

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

S.H., et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL ACTION NO. 2:04-cv-1206
	)	
HARVEY J. REED,	)	
Defendant.	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 2:08-cv-475
	)	
THE STATE OF OHIO, <i>et al.</i>,	)	
	)	JUDGE ALGENON L. MARBLEY
Defendants.	)	
	)	

AGREED ORDER

On February 18, 2014, Plaintiffs in *S.H. v. Reed* filed a motion for specific performance (Doc 389), and alleged a failure “to provide adequate treatment to youth who are or have been on the mental health caseload. As a result many of these youth are experiencing excessive periods of seclusion” *Id* at p. 1. On March 12, 2014, the United States filed a motion for a temporary restraining order in *United States v. Ohio* raising concerns about Defendants’ use of seclusion for all youth with an identified mental health disorder. (Doc 131). The United States also filed a supplemental complaint. (Doc 140).

Shortly thereafter, the parties engaged in settlement negotiations aimed at addressing the issues raised in those filings. The Court hereby consolidates these actions under Fed R. Civ. Proc. 42. They shall retain their separate status but be consolidated for the purpose of case

management and monitoring. The terms of this Order are intended to be implemented consistent with Docs 108 and 359 in *S.H. v. Reed* and with Doc 85 in *United States v. Ohio*.

Attached as Exhibit A to this Order is the agreed grid that details the actions Defendants will undertake to improve mental health services and reduce seclusion of youth who are on the mental health caseload. The actions and deadlines included in the attached grid are hereby incorporated into this Order. Defendants' compliance with those terms will be co-monitored by Mr. Will Harrell and Dr. Kelly Dedel under the Court's jurisdiction, and monitoring will continue until Defendants have maintained substantial compliance with all provisions and performance measures for six months.

Upon entry of this Order, Plaintiffs in *S.H. v. Reed* agree to withdraw their pending motions (Docs 389 and 390) without prejudice. The United States agrees to withdraw without prejudice its renewed motion for a temporary restraining order. (Doc 145). Because Defendants have committed to the eventual elimination of disciplinary seclusion for all youth housed in a DYS facility and to engage with the monitors and subject matter experts within six months hereof to formulate steps to reach that goal, the United States also agrees to withdraw without prejudice the claims in its supplemental complaint concerning youth who are not on the mental health caseload. (Doc 140). The United States agrees that it may not renew those claims until one month after the effective date of a request that this Court conduct a conference with the United States and the Defendants regarding a resolution of the United States' claims and that the effective date for a conference request shall be no sooner than seven months from the date of this Order.

On a quarterly basis starting July 31, 2014, DYS will provide AMS reports for youth not on the MHCL, but who were held in seclusion for an act of violence, that will contain a narrative

of the incident resulting in seclusion, the AMS number, the date and time the youth went into seclusion and the date and time the youth was released from seclusion, the date the youth entered DYS, the date the youth was released from DYS (if youth has been released) and the type of seclusion. On July 31, 2014, DYS shall send the monitors such documents from May 1, 2014 to July 30, 2014. These documents will be provided quarterly until DYS reaches substantial compliance with regard to seclusion, or the lawsuit terminates, whichever occurs first. The monitors may share this information with counsel for the United States and *S.H.* Plaintiffs.

The following areas are hereby removed from monitoring: psychotropic medication, sufficiency of psychiatric resources, and equitable treatment. The remaining areas of monitoring (QA/QI and peer review for mental health and psychiatry, case formulation, fidelity of treatment provided to treatment model, treatment planning and treatment teams, behavior contracts, suicide prevention, and discipline for youth on the mental health caseload through the intervention hearing process) are addressed by the grid and will be monitored in accordance therewith.

This Order is necessary to address and redress ongoing constitutional violations already found, and the relief set forth herein is narrowly drawn, extends no further than necessary, and is the least intrusive means to do so. Defendants may seek to terminate this Order no earlier than July 15, 2015 at which time the *S.H.* Plaintiffs and United States shall bear the burden of proof to demonstrate the existence of an ongoing violation of federal law and that the current order reflects narrowly drawn relief which extends no further than necessary and is the least intrusive means to remedy that violation.

IT IS SO STIPULATED AND AGREED FOR *S.H.* PLAINTIFFS:

DATE: May 20, 2014

s/ Alphonse A. Gerhardstein

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IT IS SO STIPULATED AND AGREED FOR THE UNITED STATES:

DATE: May 20, 2014

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DATE: May 20, 2014

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WHEREFORE, for good cause shown, this ORDER shall be entered this 2/ day of

May 2014


ALGENON L. MARBLEY
United States District Court Judge

EXHIBIT A**YOUTH ON THE MENTAL HEALTH CASE LOAD: PROPOSAL TO REDUCE VIOLENCE AND IMPROVE THE RESPONSE TO VIOLENCE
IN DYS FACILITIES**

A. Prevention Strategies	B. Immediate Intervention Strategies	C. Strategies for the Aftermath
<u>A.1) Verify Treatment Integrity</u> - Quality Assurance (QA) will be put in place to ensure that individual treatment is aligned with treatment goals. Each month, the Psychology Supervisor will sample 2 files per clinician. Monitors will review the cases sampled and the completed QA audit tools. <u>Timeline:</u> - Tools are developed; - Will be implemented by May 1, 2014. - QA will be put in place to verify that group treatment displays fidelity to design. Each month, a sample of groups (Managing Anger and Violence, Cognitive Behavioral Therapies overlays, etc.) will be audited using a QA tool that has been drafted. Monitors will review the completed QA tools. <u>Timeline:</u> - Tools are under development, will be sent to Monitors immediately for input; - Will be implemented by May 1, 2014. <u>Performance Measure A.1</u> 90% of all cases reviewed showed correspondence between content of individual sessions and treatment goals. 90% of all groups included in the sample score 80% or better on a measure of treatment fidelity.	<u>B.1) Reduce Reliance on Seclusion</u> - No intervention seclusion (IS) for High Severity (e.g., fight, consensual sexual activity), unless the victim requires off-grounds emergency medical treatment (and then up to 24 hours can be imposed). - Interdisciplinary Team (IDT) determines sanction. <u>Timelines:</u> - Policy changes to be completed by June 30, 2014. - QA for Performance Measure by July 15, 2014. - Training Completed by August 31, 2014. - Implementation by September 1, 2014. <u>Performance Measure B.1</u> - Proportion of youth who commit High Severity infractions who were given intervention seclusion (should be 0%, unless victim required off-grounds emergency medical treatment).	<u>C.1) Treatment Plan Review</u> - Within 2 days of every AOV, the treating clinician/IDT will review the treatment plan to identify antecedents and function of the behavior; review treatment goals and interventions. If implementation of existing plan has not been sufficient, it will be fortified. If existing plan was properly implemented yet ineffective, it will be revised to include additional skill-development or environmental changes. May use Behavior Contract if appropriate. - Intensity of treatment will be increased to 3x/week individual sessions for two weeks; daily homework will be assigned. <u>Timeline:</u> Implemented by July 1, 2014. <u>Performance Measure C.1</u> 90% of youth involved in AOV have Treatment Plan Review within 2 days of the incident. % of cases in which implementation was fortified. % of cases in which interventions were revised. - These should total 100%, not an option to do nothing.

A. Prevention Strategies	B. Immediate Intervention Strategies	C. Strategies for the Aftermath
<u>A.2) Develop BioPsychoSocial Assessment that includes Clinical and Diagnostic Formulation</u> - Initial BioPsychoSocial Assessment includes a broad range of informational sources and culminates in a clinical formulation and diagnostic formulation, which is reflected in the youth's treatment plan. <u>Timeline:</u> - Guidance on the formulation concept for Department of Youth Services (DYS) staff will be fully developed ASAP, with input from DYS clinicians and Monitors; - Training for all clinicians will occur within 60 days of entry of this Order; - QA tools will be developed and implemented by May 1, 2014.	<u>B.2) Reduce Duration of Seclusion</u> - Interim Measure: Effective no later than July 15, 2014, and ending on September 1, 2014, any youth on seclusion (intervention or pre-hearing) for over 72 hours in a rolling 30-day period must be reviewed by the Treatment Team and any continued seclusion must first receive approval from the Bureau Chief for Facilities or the Deputy Director before the seclusion continues past 72 hours in a rolling 30-day period. <u>Timeline for interim measure:</u> Effective July 15, 2014. - DYS will decrease the minimum length of stay (LOS) for youth engaged in AOVs to two to four hours, not to exceed 24 hours. - The Safe to Release (STR) process will be initiated between two and four hours and if the youth refuses to engage or the suitability of the climate indicates safety concerns, staff will attempt to engage the youth every two to three hours thereafter, up to the 24 hour period. - If the 24 hour period is reached and the youth continues to refuse or the suitability of the climate indicates safety concerns, the Superintendent must approve any further seclusion. <u>Timelines:</u> - Policy changes to be completed by June 30, 2014. - QA for Performance Measure by July 15, 2014. - Training Completed by August 31, 2014. - Implementation by September 1, 2014. - Decrease intervention seclusion time imposed for Severe AOVs (e.g., assault, sexual exposure/assault; imposed by Hearing Officer, not consecutive to pre-hearing seclusion (PHS)). 1st gets Credit for Time Served. 2nd gets up to 4 hours. 3rd gets up to 8 hours. 4th gets up to 12 hours. 5th gets up to 24 hours. - Unless victim requires off-grounds emergency medical	<u>C.2) Special Review Team (SRT)</u> - Within 2 days of a youth's 2nd Severe or 3rd High Severity AOV, he will be referred to the SRT for a clinical staffing, led by the psychologist and specifically focused on understanding and addressing the AOV behavior. - The SRT will function as the IDT until the youth's behavior improves. - The SRT will explore the causes and functions of the behavior and will prescribe interventions designed to address those causes and functions (e.g., Intensive Behavior Contract; staff mentor; change unit; skill building work; referral to Mental Health facility). <u>Timeline:</u> Implemented by July 1, 2014.

A. Prevention Strategies	B. Immediate Intervention Strategies	C. Strategies for the Aftermath
<u>Performance Measure A.2</u> • 90% of initial assessments include a solid clinical/diagnostic formulation. Every month, a sample of cases will be reviewed by the Monitor and QA. • 90% of treatment plans reflect information from the formulation. Every month, a sample of cases will be reviewed by the Monitor and QA.	treatment, then up to 24 hours. ○ For the purposes of calculating how many previous "Severe" rule violations youth have committed, the number of "Severe" rule violations is considered zero if a youth goes 30 days without a "Severe" rule violation unless the superintendent decides otherwise; and, if so, the youth will be reviewed again in 30 days. ○ Served on Saturday and Sunday. ○ The State shall not substitute physical restraints for seclusion. • <u>Timelines:</u> ○ Policy changes to be completed by June 30, 2014. ○ QA for Performance Measure by July 15, 2014. ○ Training Completed by August 31, 2014. ○ Implementation by September 1, 2014. <u>Performance Measure B.2</u> • Proportion of youth released at 4 hours or less. • 100% of youth were sanctioned according to the IS graduated scheme. • 0% of youth spent more than 72 hours in seclusion in a rolling 30-day period (except in rare circumstances with approval from the Bureau Chief for Facilities or the Deputy Director).	<u>Performance Measure C.2</u> • Number of youth involved in 2 Severe or 3 High AOVs (descriptive). ○ SRT was convened within 2 days for 100%. ○ 90% of the SRTs explored the causes and functions of the behavior. ○ 90% of the SRTs prescribed interventions that addressed those causes and functions.

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	<u>B.3) Reduce Harm Associated with Seclusion</u> • Intervention seclusion is imposed only on Saturday & Sunday, to reduce interference with core programming. • For IS, provide 1 hour out for every 4 hours in seclusion, during waking hours. • Youth in IS participate in treatment activities, school and recreation out of their room and time counts toward seclusion hours if behavior is appropriate. • <u>Timelines:</u> ○ Policy changes to be completed by June 30, 2014. ○ QA for Performance Measure by July 15, 2014. ○ Training Completed by August 31, 2014. ○ Implementation by September 1, 2014. <u>Performance Measure B.3</u> • 90% of youth in intervention seclusion spent 4 in/1 out during waking hours. • 90% of youth in intervention seclusion participated in all programming (e.g., recreation, treatment) that was scheduled during seclusion time.	
	<u>B.4) Reduce Accumulation of Seclusion</u> • To apply more than 72 hours of seclusion in a 30-day period: ○ Conduct Treatment Plan Review (see Strategy C.1). ○ Obtain approval from Bureau Chief for Facilities or the Deputy Director. ○ Monitors/Plaintiffs will be provided with information on youth reviewed on a monthly basis. • <u>Timelines:</u> ○ Policy changes to be completed by June 30, 2014. ○ QA for Performance Measure by July 15, 2014. ○ Training Completed by August 31, 2014. ○ Implementation by September 1, 2014. <u>Performance Measure B.4</u> • Number of youth secluded each month and number of	

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	hours in seclusion (Monthly—for all youth on MHCL, provide date, type of AOV, PHS and IS). • Number of youth who spent more than 72 hours in 30-day period (descriptive). ○ 90% received Treatment Plan Review. ○ 90% receive approval for exception to the 72 hour rule. • <u>Timeline:</u> ○ To be implemented by July 15, 2014.	
	<u>B.5) Provide Crisis Intervention While In PHS</u> • STR process will be initiated with every youth engaged in an AOV between two and four hours. • STR process will include a structured interview by Social Worker/Unit Manager/Operations Manager that discusses triggers, decision-making, external influences on behavior. • <u>Timeline:</u> ○ Obtain input from Monitor on STR interview guide by April 1, 2014. Completed. • <u>Timelines:</u> ○ STR Interview Form developed and Policy changes to be completed by June 30, 2014. ○ QA for Performance Measure by July 15, 2014. ○ Training Completed by August 31, 2014. ○ Implementation by September 1, 2014. <u>Performance Measure B.5</u> • STR process was initiated with 90% of youth within 4 hours. • 90% of STR checks examine the underlying causes of the youth's behavior, both internal and external.	
	<u>B.6) Eventually Eliminate Use of Seclusion</u> • DYS is committed to the eventual elimination of disciplinary seclusion for all youth housed in a DYS facility. Thus, six months from the acceptance of this proposed settlement, DYS will engage the monitors and subject matter experts in formulating steps to take, and the timeline for completing those steps, to eliminate disciplinary seclusion.	

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	• <u>Timeline:</u> ○ Six (6) months from the entry of this Order.	
<u>Overall Performance Measure: Violence Reduction</u> • Increase proportion of youth who do not engage in Acts of Violence (AOV) (baseline: February 14, 2014, 83% system-wide). • Decrease number and proportion of Mental Health Case Load (MHCL) youth who engage in 3 or more AOVs each month (any severity). • A 10% reduction goal each month based upon the previous month's total.	<u>Overall Performance Measure: Reduce Total Seclusion Hours</u> • Reduce the number of youth who serve 72+ seclusion hours per month by 10% each month, compared to previous month. ○ DYS to calculate pre-policy change total.	

DEFINITIONS

“AOV” means act of violence.

“BioPsychoSocial Assessment” means an assessment of all biological, psychological, and social factors present for an individual in order to inform that individual’s treatment.

“Disciplinary Seclusion,” also known as “Intervention Seclusion,” means a period of confinement in a locked room that is used as a disciplinary sanction following a Severe Rule Violation.

“DOJ” means the United States Department of Justice, which represents the United States in this matter.

“DYS” means the Ohio Department of Youth Services.

“Effective Date” means the date by which this Agreed Order has been signed by representatives for each of the parties to this Agreed Order and issued as this Court’s Order.

“Facilities” or “Facility” means Scioto Juvenile Correctional Facility, Circleville Juvenile Correctional Facility, Cuyahoga Hills Juvenile Correctional Facility and Indian River Juvenile Correctional Facility, including any DYS facility that replaces or supplements any of those named facilities.

“High Rule Violation” means actions that create immediate and direct threats to the security, safe and order of the facility, its staff, visitors or youth.

“IDT” means Interdisciplinary Team.

“Implement” means to give practical effect and ensure actual fulfillment by concrete measures, including appropriate training of relevant staff.

“Intervention Grid” means a DYS.grid of sanctions for rule violations ranging in severity from Low, to Moderate, High and Severe.

“Intervention Hearing” means a disciplinary hearing that is conducted, consistent with due process, to determine by a preponderance of the evidence whether a Severe Rule Violation has been proven or not proven.

“Intervention Seclusion,” also known as “Disciplinary Seclusion,” means a period of confinement in a locked room that is used as a disciplinary sanction following a Severe Rule Violation.

“LOS” means Length of Stay.

“Mental Health Caseload” or “MHCL” means all youth with an identified mental health disorder, including those youth who have a psychiatric disorder, including but not limited to psychoses, schizophrenia, bipolar with psychotic features, depression with psychotic features, severe post-traumatic stress disorder, or schizoaffective disorders and who, consistent with reasonable professional judgment, DYS believes require psychiatric or psychological care.

“Monitor” means Will Harrell and Dr. Kelly Dedel, including anyone else the court or parties by agreement may designate as their replacements.

“Monitoring” at facilities other than Indian River, Circleville, Cuyahoga Hills, and Scioto means a review of youth files or other materials requested by the monitor or subject-matter experts. The parties agree to meet and confer should additional access be requested and a good faith effort will be made to resolve any such requests. Monitoring at Indian River, Circleville, Cuyahoga Hills, and Scioto shall otherwise be conducted in accordance with Doc 359 in SH v. Taft 04 cv 1206 and with Doc 85 in *United States v. Ohio*..

“Order” means this agreed order.

“Pre-hearing Seclusion” means placement of an out-of-control youth or a youth whose behavior poses an immediate threat to himself or others, in a locked room for a period of time until he or she regains control of his or her behavior and can be safely returned to the general population

“Quality Assurance/Improvement Program” or “QA” means a system of self-auditing and improvement to assess the implementation and effectiveness of all remedies instituted pursuant to this Order, to identify deficits that may exist, and to effectuate new measures to cure deficits identified.

“Restraints” means any chemical or mechanical device used to control the behavior of a youth.

“Safe to Release” means a determination pursuant to DYS guidelines that a youth should be released from Pre-hearing Seclusion.

“Seclusion,” “seclude,” and “secluding” mean isolating a youth in a room from which the youth’s ability to egress is blocked. The term seclusion does not apply to locking a youth in a room during normal hours of sleep.

“Severe Rule Violation” means actions that have potential to create immediate and direct harm to the security, safety and order of the Facility, its Staff, visitors or youth, including assault, escape, sexual assault or riot/disturbance.

“Staff” means employees who work at any of the Facilities.

“Subject Matter Experts” means Dr. Daphne Glindmeyer, Dr. Andi Weisman, and anyone else the court or parties by agreement may designate as their replacements.

“State” means the State of Ohio, Harvey Reed, Director of the Ohio Department of Youth Services, the Ohio Department of Youth Services, and their successors, contractors and agents.

“Treatment Fidelity” means strategies that monitor the implementation of a behavioral health intervention (e.g., group treatment) to ensure it is delivered according to design/curriculum/theory and that it is delivered in a comparable manner across all youth.

“Youth” means any juvenile or juveniles committed by a court to, and residing at, the Facilities during the pendency of this Agreed Order. The specific terms set out in the grid only apply to youth at facilities directly managed by DYS. Youth at other facilities shall receive mental health services consistent with those described herein but appropriately tailored for the such non-DYS managed facilities.