insured.

9.2 MSP shall provide and maintain at its expense during the term of this contract, Workers Compensation Coverage, including occupational disease, which shall name the County as an additional insured and contain a waiver of subrogation against the County, for all of MSP's employees. In case employees engaged in hazardous work under this contract are not protected under the Worker's Compensation Law, MSP shall provide adequate and suitable insurance for the protection of its employees not otherwise protected.

9.3 Certificates of Insurance acceptable to County must be filed with County simultaneously with the execution of this Agreement. These certificates shall contain provisions that coverage afforded under the policies will not be canceled unless at least thirty days written notice is given to Harrison County, Mississippi.

ARTICLE 10.

MSP does not guarantee or insure County's premises from theft, vandalism, or damages of any type, other than such that is caused by MSP, its agents or employees.

ARTICLE 11.

Both parties acknowledge that there may be grants available to MSP to provide some additional services to the Juvenile Detention Center. MSP hereby agrees to keep the Youth Court Judge or Administrator informed of any grants applied for and the results thereof. If any grants are received by MSP, MSP understands and acknowledges that any additional service provided with grants will be at no additional cost to the County.

ARTICLE 12.

12.1 This agreement is the final expression of the agreement of the parties and is the complete and exclusive statement of the terms agreed upon and shall supersede all prior negotiations, understandings, or agreement. There are no representations, warranties, or stipulations, either oral or written, not herein contained.

12.2 No assignment of this contract is permitted without the written mutual consent of both parties.

12.3 The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to any party.

12.4 Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing and signed by authorized representatives.

ARTICLE 13. NOTICES.

The parties agree that any notices or other communications between them shall be through the following authorized persons:

For the County:

1. Pam Ulrich
County Administrator
Harrison County Courthouse
2301 23rd Avenue
Gulfport, Ms 39501
(228) 865-4070 office

For MSP:

1. Nicky Maxwell
2026 14th Street
Pascagoula, Ms 39567
(228) 762-0661 office
(228) 769-5583 fax
(228) 324-1216 Emergencies

2. Tony Best

2026 14th Street
Pascagoula, Ms 39567
(228) 762-0661 office
(228) 769-5583 fax
(228) 324-1217 Emergencies

Should the authorized person to whom notices or communications should be directed be changed, the respective party shall notify the other immediately and confirm the same in writing.

ARTICLE 14. AUTHORITY

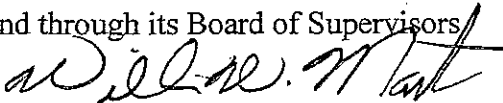
The person signing hereinafter represents to the other that he/she has been duly authorized to execute this service agreement on behalf of the respective party on whose behalf he/she has executed the same.

HARRISON COUNTY, MISSISSIPPI

MISSISSIPPI SECURITY POLICE, INC.

By and through its Board of Supervisors

BY:



William Martin, its President

BY:

Nicky Maxwell, its President

DATE: 12-9-02

DATE:

ADDENDUM TO SERVICE AGREEMENT FOR THE HARRISON
COUNTY JUVENILE DETENTION CENTER BETWEEN HARRISON
COUNTY, MISSISSIPPI AND MISSISSIPPI SECURITY POLICE, INC.

THIS ADDENDUM AGREEMENT is hereby entered into on the date below, by and between Mississippi Security Police, Inc., (hereinafter referred to as "MSP"), and Harrison County, Mississippi, by and through its Board of Supervisors (hereafter referred to as "County"); and

With an effective date of January 1, 2007; and

NOW, THEREFORE, for the mutual covenants hereafter set forth, the parties do hereby agree and contract to amend a certain Contract/Service Agreement entered into on January 1, 2003, a copy of which is attached hereto and incorporated herein by reference, as follows:

1. 1.2 Term - This Agreement shall be in effect from January 1, 2007 through December 31, 2007, unless terminated earlier in accordance with the provisions of Article 4 herein. County may, if both parties agree, renew this contract for an addition one (1) year term by a 90 days notice to MSP prior to the expiration of the contract of an intent to renew this contract. The County and MSP must the spread any agreement for an expiration of this contract on the Board of Supervisors minutes for the year(s) 2008 and forward.
2. 3.1 For and in consideration of the sum of One Million Six Hundred Twenty-Eight Thousand One Hundred Eighty-four and 60/100 Dollars (\$1,628,184.60), to be as hereinafter set forth, and the mutual covenants herein stated, MSP shall provide services as follows:

3. 4.1 For and in consideration of the services to be provided herein, Harrison County, Mississippi shall pay to MSP the balance of One Million Six Hundred Twenty-Eight Thousand One Hundred Eighty-four and 60/100 Dollars (\$1,628,184.60) for the twelve (12) months of term herein in twelve (12) equal monthly installments of One Hundred Thirty-five Thousand Six Hundred Twenty-eight and 05/100 Dollars (135,628.05) with the first installment being due on February 10, 2007, and continuing thereafter until the expiration or termination of the contract.
4. 4.2 MSP shall submit an invoice by the 25th day of each month to be approved by the Harrison County Administrator to be paid by the 10th day of the following month. (e.g. invoice submitted for January on January 25, 2007 and paid by February 10, 2007)

This the 8th day of January 2007.

HARRISON COUNTY, MISSISSIPPI MISSISSIPPI SECURITY POLICE,
INC.

By and through its Board
of Supervisors

By: Larry Benefield
Larry Benefield
President

By: Tony Deaf
Vice-President

Date: JANUARY 8, 2007

Date: 01-08-2007

HARRISON COUNTY

BOARD OF SUPERVISORS

✓ 1801 23RD AVENUE · P.O. DRAWER CC · GULFPORT, MISSISSIPPI 39502-0860

TELEPHONE: (228) 865-4204
FACSIMILE: (228) 867-6551
E-MAIL: hcboard@co.harrison.ms.us



December 29, 2008

Mississippi Security Police, Inc.
2026 14th Street
Pascagoula, MS 39567

RE: Mississippi Security Police, Inc.
Contract With Harrison County/
Youth Detention Center

Dear Sir:

As President of the Harrison County Board of Supervisors, I have been directed to advise that the current Agreement between the Mississippi Security Police, Inc. and Harrison County, for the operation of the Youth Detention Center has been extended until March 31, 2009, at the same rate as fiscal year 2007-2008.

This is to further advise that the Board has authorized advertisement for "request for proposals" for this Contract.

We shall keep you advised.

Cordially yours,

WILLIAM W. MARTIN, PRESIDENT
HARRISON COUNTY BOARD OF SUPERVISORS

HARRISON COUNTY

BOARD OF SUPERVISORS



1801 23RD AVENUE · P.O. DRAWER CC · GULFPORT, MISSISSIPPI 39502-0860

E-MAIL: pulrich@co.harrison.ms.us

TELEPHONE: (228) 865-4116

FACSIMILE: (228) 865-4162

December 10, 2007

Tony Best
Mississippi Security Police
PO Box 1781
Pascagoula, MS 39567-1781

Dear Mr. Best:

Tony

On December 3, 2007, the Harrison County Board of Supervisors approved an extension of your contract for Security Services for the Harrison County Juvenile Detention Center with no change in cost for a period of one (1) year.

In the near future you will be forwarded a contract with the extended dates for your signature. Upon receipt of this new contract, please sign and return to my office as soon as possible so that the Board of Supervisors can execute.

If you have any questions or concerns, please feel free to contact me at (228) 865-4116.

Sincerely,

Pamela J. Ulrich
Harrison County Administrator

PJU/cv

Attachment

cc: Joe Meadows

ID: 17862 Dep: 100 BOARD AGENDA Department Seq Code _
Status COMPLETED Action Taken PASSED

Date 12/06/2004 Motion Second Votes: 1 2 3 4 5 Book From Thru
Description 2 5 Y Y E Y Y 404 30

ORDER approving renewal of the service agreement with Mississippi
Security Police, Inc. for the Harrison County Juvenile Detention
Center's management for a period of one year effective January 1, 2005
as per section 1.2 of the original agreement at no additional cost to
the County.

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Supervisor MARLIN R. LADNER moved adoption of the following:

ORDER APPROVING SERVICE AGREEMENT BY AND BETWEEN
HARRISON COUNTY AND MISSISSIPPI SECURITY POLICE, INC. FOR
THE HARRISON COUNTY JUVENILE DETENTION CENTER, AND
AUTHORIZING THE VICE PRESIDENT TO EXECUTE SAME

ORDERED BY THE BOARD OF SUPERVISORS OF HARRISON COUNTY, MISSISSIPPI, that the Board does HEREBY APPROVE and does HEREBY AUTHORIZE the vice president to execute the following service agreement by and between Harrison County and Mississippi Security Police, Inc. for the Harrison County Juvenile Detention Center:

SERVICE AGREEMENT
FOR THE HARRISON COUNTY JUVENILE DETENTION CENTER

THIS AGREEMENT entered into on the last date indicated below by and between MISSISSIPPI SECURITY POLICE INC., a Mississippi corporation, domiciled in Pascagoula, Jackson County, Mississippi, (hereinafter referred to as "MSP") and HARRISON COUNTY, MISSISSIPPI, by and through its Board of Supervisors (hereinafter referred to as "County").

NOW, THEREFORE, for the mutual covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, MSP and County do hereby agree, bind and obligate themselves as follows, to-wit:

ARTICLE 1. GENERAL PROVISIONS

1.1 Purpose - The purpose of this agreement is to establish the terms and conditions of the contractual services to be rendered by MSP to assume the management of and to provide qualified personnel to run the Harrison County Juvenile Detention Center (hereinafter referred to as "HCJDC") located at 765 McElroy Street, Biloxi, Mississippi.

1.2 Term - This agreement shall be in effect from January 1, 2004 until December 31, 2004 unless terminated earlier in accordance with the provisions of Article 4 herein. County may, if both parties agree, renew this contract for an additional one (1) year term by 90 days notice to MSP prior to the expiration of the contract of intent to renew this contract.

ARTICLE 2. FACILITIES

2.1 The County is the owner of the HCJDC located at 765 McElroy Street in Biloxi, Mississippi.

2.2 Said facility has been completely remodeled, refurbished, is fully operational and ready for the housing up to forty-eight (48) juveniles in a secure detention facility pursuant to the laws of the State of Mississippi, United States and in compliance with regulations for juvenile detention facilities as set forth by the United States Department of Justice.

2.3 The County shall be responsible for any major structural repairs and maintenance of the facility during the term of this Contract or any extension thereof upon notification by MSP of the need thereof.

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2.4 The County shall provide a fully operational facility at the HCJDC on or before the effective date of this Contract, including but not limited to:

A fully functional kitchen necessary to prepare and feed the juveniles housed therein, including but not limited to utensils, pots, baking sheets, serving dishes, locking knife cabinet, serving carts, garbage cans, trays, cups, bowls, eating utensils, 5 gallon beverage holders and related items to start the kitchen. If replacements are necessary MSP will be responsible therefore;

All necessary student desks, tables, chairs, and book cases necessary for class rooms for juveniles;

All necessary mattresses and other necessary bedding, including but not limited to 50 mattresses, with two sets of sheets, blankets, pillows, and pillowcases for each mattress and 20 dozen towels. If replacements are necessary MSP will be responsible therefore;

All necessary office furnishings and equipment, as specified and agreed prior to MSP accepting the facility;

A telephone system for the building with telephones for the following locations: intake office, office next to break room, director's office, medical examination room, secretarial office, central control room, property room if necessary, staff area on the corridor and any other location that MSP advises a phone is necessary; and

f. Any other equipment or materials necessary to operate the facility as determined by the parties prior to acceptance of the facility by MSP or as required by any regulations for juvenile detention facilities as set forth by the United States Department of Justice.

g. MSP shall have three (3) days from the date of the execution of this agreement to accept the facilities, equipment, or other items set forth above. MSP shall provide the County written acceptance at the end of said three (3) day period, which shall relieve the County of any further obligation with respect to providing any of the items set forth above.

2.5 The County shall pay the line service and local usage for the phone system. MSP shall be responsible for any long distance service.

2.6 The County shall pay all utilities, including but not limited to, electricity gas and water.

2.7 The County shall provide and/or pay for pest control of the property and facility.

2.8 The County shall provide and be responsible for the camera and security control systems in the facility.

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2.9. The County shall be responsible for providing or arranging for providing any and all necessary medical care and/or treatment to juveniles housed or detained in the facility.

ARTICLE 3. SCOPE OF SERVICES

3.1 FOR AND IN CONSIDERATION of the payment of One Million Five Hundred Fifty Thousand Six Hundred Fifty Two and 00/100 dollars (\$1,550,652.00) to be paid as hereinafter set forth, and the mutual covenants herein stated, MSP shall provide services as follows:

- a. MSP shall provide qualified, trained personnel with law enforcement/corrections experience to manage and operate the HCJDC to house and feed up to forty-eight (48) juveniles in a secure detention facility pursuant to the laws of the State of Mississippi and of the United States and regulations for juvenile detention facilities as set forth by the United States Department of Justice.
- b. MSP shall provide all personnel as needed twenty-four (24) hours a day, seven (7) days a week to effectively run, man and staff the HCJDC. The personnel provided by MSP shall provide security, supervision, management, transportation, food services, and any other related necessary services to the HCJDC. The personnel shall not be employees or agents of Harrison County Mississippi, but at all times shall remain solely employees of MSP. MSP shall at all times have a minimum of three (3) correctional officers on duty. MSP agrees to provide trained, professional personnel to manage and operate the HCJDC to house housing up to forty-eight (48) juveniles in a secure detention facility pursuant to the laws of the State of Mississippi and of the United States. It is understood and agreed by MSP and County that these personnel must be qualified but must not currently be employed in a capacity that would permit them to be active law enforcement officers in Harrison County.
- c. It shall be MSP's responsibility to author and implement Standard Operating Procedure, acceptable to Youth Court Judge, for the Youth Court in accordance with the provisions set forth herein and to see that it is properly administered and adhered to. MSP shall adhere to all procedures and regulations for juvenile detention facilities as set forth by the United States Department of Justice.
- d. MSP is to totally assume responsibility for the operation and management of the HCJDC and provide all services necessary to adequately effectuate proper management and operation of the HCJDC.
- e. MSP will be responsible for providing all training, necessary uniforms, equipment and radios for its correctional officers and personnel.

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- f. At the request of the Harrison County Youth Court, MSP shall provide a complete list of employees and their qualifications, background and employment history. MSP acknowledges and understands that any additional services not covered by this agreement will require approval on its minutes of the Harrison County Board of Supervisors prior to such being rendered, in order to be paid therefore. It is the responsibility of MSP to obtain such approval before rendering the service or MSP shall not be paid therefore.
- g. MSP shall provide for preparation and delivery of food service to the juvenile detainees.
- h. MSP shall provide for the sanitation and maintenance for the Facility from and after the date of acceptance of the facility by MSP, except Harrison County will be responsible for major structural repairs and other maintenance as stated above.
- i. MSP shall provide for recreational activities for the facility.
- j. MSP shall provide for the secure transportation of juveniles from the facility in Biloxi, Mississippi to the Youth Court location in Gulfport, Mississippi as directed by the Youth Court of Harrison County and to appropriate locations within Harrison County, Mississippi, if required, for juveniles to attend or appear in Court or in the case of medical emergencies.
- k. MSP shall be responsible for appropriate record keeping and all reporting required by the Harrison County Board of Supervisors or by the Youth Court.

ARTICLE 4. PAYMENT

4.1 For and in consideration of the services to be provided herein, Harrison County, Mississippi shall pay to MSP the balance of One Million Five Hundred Fifty Thousand Six Hundred fifty-two and 00/100 dollars (\$1,550,652.00) for the twelve (12) months of term herein in twelve equal installments of One Hundred twenty-nine Thousand Two Hundred Twenty-one dollars (\$129,221.00) with the first installment being due on February 10, 2004 and continuing thereafter expiration or termination of the Contract.

4.2 MSP shall submit an invoice by the 25th of each month to be approved by the Harrison County Administrator to be paid by the 10th of following month. (e. g. invoice submitted for January on January 25th, 2004 and paid by February 10th, 2004)

ARTICLE 5. CANCELLATION AND TERMINATION

5.1 MSP understands and acknowledges that its inability to fulfill this agreement and/or termination thereof will severely damage Harrison County's ability to operate its HCJDC. Both parties must provide 90 days written notice in order to terminate this agreement. In the event of cancellation by the County, the County shall pay MSP for all charges accrued pursuant to this contract through the actual date of termination.

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5.2 Should MSP terminate said agreement not in accordance with Article 4.1 or fail to perform said agreement through no fault of County, MSP may be liable for damages incurred by Harrison County for MSP's failure to perform or early termination.

5.3 If either party breaches this agreement, the breaching party shall be responsible for all attorneys' fees, expenses and costs incurred by the non-breaching party in enforcing the Agreement. The breaching party will further be liable for interest in an amount not to exceed the rate allowed by law.

ARTICLE 6. CHANGES IN SERVICE

The County reserves the right to request that MSP deviate from the agreed upon scope of services and MSP shall be additionally compensated therefore. Any change of scope shall be made part of this agreement by written consent of both parties, which shall require approval by the Harrison County Board of Supervisors reflected upon its minutes.

ARTICLE 7. CONFLICTS OF INTEREST

7.1 MSP certifies that to the best of its knowledge, no circumstances exist which will cause a conflict of interest in performing the services by this contract, that no employee of Harrison County nor any member thereof, not any public agency or official affected by the Agreement, has any pecuniary interest in the business of MSP and that no person associated with MSP has any interest that would conflict in any manner of degree with the performance of the Agreement pursuant to the MS Ethics in Government Act.

7.2 Should MSP become aware of any circumstances, which may cause a conflict of interest during the term of its contract, MSP shall immediately notify the County.

ARTICLE 8. LIABILITY

8.1 Each party to this Agreement shall be liable for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party, its officers, employees, agents or assigns.

8.2 It is understood and agreed that MSP and/or its employees in the performance of work and services pursuant to this Agreement, shall act as and be deemed to be an independent contractor, and not an employee of the County, and shall not obtain any rights or benefits which accrue to employees of the County. MSP further understands and agrees that the County shall

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ARTICLE 10.

MSP does not guarantee or insure County's premises from theft, vandalism, or damages of any type, other than such that is caused by MSP, its agents or employees.

ARTICLE 11.

Both parties acknowledge that there may be grants available to MSP to provide some additional services to the Juvenile Detention Center. MSP hereby agrees to keep the Youth Court Judge or Administrator informed of any grants applied for and the results thereof. If any grants are received by MSP, MSP understands and acknowledges that any additional service provided with grants will be at no additional cost to the County.

ARTICLE 12.

12.1 This agreement is the final expression of the agreement of the parties and is the complete and exclusive statement of the terms agreed upon and shall supersede all prior negotiations, understandings, or agreement. There are no representations, warranties, or stipulations, either oral or written, not herein contained.

12.2 No assignment of this contract is permitted without the written mutual consent of both parties.

12.3 The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to any party.

12.4 Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing and signed by authorized representatives.

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ARTICLE 13. NOTICES.

The parties agree that any notices or other communications between them shall be through the following authorized persons:

For the County:

1. Pam Ulrich
County Administrator
Harrison County Courthouse
2301 23rd Avenue
Gulfport, Ms 39501
(228) 865-4070 office

For MSP:

1. Nicky Maxwell
2026 14th Street
Pascagoula, Ms 39567
(228) 762-0661 office
(228) 769-5583 fax
(228) 324-1216 Emergencies

- 2.. Tony Best
2026 14th Street
Pascagoula, Ms 39567
(228) 762-0661 office
(228) 769-5583 fax
(228) 324-1217 Emergencies

Should the authorized person to whom notices or communications should be directed be changed, the respective party shall notify the other immediately and confirm the same in writing.

ARTICLE 14. AUTHORITY

The person signing hereinafter represents to the other that he/she has been duly authorized to execute this service agreement on behalf of the respective party on whose behalf he/she has executed the same.

HARRISON COUNTY, MISSISSIPPI

MISSISSIPPI SECURITY POLICE, INC.

By and through its Board of Supervisors

BY:

Larry Benefield, its President

BY:

Nicky Maxwell, its President

DATE:

DATE:

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Supervisor **CONNIE M. ROCKCO** seconded the motion to adopt the above and foregoing order, whereupon the question was put to a vote with the following results:

Supervisor BOBBY ELEUTERIUS voted	(ABSENT & EXCUSED)
Supervisor LARRY BENEFIELD voted	AYE
Supervisor MARLIN R. LADNER voted	AYE
Supervisor WILLIAM W. MARTIN voted	AYE
Supervisor CONNIE M. ROCKCO voted	AYE

The motion having received the affirmative vote from the majority of the supervisors present, the vice president declared the motion carried and the order adopted.

THIS, the 5th day of April 2004.

* * *