

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
THE STATE OF OHIO, *et al.*,)
)
 Defendants.)

CIVIL ACTION NO: 2:08-cv-475
JUDGE ALGENON L. MARBLEY

UNITED STATES' MOTION FOR A TEMPORARY RESTRAINING ORDER

Plaintiff, the United States, moves the Court for a temporary restraining order against Defendants, the State of Ohio, et al. (the "State"), and requests a hearing. The grounds for this motion are set forth in the attached Memorandum of Points and Authorities.

The United States notified the State on March 12, 2014, that it planned to file this motion.

Respectfully Submitted,

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
THE UNITED STATES' MOTION FOR A TEMPORARY RESTRAINING ORDER**

The State has systematically violated the substantive due process rights of boys with mental health disorders at four of its juvenile correctional facilities (the “Facilities”)¹, and this Court must act immediately to protect these boys from mounting and irreparable harm. The State punishes the boys with seclusion (i.e., solitary confinement) for days on end, often also depriving them of education, exercise, programming and crucial mental health care. When the State returns them to the general population, the State often does not adjust their mental health care treatment to address the harm from seclusion or the misconduct that led to seclusion in the first place. Even when the boys are not secluded, the State deprives them of appropriate mental health care, instead providing cut-and-paste treatment plans that bear little relationship to the mental health needs of a particular boy.

Seclusion has become the State’s modus operandi for handling boys with mental illness. In the second half of 2013, the State imposed almost 60,000 hours of seclusion on boys at the Facilities. Ten boys at Circleville and Indian River spent over 1,000 hours in seclusion over a six month period, and another 17 boys spent over 500 hours in seclusion. At least ten boys at Scioto spent over 10 percent of their time in custody in seclusion from April to September 2013.

Those statistics are disturbing, but the youth at the Facilities are not statistics. They are troubled boys coping with mental health disorders who are suffering real, irreparable harm from tremendous time in seclusion. A few examples from just six months of the State’s records:

¹ The Facilities are Cuyahoga Juvenile Correctional Facility, Circleville Juvenile Correctional Facility, Indian River Juvenile Correctional Facility and Scioto Juvenile Correctional Facility.

- K.R. (218520) at Circleville is taking significant psychiatric medications. He bangs his head frequently, and he had fresh head injuries during a recent visit.² Yet K.R. spent 1,964 hours in seclusion over six months. His longest episode of seclusion was about 19 days. Eleven times, he was secluded for five or more days at a time. Three times, he received a five-day penalty of extra seclusion during a time when he was already serving seven days in seclusion. While secluded, he was on “Suicide Watch,” had “Suicide [Ideation],” and displayed “Self Injurious Behavior.”
- A.E. (217241) at Circleville spent 1,504 hours in seclusion over six months. At one point, he was given 21 consecutive days in seclusion, with five of those days tacked on while he was already in seclusion.
- J.H. (218144) at Circleville spent 1,146 hours in seclusion over six months. In September 2013, he received 120 hours of seclusion, and then an additional 179 hours that same day, for over 12 days of seclusion. On November 17, 2013, he received 143 hours of seclusion; the next day the State tacked on 108 more.
- N.H. (217322) at Indian River spent 90 hours in seclusion, followed by an additional 120 hours. A week later, he received 92.5 hours. The day after that, the State imposed another 144 hours. One observation during his seclusion was “Self Injurious Behavior.”
- M.L. (218660) at Cuyahoga spent 164.58 hours in seclusion over three months, culminating in “Suicidal Ideation.”
- N.O. (218428) at Indian River spent 752 hours in seclusion. During 158 hours of seclusion, he demonstrated “Self Injurious Behavior.” Another 81 hours yielded a notation of “Suicide Watch”; two days later, he received 91.5 hours of seclusion and another notation of “Suicide Watch.”
- J.S. (218396) at Circleville spent 1,585 hours in seclusion. “Self Injurious Behavior” marred his last 48 hours of seclusion.³

The State has had every opportunity to address the rampant use of seclusion on boys with mental health disorders, but it has made little or no improvement and may actually be losing

² See Email from Alphonse Gerhardstein to Thomas Anger (Jan. 11, 2014) (Attach. A).

³ Monitor Dr. Dedel found additional instances of lengthy seclusion at Scioto from April through September 2013. C.C. spent 16 consecutive days in seclusion with only one 24-hour period in the general population. T.B. spent eight consecutive days in seclusion. Fifth Compliance Report at 29-30, *U.S. v. Ohio*, ECF No. 127.

ground. Indeed, the State does not view seclusion at the Facilities as a problem at all. At one point, counsel for the State brushed aside a boy's seclusion of 142 hours in a single month as "not alarming."⁴ When the State was advised that K.R. (1,964 seclusion hours in six months) was in immediate and extreme distress, the State's lawyers responded with a demand for the resignation of the subject matter expert who tried to look into K.R.'s situation at the monitor's request.⁵ One thing is certain: The State will continue the excessive seclusion of boys with mental health disorders unless this Court steps in.

The United States requests an immediate temporary restraining order to stop the seclusion of boys with mental health disorders and to avoid the irreparable harm these boys are suffering and will continue to suffer absent Court protection. Specifically, the United States seeks a temporary restraining order as follows:

I. This Court, as an interim response to the State's infliction of unlawful and irreparable harm on boys through its seclusion and mental health practices, should immediately issue a temporary restraining order that the State:

A. Stop secluding any boy with an identified mental health disorder for more than 24 hours without providing him, outside of his confinement area and during normal facility programming times, at least four hours of programming, exercise, education, or combinations thereof;

B. Stop imposing more than three consecutive days of seclusion in any form (e.g., prehearing seclusion and intervention seclusion) on any boy with an identified mental health disorder;

C. Stop imposing more than three days of seclusion in any form within a 30-day period on any boy with an identified mental health disorder without first:

1. Conducting a comprehensive mental health treatment review of the boy that

⁴ See Email from Dustin Calhoun to Silvia Dominguez and Benjamin Tayloe (Dec. 4, 2013) (Attach. B).

⁵ See Email from Will Harrell to Alphonse Gerhardstein (Jan. 15, 2014) (Attach. C).

includes the treatment team meeting and reviewing the boy's mental health treatment plan to consider and address potential problems with the plan and its implementation;

2. Obtaining the prior written approval of the Deputy Director of the Department of Youth Services ("DYS") responsible for Facility programming; and
3. Providing written notice to the United States and monitor within 24 hours of a youth exceeding three days of seclusion within a single month, describing the amount of seclusion, reason for seclusion, treatment provided in response to seclusion, whether the youth's behavior intervention plan was modified or created, and alternatives to seclusion that were rejected.

D. Provide monthly to the monitor an AMS printout of monthly seclusion hours for boys at the Facilities; and

E. Refrain from substituting restraints for seclusion.

II. The Court should hold an expedited hearing to determine the United States' entitlement to a preliminary injunction.

III. The Court should set an expedited schedule for discovery and further briefing in preparation for a hearing on a permanent injunction. At the permanent injunction hearing, the Court should determine the circumstances and limitations governing the use of seclusion (or restraints as a substitute for seclusion) on boys with mental health disorders at the Facilities, particularly given that the proposed temporary restraining order's terms do not extend far enough to address the extent of the State's violations;

IV. Such other and further relief as the Court deems necessary to prevent the boys with mental health disorders at the Facilities from suffering additional irreparable harm.⁶

BACKGROUND

A. U.S. v. Ohio.

Following an investigation of the Scioto Juvenile Correctional Facility ("Scioto") in Delaware, Ohio, the United States found "significant constitutional deficiencies regarding use of

⁶ The United States seeks a temporary restraining order permitting the State to use up to three days of seclusion as an interim measure only, until the State implements reasonable programmatic changes enabling it to constrain further its seclusion use and comply with constitutional standards. The United States will delineate those programmatic changes in a subsequent request for relief, after conducting discovery with its experts.

physical force, grievance investigation and processing, and use of seclusion.” *See* Letter from Wan J. Kim, Assistant Att’y Gen., Ohio Att’y Gen., to Ted Strickland, Governor, State of Ohio, “Investigation of the Scioto Juvenile Correctional Facility, Delaware, Ohio” (May 9, 2007) (on file with author). Thereafter, on May 16, 2008, the United States filed suit against the State (including the Governor, DYS, and various officials associated with DYS), alleging among other things that the State engaged in a pattern or practice of failing adequately to protect boys from undue risk of harm by failing to “protect[] from the unwarranted use of seclusion” and failing to provide adequate mental health care and rehabilitative treatment to boys through “the provision of adequate screening and assessments . . . adequate treatment planning . . . and adequate psychological services.” Compl., ¶¶ 22, 24, *U.S. v. Ohio*, ECF No. 2.

On June 28, 2008, the United States and the State entered into a Consent Order to resolve the identified violations of federal rights. *U.S. v. Ohio*, ECF No. 8. Three years later, the United States and the State negotiated an Amended Stipulation for Injunctive Relief, reflecting that progress had occurred in certain areas but violations related to seclusion and mental health care continued. *U.S. v. Ohio*, ECF No. 85. In January 2012, this Court issued as its order a proposed stipulation between the United States and the State intended to resolve the State’s use of excessive seclusion on Scioto youth housed on special management units. *U.S. v. Ohio*, ECF No. 109 (the “Progress Unit Consent Order”).

Less than six months after the Progress Unit Consent Order was filed, it became apparent the State was forcing Progress Unit boys to wear restraints for an average of 12-14 hours per day. Essentially, the boys in the Progress Unit who had been subjected to prolonged periods of seclusion were now being forced to wear restraints virtually every waking moment. Only after an exchange of letters and the threat of litigation did the State, on August 22, 2013, announce

that it would discontinue use of programmatic restraints. *See* Letter from Thomas Anger, Ohio Asst. Att’y Gen., to Benjamin Tayloe (Aug. 22, 2013) (Attach. D).

1. The Monitor’s Discovery of Excessive Seclusion at Scioto.

On November 8, 2013, Dr. Kelly Dedel, the monitor, investigated the accumulation of seclusion hours among some Scioto boys. She found the State had secluded ten boys for over 10 percent of their time in custody and that one boy spent almost 40 percent of his time in seclusion:

Youth	Days in Custody during Monitoring Period (max 184)	Days in Seclusion during Monitoring Period	% days spent in Seclusion
O.J.	74	28.54	38.57%
B.D.	184	49.56	26.93%
A.F.	184	43.83	23.82%
T.R.	184	35.36	19.21%
D.H.	184	33.59	18.25%
J.A.	141	24.56	17.42%
T.H.	109	16.27	14.92%
M.G.	137	17.55	12.81%
R.B.	184	23.24	12.63%
K.A.	184	20.57	11.18%
D.S.	184	17.62	9.6%

See Memorandum from Kelly Dedel, Lead Monitor, *U.S. v. Ohio*, to Tom Anger, Ohio Asst. Att’y Gen., “Results of Seclusion Analysis” (Nov. 8, 2013) (Attach. E) (“Seclusion Report”).

Faced with this evidence of seclusion, Dr. Dedel expressed her “serious concerns.” She invited the State to consider “how to mitigate these risks for the youth who have chronic, aggressive misconduct.” She urged the State to participate in a “problem-solving discussion.” She proposed that the State consult the mental health subject matter expert for recommendations. *Id.* at 1-2.

All of this fell upon deaf ears. The State has not identified any policy change or other course of action to mitigate the harm of seclusion for the boys named in the Seclusion Report or any other boys at the Facilities. On the contrary, counsel for the State cited the November seclusion hours for B.D. (142.3 hours) and A.F. (80.93 hours) and stated, “As you can see, the seclusion hours are not alarming for these youth.” Attach. B.

2. The Closure of Scioto and the PLRA Motion.

On November 21, 2013, the State announced its intent to close Scioto on May 3, 2014. Citing the declining population there, the Director of Ohio DYS wrote, “As of [November 20, 2013], there were 38 youth at [Scioto] (20 males and 18 females who reside separately). *Male youth will be gradually reassigned to the remaining facilities* according to their security, educational and programming needs.” See Letter from Harvey Reed, DYS Director, to Stakeholders (Nov. 21, 2013) (Attach. F) (emphasis added).

On December 18, 2013, the State filed a motion under the Prison Litigation Reform Act, 18 U.S.C. § 3626(b) (“PLRA”), to terminate *U.S. v. Ohio*. The next day, December 19, 2013, the United States filed a preliminary opposition. Also that day, the Court held a joint status conference with counsel in this case and *S.H. v. Reed*, No. 2:04-cv-01206 (filed Dec. 20, 2004) and set a joint settlement conference for January 29, 2014. The State withdrew its PLRA motion without prejudice to renew its motion should the parties fail to settle, and the United States withdrew its PLRA opposition without prejudice.⁷

⁷ The State’s PLRA motion and United States’ response triggered the consent order’s dispute resolution process, which culminated in a court-ordered mediation on January 29, 2014. The dispute resolution period ended on February 27, 2014, meaning the parties are free to submit this dispute to the Court.

True to its word, the State gradually assigned the Scioto boys to other Facilities. The United States has learned that there are at least six boys who were once at Scioto and are now elsewhere in DYS custody. Discovery has been limited, which prevents the United States from learning the extent to which former Scioto boys are still experiencing high levels of seclusion. The United States expects that updated discovery and records for boys not on the mental health caseload will reveal that boys at the Facilities are still experiencing excessive seclusion.

B. Excessive Seclusion Is Harming Boys with Mental Health Disorders.

On January 14, 2014, the State provided data revealing the depth of the seclusion problem. In the second half of 2013, the State imposed almost 60,000 seclusion hours on boys on the mental health caseload at the Facilities:

Prehearing And Intervention Seclusion Hours	July 2013	Aug 2013	Sept 2013	Oct 2013	Nov 2013	Dec 2013	Totals
Cuyahoga	434.45	624.37	1,027.85	1,433.47	864.97	629.34	5,324.26
	102.05	47.88	16.10	143.78			
Scioto	277.92	528.14	108.75	403.52	232.44	286.83	3,999.52
	336.00	984.17	72.00	457.75	240.00	72.00	
Indian River	2,025.13	1,938.72	2,091.99	1,908.29	1,475.24	1,763.57	20,235.07
	1,657.33	3,072.00	2,105.60	997.20	384.00	816.00	
Circleville	930.38	1,319.01	1,444.17	2,775.69	3,048.87	850.71	30,306.16
	2,256.17	2,448.00	1,752.00	4,919.33	6,420.10	2,141.73	
Total	8,019.43	10,962.29	8,618.46	13,039.03	12,665.62	6,560.18	59,865.01

That may be only the tip of the iceberg. The State did not provide records covering the first six months of 2013, any part of 2014, or any boys who are not on the mental health caseload – about half of the population at the Facilities. Even this limited data the State provided shows that seclusion remains unchecked at the Facilities.

As poor as the State's track record has been, its overreliance on seclusion is getting worse, not better. In June 2013, Dr. Dedel found that Scioto boys who committed an act of violence received seclusion as a sanction 72 percent of the time. *See* Fourth Compliance Report at 25, *U.S. v. Ohio*, ECF No. 114. By September 2013, that number had grown to approximately 90 percent, which is a "significant increase." *See U.S. v. Ohio*, ECF No. 127 at 27.

None of this should come as a surprise to the State. Dr. Andrea Weisman, a subject matter expert in the *S.H.* case, found that the DYS head psychologist, Dr. Hamming, noted that "half of the kids are in seclusion (on Buckeye) a good majority of the time." *See* Report by Andrea Weisman, *S.H.* "Compliance with Consent Order Provisions Regarding Mental Health," at 6 (Dec. 16, 2013) ("Weisman Report I") (Attach. G). Dr. Weisman further explained that Dr. Hamming's note "raises concern that the youth who have transitioned out of the Progress Unit are still being managed with long stays in seclusion, by way of the IRAV and sanction seclusion processes rather than by way of a maximum security unit." *Id.* at 6.

Three facts are beyond dispute: The State secludes boys with mental health disorders at the Facilities a tremendous amount, the State knows it, and the State won't address it. If these boys are to be protected from the irreparable harm of excessive and repeated seclusion, it is up to this Court to protect them.

C. Boys with Mental Health Disorders Suffer Tremendous Harm from Seclusion.

The harm from seclusion falls disproportionately on boys with mental illness – the very boys least able to cope with repeated and extended isolation. Dr. Weisman found that the State places mentally ill boys into seclusion more often than general population boys, and "mentally ill youth are disproportionately engaging in behaviors likely to result in their being secluded." *See*

“Compliance with Consent Order Provisions Regarding Mental Health,” *S.H. v. Reed*, ECF No. 388-2.

The State’s excessive reliance on seclusion is rooted in the deficiencies in its mental health care treatment. Dr. Weisman explained, “It is clear to me that *the deficiencies in behavioral health care* led to the high rates of seclusion for youth at Scioto, and that the same deficiencies exist at the other three DYS facilities.” *See* Weisman Report I at 6 (emphasis added). Dr. Dedel also warned that seclusion suppresses a boy’s negative behavior during the time that he is behind a locked door but denies him access to the very treatment programs needed to change his behavior. *See U.S. v. Ohio*, ECF No. 127 at 29.

Indeed, the State does not modify boys’ treatment plans or adjust their mental health treatment following misconduct, so the cycle of violence leading to seclusion continues. When a boy with a mental health disorder is placed in seclusion, “it is incumbent on the practitioners to modify the [Integrated Treatment Plan] to extinguish the behavior.” *See* Weisman Report I at 5. If there is no corresponding modification of the treatment plan, Dr. Weisman predicted that the “seclusion will just *exacerbate the behavioral problems DYS is seeking to extinguish*.” *See* Weisman Report I at 5 (emphasis added).

D. The State Can Operate the Facilities Safely and Securely Without the Use of Excessive Seclusion or Restraints.

The State can operate a safe, secure facility without resorting to seclusion. Dr. Dedel has conducted reviews of approximately 60 juvenile correctional facilities. She has repeatedly informed the parties that, in her experience, juvenile facilities routinely maintain control over youth while using minimal levels of seclusion, levels significantly below those that the State uses. Separately, Paul DeMuro, the former Pennsylvania Commissioner of Children and Youth

and a nationally recognized expert on the operations of juvenile justice facilities, opines that it is possible to maintain security and deliver effective programming while using minimal levels of seclusion. In fact, Mr. DeMuro confirms that high rates of seclusion, such as those used by the State, impede the delivery of effective programming and worsen the very behaviors that seclusion targets. *See* Decl. of Paul DeMuro at ¶¶ 4-6 (Attach. H).

DYS' disciplinary policies contribute to the seclusion problem at the Facilities. Dr. Dedel noted, "DYS' continued use of disciplinary seclusion remains outside the norm. The Monitor's experience in the field suggests that most jurisdictions limit the length of stay in seclusion to 72 hours, compared to the 120 hours permitted by DYS policy." *U.S. v. Ohio*, ECF No. 127 at 31. In the most recent monitoring period, 27 percent of instances of intervention seclusion at Scioto were for the maximum 120 hours. *Id.* at 29. That is five straight days of isolation, depriving the boys of mental health care treatment the entire time.

Seclusion at the Facilities must be addressed for the best possible reason: It is hurting these boys. "Solitary confinement can cause serious psychological, physical, and developmental harm, resulting in persistent mental health problems or, worse, suicide. . . . These risks are magnified for children with disabilities or histories of trauma and abuse." ACLU, "Alone & Afraid: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities" (Nov. 2013). "[D]ue to their 'developmental vulnerability,' adolescents are particularly at risk of adverse reactions from prolonged isolation and solitary confinement." American Academy of Child & Adolescent Psychiatry, "Policy Statements: Solitary Confinement of Juvenile Offenders" (April 2012).⁸

⁸ *See also* Lindsay Hayes, Office of Juvenile Justice and Delinquency Prevention, Juvenile

Dr. Dedel agrees that seclusion of youth in correctional facilities should be a thing of the past. She noted, “Recent publications by the ACLU/Human Rights Watch, the United Nations’ General Assembly, and other scholars suggest an evolving standard around the practice. Indeed, the upcoming revision of the Juvenile Detention Alternative Initiatives’ standards will prohibit the practice of disciplinary seclusion.” *See U.S. v. Ohio*, ECF No. 127 at 31.

ARGUMENT

Fed. R. Civ. P. 65 allows issuance of a temporary restraining order if there is notice to the adverse party and an opportunity for a hearing. *Certified Restoration Dry Cleaning Network v. Tenke Corp.*, 511 F.3d 535, 552 (6th Cir. 2007) (reversing denial of preliminary injunction for failure to hold a hearing). Issuance of injunctive relief is a matter for the trial court’s discretion. *Galper v. U.S. Shoe Corp.*, 815 F. Supp. 1037, 1043 (E.D. Mich. 1993) (granting preliminary injunction prohibiting plaintiff’s eviction from her place of business).

A. This Court Should Grant a Temporary Restraining Order to Prevent the Excessive Seclusion of Boys with Mental Health Disorders.

Granting a temporary restraining order involves an evaluation of four factors:

- (1) Whether the movant has a strong likelihood of success on the merits;
- (2) Whether the movant would suffer irreparable injury without the injunction;
- (3) Whether the issuance of the injunction would cause substantial harm to others; and
- (4) Whether the public interest would be served by issuance of the injunction.

Suicide in Confinement: A National Survey at 3 (2009) (“Although little research has been conducted regarding youth suicide in custody, the information that is available suggests a high prevalence of self-injurious behavior in juvenile correctional facilities. . . . The study found that almost 22 percent of confined youth seriously considered suicide, 20 percent made a plan, 16 percent made at least one attempt, and 8 percent were injured in a suicide attempt during the previous 12 months.”).

Welch v. Brown, No. 13-1476, 2014 WL 25641 (6th Cir. 2014) (granting preliminary injunction preventing city from changing terms of retirees' benefits package) (citations omitted).

These considerations are "factors to be balanced, not prerequisites that must be met." *Washington v. Reno*, 35 F.3d 1093, 1099 (6th Cir.1994) (affirming issuance of injunction prohibiting prison officials from using trust fund proceeds to fund a new phone system). The district court need not make specific findings regarding each of the four factors if fewer factors are dispositive of the issue. *See Six Clinics Holding Corp., II v. Cafcomp Sys., Inc.*, 119 F.3d 393, 400 (6th Cir. 1997) ("A preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits.").

In this case, the balancing of these factors weighs heavily in favor of enjoining the State's continued use of excessive seclusion at the Facilities on boys with mental health disorders.

1. The United States Has Demonstrated a Likelihood of Success on the Merits.

To show a likelihood of success on the merits, it is enough that the movant raises "questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation." *Brandeis Mach. & Supply Corp. v. Barber-Greene Co.*, 503 F.2d 503, 505 (6th Cir. 1974) (preliminary injunction granted against illegal tying arrangement) (quotation omitted).

The United States can demonstrate likelihood of success on the merits. Excessive seclusion of juveniles is inherently punitive and violates the Fourteenth and Eighth Amendments to the Constitution. Courts have held that the "use of isolation [on children] was not within the range of acceptable professional practices and constitutes punishment in violation of the plaintiffs' Due Process rights." *R.G. v. Koller*, 415 F. Supp. 2d 1129, 1155 (D. Haw. 2006)

(relying on expert testimony that “[p]rolonged isolation or seclusion . . . can cause serious psychological consequences”). Numerous courts have recognized the harm to juveniles from isolation and have found it violates Due Process. *See generally H.C. v. Jarrard*, 786 F.2d 1080, 1088 (11th Cir. 1986) (“Juveniles are even more susceptible to mental anguish than adult convicts.”); *Santana v. Collazo*, 714 F.2d 1172 (1st Cir. 1983) (experts’ testimony on lack of therapeutic and disciplinary benefits from isolation sufficient to warrant remand for further factual findings); *Feliciano v. Barcelo*, 497 F. Supp. 14, 35 (D.P.R. 1979) (“Solitary confinement of young adults is unconstitutional.”); *Lollis v. N.Y. State Dep’t of Soc. Servs.*, 322 F. Supp. 473, 480 (S.D.N.Y. 1970) (concluding that the extended use of isolation on children is “cruel and inhuman,” and “counterproductive to the development of the child”).

The United States has established that boys with mental health disorders at the Facilities are secluded for weeks at a time, even when they demonstrate suicidal ideation or actions. Despite the concerted efforts of monitoring teams of subject matter experts for many years, the State continues to impose seclusion on boys with mental health disorders as a matter of course. The State does not deny the extent to which it secludes boys at the Facilities; when confronted with over 100 hours of seclusion in a single month, it dismissed that as “not alarming.” Attach. B. Even as evidence mounted that boys with mental health disorders were suffering, the State turned its resources and attention toward terminating this case under the PLRA rather than addressing the problems at the Facilities. There can be no factual dispute that the State is handing out thousands of seclusion hours and that is hurting boys at the Facilities.

Based on the undisputed evidence of the State’s relentless use of seclusion on boys with mental health disorders, the United States has demonstrated a likelihood of success sufficient to justify a temporary restraining order.

2. The Boys at the Facilities Will Suffer Irreparable Injury Without a Temporary Restraining Order.

The United States can demonstrate irreparable harm to boys with mental health disorders at the Facilities. “Irreparable harm” means that the plaintiff is unlikely to be made whole by an award of damages at the end of the trial. *Farnam v. Walker*, 593 F. Supp. 2d 1000, 1012 (C.D. Ill. 2009) (granting preliminary injunction requiring prison to provide medical care for inmate).

Here, a monetary award would be cold comfort for the tremendous mental and physical harm the boys at the Facilities are suffering. They have endured days and even weeks of seclusion at the Facilities, to the point where some boys threaten suicide or are driven to hurt themselves. Their Fourteenth Amendment and Eighth Amendment rights have been impaired, and money damages cannot possibly fix that. These boys should not have to suffer needlessly while the United States, the *United States v. Ohio* and *S.H.* monitors, and the monitors’ subject matter experts try to persuade the State to change its ways. *See, e.g., Farnam*, 593 F. Supp. 2d at 1013 (“[M]oney hardly seems an adequate remedy for . . . significant pain and suffering.”).

To substantiate a claim that irreparable injury is likely to occur, a movant “must provide some evidence that the harm has occurred in the past and is likely to occur again.” *See Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 154 (6th Cir. 1991) (finding irreparable harm in state’s refusal to allow access to sites for dumping of radioactive waste). Here, the State’s own records prove excessive seclusion has occurred in the past. Moreover, the State’s own words prove excessive seclusion will occur in the future. When Dr. Dedel discovered that some Scioto boys had been secluded for at least 10 percent of their time in custody, the State dismissed her findings as “not alarming.” Attach. B. When the monitor sought help for one boy who showed extreme distress, visible injuries, and suicidal

behavior during numerous episodes of seclusion, the State sought the resignation of the subject matter expert who investigated. The State's active resistance to efforts to reduce the suffering of secluded boys with mental health disorders shows irreparable harm will continue unless this Court steps in.

3. A Temporary Restraining Order Would Not Cause Substantial Harm to Others.

To determine whether the temporary restraining order would cause harm to others, the Court should balance the hardships by comparing relevant harms to plaintiff and defendant. *Hughes Network Sys., Inc. v. InterDigital Commc'ns Corp.*, 17 F.3d 691, 693 (4th Cir. 1994) (vacating denial of preliminary injunction where district court failed to balance relative harms).

Here, the harm to the boys with mental health disorders is significant and immediate. They are isolated for long periods, they are denied exercise outside of their rooms, and they often cannot receive essential programming, education and mental health care. At least one boy (K.R.) has hurt himself, and several more displayed suicidal tendencies. Isolation of juveniles greatly increases the risk of suicide or self-harm. Dr. Dedel warned, "The risk of self-harm increases when youth are isolated. Approximately ½ of the suicides that occur in juvenile correctional facilities occur among youth who are in disciplinary seclusion." *See* Seclusion Report at 1.

In contrast, the potential harm to the State from the proposed relief is minimal and speculative if there is any harm at all.⁹ As expert DeMuro explained, it is possible to run a safe

⁹ Reducing seclusion may actually yield cost savings for the State. A recent study found, "[s]ubstantial savings can result from effectively changing the organizational culture to reduce and prevent the use of restraint and seclusion." Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services, *The Business Case for Preventing and Reducing Restraint and Seclusion Use*, at 4 (2011).

and secure facility without the State's current overreliance on seclusion. DeMuro Decl. at ¶¶ 4-6, Attach. H. Under the proposed temporary restraining order, the State would retain authority and discretion to run the Facilities consistent with this Court's order. For instance, the State could use seclusion as a temporary cool-down device or to restore order for a short time after an episode of chaos. What the State could not do is continue to use lengthy and repeated seclusion as its default, one-size-fits-all method for handling disciplinary issues. *See Farnam*, 593 F. Supp. 2d at 1016 (in Eighth Amendment challenge alleging deliberate indifference to serious medical needs, potential harm from erroneously granting a preliminary injunction was slight compared to the potential harm from erroneously denying it); *see also Beerheide v. Zavaras*, 997 F. Supp. 1405, 1411 (D. Colo. 1998) (balance of harms favored prisoners requesting kosher diet despite prison's objection based on cost and security concerns).

When the overwhelming harm to the boys at the Facilities from excessive seclusion is weighed against the possible inconvenience to the State of temporarily changing its seclusion practices pending a final determination of what those practices should be, the balance of hardships weighs heavily in favor of the United States.

4. A Temporary Restraining Order to Prevent the Excessive Seclusion of Boys with Mental Health Disorders Would Serve the Public Interest.

The Court should evaluate whether "the public interest that would be served by the granting of a preliminary injunction outweighs any public interest that would be served by denying it." *United Food & Commercial Workers Union v. Sw. Ohio Reg'l Transit Auth.*, 163 F.3d 341, 363 (6th Cir. 1998) (public had an interest in free expression of ideas in bus ads, and transit authority failed to prove impact on safe and efficient transportation supporting advertising

ban); *see Galper*, 815 F. Supp. at 1044 (preventing plaintiff's eviction from her office served the public interest because eviction "would disrupt the service she provides to [5,000] patients").

Protecting the constitutional rights of juveniles is in the public interest. The Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, explicitly grants the Attorney General the authority to bring suit against any governmental entity that has engaged in a pattern or practice of depriving juveniles of their rights secured by the Constitution or federal statute. In addition, the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, authorizes the United States to investigate and remedy unconstitutional conditions in juvenile facilities. 42 U.S.C. § 1997a(a). The existence and enforcement of these federal statutes demonstrates a substantial and compelling public interest in protecting the rights of boys with mental health disorders from the harm of excessive seclusion.

Further, a national enforcement priority of the United States is preventing the use of unlawful seclusion on persons in custody who have significant mental health needs. In the past ten months alone, the United States has issued investigative findings and statements of interest in pursuit of this priority.¹⁰ The compelling public interest, combined with the United States'

¹⁰ For example, on May 31, 2013, and February 24, 2014, the United States issued findings that the manner in which the Pennsylvania Department of Corrections used prolonged isolation on inmates with serious mental illness subjected those inmates to a risk of serious harm and violated the Eighth Amendment of the U.S. Constitution and Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131-34. On February 13, 2014, the United States filed a Statement of Interest in *G.F. v Contra Costa County*, No. 3:13-cv-03667-MEJ (N.D. Cal.), arguing that a juvenile detention facility is obligated under the ADA, 42 U.S.C. § 12101, to provide reasonable programming modifications enabling youth with disabilities to avoid imposition of seclusion due to their disability-related behaviors and to receive education and related programming while in seclusion. On August 9, 2013, the United States filed a Statement of Interest in *Coleman v. Brown*, No. 2:90-cv-0520 (E.D. Cal.), reaffirming, in a case challenging California's use of prolonged isolation on prisoners with serious mental illness, the United States' broad interest in preventing the unlawful use of solitary confinement. *See Special*

showing of irreparable harm, likelihood of success on the merits, and balancing of harms, justifies a temporary restraining order.

B. The Temporary Restraining Order Satisfies the PLRA.

The Prison Litigation Reform Act (“PLRA”) bears on the scope of the prospective relief this Court can order. It states:

Preliminary injunctive relief. . . . *Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm.* The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief and shall respect the principles of comity set out in paragraph (1)(B) in tailoring any preliminary relief.

18 U.S.C.A. § 3626(a)(2) (emphasis added).

As described in the Proposed Order, the United States seeks a temporary restraining order to enjoin the State from imposing excessive amounts of seclusion on boys with mental health disorders. This targeted relief complies with the PLRA requirements because:

- It extends no further than necessary to correct the harm because it allows the State to use seclusion in a controlled fashion where necessary while preserving boys’ access to essential education, exercise, programming and mental health care;
- It is narrowly tailored because it encompasses only boys at the Facilities with mental health disorders, as they are the ones who suffer the most from excessive seclusion; and
- It is the least restrictive means necessary because it vests in the State discretion to decide when seclusion is unavoidable and what offenses will result in seclusion.

The United States’ requested relief is an appropriate exercise of the Court’s equitable powers, so the Court should issue a temporary restraining order and set an expedited hearing on issuance of a preliminary injunction, followed by expedited discovery and a hearing on the

United States' request for a permanent injunction.

CONCLUSION

The United States has established that the State is excessively secluding boys with mental health disorders, that boys are suffering irreparable harm, and that the State has not changed its practices. This Court should act now and grant an immediate temporary restraining order, a preliminary injunction hearing and, after expedited discovery and briefing, a hearing on the issuance of a permanent injunction to protect the constitutional and federal rights of these boys.

DATE: March 12, 2014

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United States Attorney
Southern District of Ohio

/s/ Deborah F. Sanders

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Respectfully submitted,

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this date, March 12, 2014, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will simultaneously serve notice of such filing to counsel of record and the Court Monitor to their registered electronic mail addresses.

/s/ Silvia J. Dominguez-Reese
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Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO: 2:08-cv-475
	)	JUDGE ALGENON L. MARBLEY
THE STATE OF OHIO, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

[PROPOSED] ORDER
GRANTING UNITED STATES' MOTION FOR TEMPORARY RESTRAINING
ORDER, SETTING A PRELIMINARY INJUNCTION HEARING, AND GRANTING
EXPEDITED DISCOVERY FOR A PERMANENT INJUNCTION HEARING

Upon consideration of the parties' submissions and the applicable law, the Court hereby grants the United States' Motion for a Temporary Restraining Order and sets a schedule for the United States' request for a Preliminary and Permanent Injunction as follows:

I. This Court, as an interim response to the State's infliction of unlawful and irreparable harm on boys through its seclusion and mental health practices, hereby issues a temporary restraining order that the State:

A. Stop secluding any boy with an identified mental health disorder for more than 24 hours without providing him, outside of his confinement area and during normal facility programming times, at least four hours of programming, exercise, education, or combinations thereof;

B. Stop imposing more than three consecutive days of seclusion in any form (e.g., prehearing seclusion and intervention seclusion) on any boy with an identified mental health disorder; and

C. Stop imposing more than three days of seclusion in any form within a 30-day period on any boy with an identified mental health disorder without first:

1. Conducting a comprehensive mental health treatment review of the boy that includes the treatment team meeting and reviewing the boy's mental health treatment plan to consider and address potential problems with the plan and its implementation;

2. Obtaining the prior written approval of the Deputy Director of DYS responsible for Facility programming; and

3. Providing written notice to the United States and monitor within 24 hours of a youth exceeding three days of seclusion within a single month, describing the amount of seclusion, reason for seclusion, treatment provided in response to seclusion, whether the youth's behavior intervention plan was modified or created, and alternatives to seclusion that were rejected.

D. Provide monthly to the monitor an AMS printout of monthly seclusion hours for boys at the Facilities; and

E. Refrain from substituting restraints for seclusion.

II. The Court will hold an expedited hearing to determine the United States' entitlement to a preliminary injunction.

III. The Court hereby sets an expedited schedule for discovery and further briefing in preparation for a hearing on a permanent injunction. At the permanent injunction hearing, the Court will determine the circumstances and limitations governing the use of seclusion (or restraints as a substitute for seclusion) on boys with mental health disorders at the Facilities, particularly given that the proposed temporary restraining order's terms do not extend far enough to address the extent of the State's violations.

The Court hereby adopts the following schedule for expedited discovery:

Hearing on TRO Motion	March 21, 2014
Hearing on Motion to Supplement	March 21, 2014
Parties Serve Requests for Production of Documents and Interrogatories	March 24, 2014
Parties Identify Experts	March 25, 2014
Parties File Briefs on Issuance of Preliminary Injunction	March 28, 2014
Hearing on Issuance of Preliminary Injunction	April 2, 2014
Responses to Requests for Production of Documents and Interrogatories	April 4, 2014
Plaintiff's Experts Tour Facilities	April 6-11, 2014
Monitor Team Reports Filed by Dedel and Glindmeyer	April 21, 2014
Plaintiff Deposes DYS Staff	April 28, 2014
Parties Serve Requests for Admission	April 28, 2014
Parties Respond to Requests for Admission	May 5, 2014
Parties' Serve Expert Reports	May 5, 2014

Depositions of Experts	May 12-16, 2014
Pre-Hearing Briefs for Permanent Injunction	May 27, 2014
Hearing to Determine Permanent Injunction	June 7, 2014

It is so ordered.

Signed this ____ day of _____, 2014

HONORABLE ALGENON MARBLEY
UNITED STATES DISTRICT JUDGE

Attachment A

Coe, Cynthia (CRT)

From: Alphonse Gerhardstein [AGerhardstein@gbfirm.com]
Sent: Saturday, January 11, 2014 3:25 PM
To: Thomas N. Anger
Cc: Judith B. Goldstein; Terry Schuster; Kim Tandy; Tayloe, Benjamin (CRT); Coe, Cynthia (CRT); Dominguez-Reese, Silvia (CRT); Will Harrell; Andrea Weismann; daphne glindmeyer
Subject: [REDACTED] - evaluation needed

Tom – Thanks for the cooperation Kim and I got at CJCF yesterday. I write to urge prompt action regarding [REDACTED]. I am not a clinician but I have been representing mentally ill inmates for 37 years. Mr. [REDACTED] strikes me as extremely mentally ill. More importantly, he seems to be experiencing excessive seclusion – particularly in the Observation Cell on Oak – which appears to make him worse.

I do not have his file. Only my interview. He reports that he is taking significant psych meds. Staff and the client both reported that he bangs his head frequently. He had fresh head injuries as I spoke to him. Something drives him to self destructive behavior and whatever has been tried so far does not seem to be working. I certainly got the impression that he remains at a current risk of seriously harming himself. I ask that DYS, Dr. Weisman and Dr. Glindmeyer take a careful look at this young man and act promptly to ensure his safety and adequate treatment. Thanks very much.

Alphonse A. Gerhardstein
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432 Walnut Street, Suite 400
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Office 513.621.9100
FAX 513.345.5543
www.gbfirm.com

From: Judith B. Goldstein [mailto:Judith.Goldstein@ohioattorneygeneral.gov]
Sent: Friday, January 10, 2014 1:37 PM
To: Terry Schuster; Thomas N. Anger; Calhoun, Dustin; Alphonse Gerhardstein; Kim Tandy; Tayloe, Benjamin (CRT); Coe, Cynthia (CRT); Dominguez-Reese, Silvia (CRT); Will Harrell; Andrea Weismann; daphne glindmeyer
Subject: RE: Summary of parties' agreement re: follow-up to Glindmeyer and Weisman reports

I will certainly check into this asap. I do know that for the documents requested by Dr. Weisman (which were listed in your summary as due on Jan. 6th), we were following her mid-January deadline because we were working under the understanding that she needed documents for a report and plaintiff's counsel needed different documents for the Jan. 29th conference. I'll get back to you with a response.

Judith B. Goldstein
Unit Coordinator – Criminal Justice Section/Corrections Litigation Unit
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From: Terry Schuster [<mailto:shmonitor.schuster@gmail.com>]

Sent: Friday, January 10, 2014 1:33 PM

To: Judith B. Goldstein; Thomas N. Anger; Calhoun, Dustin; Alphonse Gerhardstein; Kim Tandy; Tayloe, Benjamin (CRT); Coe, Cynthia (CRT); Dominguez-Reese, Silvia (CRT); Will Harrell; Andrea Weismann; daphne glindmeyer

Subject: Fwd: Summary of parties' agreement re: follow-up to Glindmeyer and Weisman reports

Hi Judy,

We need some further explanation from you. You said in your recent email that Defendant has provided all of the documents and met all of the deadlines agreed to in chambers. I am forwarding the email that I sent out to everyone on Dec. 22nd. It includes an attached summary of the parties' agreement in chambers.

As far as we can tell, DYS has not provided any of the documents and information on the second page of the attached summary.

Additionally, DYS has not provided the items listed on the first page under the heading "QA/QI and peer review for mental health" or under the heading "discipline for youth on the mental health caseload". [Note that we agreed with Dustin's alternate definition of "frequent flyers," which he included in an email response to this Dec. 22nd email.]

I have also attached a short memo that Dr. Weisman wrote up for Will explaining what she is able to report on (by Monday) based on what she's been provided so far, and what she's not able to report on.

It seems as though DYS has overlooked quite a few of the items that were included in this summary. Can you please explain what happened?

Thanks,
Terry and Will

----- Forwarded message -----

From: Terry Schuster <shmonitor.schuster@gmail.com>

Date: Sun, Dec 22, 2013 at 8:28 PM

Subject: Summary of parties' agreement re: follow-up to Glindmeyer and Weisman reports

To: "Judith B. Goldstein" <Judith.Goldstein@ohioattorneygeneral.gov>, "Thomas N. Anger" <thomas.anger@ohioattorneygeneral.gov>, "Calhoun, Dustin" <dustin.calhoun@dys.ohio.gov>, "Reed, Harvey" <Harvey.Reed@dys.ohio.gov>, "linda.janes@dys.ohio.gov" <linda.janes@dys.ohio.gov>, "Trim, Ginine" <ginine.trim@dys.ohio.gov>, Will Harrell <shmonitor.harrell@gmail.com>, Alphonse Gerhardstein <AGerhardstein@gbfirm.com>, Kim Tandy <ktandy@childrenslawky.org>, "Dominguez-Reese, Silvia (CRT)" <Silvia.Dominguez-Reese@usdoj.gov>, "Tayloe, Benjamin (CRT)" <Benjamin.Tayloe@usdoj.gov>, "Coe, Cynthia (CRT)" <Cynthia.Coe@usdoj.gov>, daphne glindmeyer <dglindmeyer@gmail.com>, Andrea Weismann <Aweisman@aol.com>, Kelly Dedel <kelly.dedel@gmail.com>

Dear DYS administrators, DYS counsel, S.H. counsel, and DOJ,

On Thursday we discussed various follow-up items from the reports written by Dr. Glindmeyer and Dr. Weisman. I have attached a summary.

If anyone needs clarification on any of the items in the summary, please let us know by close of business on Monday.

The deadline for the documentation itemized in the attached summary is January 6th. If you need a couple of extra days, let us know -- we have some wiggle room on that deadline, but we are aiming to circulate our final mental health and psychiatry reports on Jan. 13th, so we'll need all of the documentation sometime on the week of January 6th. We plan to file the final reports with the Court before January 25th.

Thanks,
Terry

--

Terry Schuster, Esq.
Special Assistant to the Federal Court Monitor
S.H. v. Reed Monitoring Team

(512) 468-4486
shmonitor.schuster@gmail.com

--

Terry Schuster, Esq.
Special Assistant to the Federal Court Monitor
S.H. v. Reed Monitoring Team

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Attachment B

Coe, Cynthia (CRT)

From: Dominguez-Reese, Silvia (CRT)
Sent: Thursday, March 06, 2014 5:48 PM
To: Coe, Cynthia (CRT)
Subject: FW: Seclusion concerns at SJCF

From: Calhoun, Dustin [mailto:Dustin.Calhoun@dys.ohio.gov]
Sent: Wednesday, December 04, 2013 11:59 AM
To: Tayloe, Benjamin (CRT); Dominguez-Reese, Silvia (CRT)
Cc: 'Thomas N. Anger'; Judith B. Goldstein
Subject: Seclusion concerns at SJCF

Silvia and Bo,

It was a pleasure speaking with the two of you this morning and I believe our conversation was very productive. Before I addressed the potential for contracting with Kelly with Director Reed, I wanted to drill down and see exactly what we are dealing with and looked at the numbers for November.

Out of the 10 young men that were referenced in Kelly's report, the following five are all that remain at Scioto: [REDACTED], with the caveat that [REDACTED] is scheduled to be released tomorrow.

The following represents the seclusion HOURS for the month of November for the above youth:

[REDACTED] 4.5 hours
[REDACTED] 1.45 hours
[REDACTED] 142.3 hours (Act of Violence)
[REDACTED] 80.93 hours (Act of Violence)
[REDACTED] 1.0 hour

As you can see, the seclusion hours are not alarming for these youth. After reviewing this email, please advise if your position has changed.

Thanks,

Dustin J. Calhoun
Chief Legal Counsel
Ohio Department of Youth Services
30 West Spring Street, 5th Floor
Columbus, Ohio 43215
614.728.7353 (Office)
614.752.9078 (Fax)
Dustin.Calhoun@dys.ohio.gov

This message, and any response to it, may constitute a public record and thus may be publicly available to anyone who requests it in accordance with Chapter 149 of the Ohio Revised Code.

Attachment C

Coe, Cynthia (CRT)

From: Alphonse Gerhardstein [AGerhardstein@gbfirm.com]
Sent: Wednesday, January 15, 2014 2:24 PM
To: Tayloe, Benjamin (CRT); Coe, Cynthia (CRT); Dominguez-Reese, Silvia (CRT)
Subject: FW: Request that Dr. Weisman resign

fyi

From: Will Harrell [mailto:shmonitor.harrell@gmail.com]
Sent: Wednesday, January 15, 2014 12:02 PM
To: Alphonse Gerhardstein
Cc: Judith B. Goldstein; ktandy@childrenslawky.org; Thomas N. Anger; dustin.calhoun@dys.ohio.gov; Terry Schuster; Andi Weisman
Subject: Re: Request that Dr. Weisman resign

Judy:

I've reviewed your letter and the email from Al. I've also discussed the allegations with Dr. Weisman. Here is my opinion.

1. Andi did not step outside of her monitor boundaries in following up on this kid's situation as reported to us by Al. In fact, I explicitly asked her to do so. Al reported his concerns about youth [REDACTED] and requested that DYS and the monitors look into it. The concerns Al reported relate precisely to [REDACTED] ssue that remains in this case--seclusion of youth with mental health disorders. Al informed us that [REDACTED] mother was actively involved with him and therefor she would be a good source of information [REDACTED] s. We are authorized to gather information from any source we deem necessary such as staff, youth, advocates, oversight bodies and family members. We have done so throughout the span of this case and we will continue to do so.

2. Andi maintains that she didn't release private medical information to anyone without the youth's consent. I have no reason to believe she did. Andi didn't have any private medical information to release.

3. Andi maintains that she didn't render psychological services or a psychological evaluation. I have no reason to believe she did. She never spoke with this youth. And when she spoke with his mother, she was merely gathering information relevant to her review of the seclusion of youth on the mental health case load.

5. There is nothing slanderous about Andi's statement in her report. She is reporting what [REDACTED] mother stated to her. However, we will adjust the tone of that statement before submitting the report to t [REDACTED] for the record.

There have been many situations in the past where in the course of our monitoring we have uncovered an individual case that required urgent attention or that an urgent case is brought to our attention by plaintiffs council or other individuals. When that happens, we try to get it to the attention of the appropriate DYS officials as soon as we can. This was simply another one of those instances and it appears that this youth is now getting the attention he needed. How is that not a good thing? I assure you that is what Judge Marbley expects of us.

I am willing to seek Judge Marbley's opinion on this matter or you can bring it to him directly. But I advise you to drop this distraction and get refocused on resolving the remaining substantive issues in the case. The Attorney General's office has been trying to get Dr. Weisman removed from this case for over a year. Rather than shoot the messenger, I suggest you address the message.

Regards,

Will Harrell

On Wed, Jan 15, 2014 at 8:30 AM, Alphonse Gerhardstein <AGerhardstein@gbfirm.com> wrote:

Dear Judy – Will shared with us your letter requesting Dr. Weisman's resignation. Plaintiffs do not agree to your request. As you may know from previous disputes the agreement of Plaintiffs' counsel is necessary in order to remove a member of the monitoring team. We have not even been advised of the facts of the underlying dispute.

Here is what I know. Because of concern for one youth's safety, I requested DYS and the monitor team experts to look into the circumstances of a specific youth I interviewed last Friday. The youth called his mother who in turn called me. She had information on his history. I passed her name and number to Will and the monitor experts and it is my understanding that Will requested that Dr. Weisman talk to the mother. There is absolutely nothing wrong with those actions. It is not unusual. It has always been our practice to permit members of the monitoring team to access information from persons with knowledge. See e.g., Doc. 108 at page 82 where Monitors are allowed "unobstructed access to staff and youth and other persons having information relevant to the implementation of this Stipulation." I spoke with the youth's mom this morning and she reports that she speaks with her son by phone frequently and visits at least once a month. She seems genuinely excited that he will get effective treatment as result of the current efforts. It seems to me everyone is working to make that happen.

As far as I know the needs of the youth are now being evaluated. That was the goal. There is no basis here for DYS to seek anyone's resignation. Please call me to discuss the matter.

Alphonse A. Gerhardstein

Gerhardstein & Branch Co LPA

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Cincinnati, OH 45202

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Attachment D



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August 22, 2013

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Kim Tandy-Brown, Esq.
Children's Law Center
1002 Russell Street
Covington, KY 41011

RE: Use of Programmatic Restraints and Restructuring of Progress Unit

Dear Attorneys for S.H. and the Department of Justice:

DYS has decided to make the following changes to the Progress Unit:

First, the Progress Unit will be restructured in such a way that any youth admitted to Progress will be placed on Transition Phase I. Further, any youth demoted from Transition Phase II will be demoted only to Transition Phase I. No youth will be demoted from Transition Phase I.

Second, incidental to this change, DYS will no longer be using programmatic restraints.

These changes will be formalized and incorporated into policy as soon as possible. During this transition time, DYS will neither admit nor demote youth into Phase I, nor will it use programmatic restraints.

Thank you for your continued input and patience as DYS makes these changes.

Very truly yours,

MIKE DeWINE
Ohio Attorney General

s/Thomas N. Anger
THOMAS N. ANGER
Assistant Attorney General

TNA:mcc

cc: Jackie Cuncannan
Kelly Dedel
Silvia Dominguez
Will Harrell
Rashida Ogletree
Terry Schuster

Attachment E

MEMORANDUM

TO: Tom Anger, Linda Janes, Amy Ast—Ohio DYS
Bo Tayloe, Silvia Dominguez—U.S. DOJ

FROM: Kelly Dedel, Ph.D., Lead Monitor *U.S. v State of Ohio*

RE: Results of Seclusion Analysis

DATE: November 8, 2013

As you know, while I was on site at Scioto during the week of October 14, 2013, I became curious about the accumulation of seclusion hours for certain youth. While on site, I noted that the IH Officer and Superintendent used a tempered approach in the number of seclusion hours ordered as a sanction for individual AOVs (e.g., they did not order the maximum permissible, but more often something less). However, I also noticed that the same youth's names kept coming up in the documentation, over and over again.

I did not have time to further investigate this while I was on site, so upon returning home, I requested additional documents to examine this "accumulation" question. Using the AMS seclusion reports for the entire 6-month monitoring period, I calculated the number of hours/days each youth spent in seclusion. At first, I simply estimated the number of days the youth was in custody during that time, e.g., if he had any seclusion time during the month of June, I assumed he was there for the entire month. Once I obtained the preliminary results, I felt the need to make the analysis more precise and requested the exact admission and release dates for each youth so that I could know the precise number of days in custody, and therefore the proportion of that time that the youth spent in seclusion.

The results of this analysis are summarized in the table below. It includes youth whose total seclusion hours/days was 10% or more of their time in custody during the 6-month period. [Note: the total time in seclusion was not consecutive.] Of course, the AMS records show that there are some youth who spent very little time in seclusion. However, the AMS records also show that there are a number of youth who spent a considerable amount of time (20, 30, 40, nearly 50 days) in seclusion. Depending on how long the youth was in custody, this could amount to significant proportions of his time at Scioto.

As you know, I have serious concerns about the use of seclusion as a sanction:

- The risk of self-harm increases when youth are isolated. Approximately ½ of the suicides that occur in juvenile correctional facilities occur among youth who are in disciplinary seclusion.
- Isolation has the potential to exacerbate mental illnesses.
- Seclusion suppresses violent behavior in the moment, but does nothing to address the underlying causes of it. Instead, youth often emerge from seclusion feeling angry, frustrated and irritable—likely the very emotions that triggered their violent behavior in the first place.

- Seclusion disengages youth from the people and programs that they need to access in order to develop the awareness, skills and desire to control their violent behavior.

Although I believe it to be ineffective, when youth experience seclusion in very small doses, I don't necessarily believe it is harmful. However, when youth's exposure to seclusion accumulates, as it has for the youth listed in the table below, I believe the risk of harm is much more significant.

I offer these data as a starting point for a conversation about how to mitigate these risks for the youth who have chronic, aggressive misconduct. Obviously, preventing the misconduct via effective treatment is the best solution. Dr. Glindmeyer is reviewing these youth's mental health records and may be able to make some recommendations toward that end. When treatment is not sufficient, finding ways to address the youth's behavior that are compatible with, rather than counterproductive to, the goal of rehabilitation seems essential.

I plan to summarize these results in the upcoming Monitor's Report, but hope that we can initiate a problem-solving discussion about where to go from here in the meantime.

Respectfully,

Kelly Dedel, Ph.D.
Lead Monitor, *U.S. v. State of Ohio*

Youth	Days in Custody during Monitoring Period (max 184)	Days in Seclusion during Monitoring Period	% days spent in Seclusion
[O.J.]	74	28.54	38.57%
[B.D.]	184	49.56	26.93%
[A.F.]	184	43.83	23.82%
[T.R.]	184	35.36	19.21%
[D.H.]	184	33.59	18.25%
[J.A.]	141	24.56	17.42%
[T.H.]	109	16.27	14.92%
[M.G.]	137	17.55	12.81%
[R.B.]	184	23.24	12.63%
[K.A.]	184	20.57	11.18%
[D.S.]	184	17.62	9.6%

Attachment F

Ohio | Department of Youth Services

John R. Kasich, Governor
Harvey J. Reed, Director

November 21, 2013

TO: Stakeholders
FROM: Director Reed
RE: Facility Closure

I want to inform you of the Department's decision to close the Scioto Juvenile Correctional Facility (SJCF) on May 3, 2014. Over the course of the past two years, the DYS population has dropped from an average of 685 youth in October 2011 to 525 youth in October 2013. With a 23 percent drop in population, closing the facility improves the efficiency of our operations.

As of yesterday, there were 38 youth at SJCF (20 males and 18 females who reside separately). Male youth will be gradually reassigned to the remaining facilities according to their security, educational and programming needs. I am confident that our staff is well-equipped to handle these youth safely and effectively. We are evaluating the appropriate placement options for our female youth, including placement at private residential facilities and Community Corrections Facilities (CCFs), and will certainly keep you informed as the plan advances.

We are required to follow all layoff procedures according to union contracts and the Ohio Revised Code; however, we will offer a DYS position to all staff impacted by this closure and who are not ready to retire. During the next few weeks, we will work closely with the affected bargaining unit and exempt staff to identify positions for which they are qualified.

Thank you for your cooperation and support. Please do not hesitate to contact us with any questions or concerns by emailing questions@dys.ohio.gov.

Attachment G

S.H. v. Reed

Re: Compliance with Consent Order Provisions regarding Mental Health

Submitted by: Andrea Weisman, Ph.D.

December 16, 2013

Sub-topic II.C.1.a. QA/QI and peer review for mental health and psychiatry

Mental Health Compliance Rating – Partial Compliance

Methodology: Peer Review forms were received from each facility: CJCF – N=6, CHJCF – N=8, Scioto – N=7, IRJCF – N=6.

Observations: These reviews are titled Clinical File Reviews and reflect provider's assessment of 14 areas of concern including, whether the ITP is strength-based, whether there is evidence that parents/guardians have been communicated with, whether the SOAP format was utilized in the documentation of group and individual sessions, etc. The newly created form provides check boxes (Compliant, Non-Compliant and N/A). Problems noted include: when non-compliant or N/A is checked there frequently is no narrative explaining why the rating was given. In addition, there are numerous examples of unchecked boxes or multiple responses to the same question. This check box approach does not really get at the quality of treatment provided or the clinical efficacy of their interventions. In order to determine the efficacy of treatment, DYS would, for example, need to look at such issues as whether the Sex Offender program is working, and for which populations of youth is it working? Are there racial, intelligence, psychiatric diagnostic factors that correlate with youth's ability to complete the program in a timely way. DYS would also need to examine such issues as what sub-groups of youth are effectively participating in their CBT curriculum or individual therapy, as evidenced by youth engaging in fewer acts of violence or meeting treatment objectives. And DYS would be advised to look at whether group and individual services are being offered at the recommended frequency, also by the demographic variables identified above.

In addition, Behavioral Health Peer Review forms specifically focused on ITPs were received from CJCF (N=16). These forms assess the ITP objectives in terms of the acronym SMART: Specific (What do we want them to accomplish?), Measurable (Concrete criteria established to measure progress. How much, how many, how will I know when it is accomplished), Attainable (Plan the steps and associated timeframe wisely), Realistic (Is the youth willing and able to meet the objective?) and Timely (Are

the time frames associated with objective). This is a form that collects provider's responses on 5 separate Likert scales which range from strongly disagree to strongly agree (with "neutral" in the center of the scale. Most providers rated the ITPs as meeting SMART expectations.

Since ITPs were also presented for review, it was possible to determine the accuracy of ratings on the SMART Peer review forms. For example, one form which rated the ITP positively on all indicators, in fact contained an objective that read "Learn and practice Skill Card #12: Following instructions and Skill Card #1: Listening over the next 30 days." In still another, the objective read "(Youth) and I will continue working together in individual sessions to identify his coping skills, coping strategies, common thinking errors and his goals, dreams and hopes for the future. This social worker plans on continuing to provide regular support, encouragement and advice in order to aid (youth) in balancing his thinking. We will complete the CBT packet entitled "Functional Behaviors – Making Choices that Work." Neither of these objectives identifies the new skill the youth will learn. I have provided consistent feedback over the years : Talking about completion of skill cards or CBT packets is not the same thing as skill acquisition. If the objective is completion of an assignment, the providers aren't measuring whether the problem behavior has decreased when they monitor for progress. And referencing what the social worker will do to provide support and encouragement is also not appropriate for inclusion in the statement of an objective. As a consequence, this peer review process has not meaningfully addressed the integrity of the ITPs.

There are additional problems with the Peer Review process. Many of the SMART Review forms are inaccurately filled out. With some providers rating that they "strongly disagree" that an objective meets the SMART indicators while the accompanying narrative would suggest the provider actually found the objectives to be compliant in the context of SMART. Also, where "neutral" is provider's rating, there is frequently no narrative to explain the rating. It is substantially unclear what value is added with this rating, particularly if it has no narrative clarifying what the rating means.

While there are continuing difficulties with the QI processes, there is evidence that psychology supervisors are focused on improving ITPs. Both Drs. Dunphy and Hamning should receive particular praise for their efforts to improve the quality of ITPs as evidenced by their thoughtful feedback to clinicians in both Behavioral Health Staff Meeting minutes and on their supervision notes. However their efforts are not reflected in the documentation provided for review.

Required Action: DYS needs to provide additional training on the writing of ITPs and on the forms in used for their peer review process.

Sub-topic II.C.1.e. Case formulation, fidelity to treatment provided to treatment model, treatment planning and treatment teams

Compliance Rating: Partial Compliance – Case formulation, treatment planning and treatment teams

Compliance Rating: Non- Compliant - Fidelity to treatment provided to treatment model

Methodology: Four Individual Treatment Plans (ITP) from each of the four facilities were reviewed. CJCF presented an additional 13 ITPs along with their Peer Review documentation. This documentation was sufficient to comment on case formulation, treatment planning and treatment teams. There was no documentation offered for review of fidelity to treatment provided to treatment model.

Observations: Treatment planning and ITPs continue to be a challenge for all facilities. Although we'd previously identified problems with the conceptualization and encoding of ITPs, and asked DYS to produce ITPs that was responsive to this observation, none of the currently reviewed ITPs are strength-based, nor do they present goals or objectives in concrete, measurable terms. Examples across facilities include: Goal: "(Youth will address his pro criminal identify mindset and work towards identifying a non criminal identity." The corresponding objective is "(Youth and I will complete the packet "Problems with Authority in our individual sessions." Goal: "(Youth) will be able to maintain control over disturbing thoughts and feelings and related impulses that contribute to criminal behavior." The corresponding objective reads: "I will use CBT techniques to develop an understanding of and be able to identify in everyday situations, the ways in which thoughts feelings, behaviors and consequences are connected and related to each other." Goal: "Correct irrational thinking, which leads to anger and interpersonal problems." And again, the corresponding objective reads: "I will use materials from MAV and CBT groups, including thinking reports, to review the last 5 incidents of angry outbursts and all future incidents to identify the specific triggers that were connected with these incidents."

As has been discussed previously, a case formulation is the essential framework for the development of Individual Treatment Plans (ITP). Treatment goals need to reflect real world concerns – issues that must be addressed in order for the youth to return to the community. Objectives should be designed to develop and measure skill acquisition. Plans need to be assessed in terms of their efficacy in helping the youth acquire the desired skills, and revised monthly – or more often – if it becomes clear that the ITP is not working. Articulating objectives as the completion of paper and pencil tasks or

studying Skill Cards does not address the development of new replacement behaviors. These are rather, strategies being employed in the service of the development of new skills, they are not in and of themselves, evidence of skill acquisition.

Required Action: Until ITPs are made more meaningful, mental health service delivery is compromised. The ITP is a roadmap, and if it doesn't outline what the staff is trying to achieve with the youth, there's no way for providers to assess whether the youth is improving. If DYS is to receive an improved compliance rating with regard to fidelity monitoring, they will have to produce evidence that they are engaging in such monitoring. This is a recommendation that has been made repeatedly over the years.

Sub-topic II.C.1.f. Behavior contracts

Compliance rating - Partial Compliance

Methodology: Five Intensive Behavior Contracts from each facility were reviewed.

Comments: As a general matter, there is noted improvement in the Intensive Behavior Contracts. There is consistency across facilities in their use of a newly revised Intensive Behavior Contract format. The Contracts now evidence only one or two target behaviors, some document the frequency of occurrence of the noxious behavior, and all offer both incentives and consequences. All Contracts are now scheduled for review 7 days from the date of its signing, and, Contracts evidence attempts to articulate goals in incremental steps: "I (youth) agree I will perform the following behavior: maintain a distance of an arm's length when upset, use respectful language when discussing my issue, and maintain a low voice volume 1 out of 3 times," "I will maintain an arm's length of space between myself and all female staff 1 out of 2 times."

There are however, some continuing challenges with the Contracts. In particular, the incentives are not sufficiently incentivizing: "I will earn an extra snack provided by the UM or SW at a predetermined time," "I can listen to 15 minutes of music in my SW or psychologist's office," "15 minutes with an MP3 player on her unit," "I will earn 10 minutes in my room." As has been noted previously, incentives should be both proximate to the production of the desired behavior and should be sufficiently incentivizing so as to be rewarding to the youth. An extra 10 minutes in one's room at the end of a week of not engaging in target behaviors just not enough of a carrot for an adolescent. Incentives should be meaningful and determined in collaboration with the youth. In order to be maximally rewarding, as previously noted, they should also be more proximate to the production of desired behavior – like daily.

In addition, all Contracts begin with the statement that "I (youth) enter into the following contract in order to create and maintain order and harmony in the facility." In point of fact, Behavior Contracts are entered into in order to enhance the youth's ability to engage in replacement behaviors - that is, new behaviors that replace the target

behaviors. If and when successful, it is likely that it will facilitate “order and harmony in the facility,” however, that is not the purpose of the Contracts.

Contracts reviewed were developed from July through October. None were signed by the youth, clinician, UM, or supervisory behavioral health staff. No evidence was provided that any of the Contracts were reviewed. As such, it is impossible to know whether these Contracts were implemented, or if revising these Contracts was just a training exercise for the practitioners. As a consequence, it is impossible to determine if these Contracts are more efficacious than their predecessors. To determine the efficacy of the Contracts, DYS would have to track whether the youth met the goal and got the reward, or didn’t meet the goal and got the consequence.

Required Action: DYS needs to provide documentation that reviews of the behavior contracts is occurring and that they are reducing the target behaviors.

Sub-topic II.C.1.h. Discipline for youth on the mental health caseload through the intervention hearing process

Compliance Rating – Partial Compliance

Since my preliminary recommendations in November, 2013, no new documentation has been presented for review regarding discipline for youth on the mental health caseload. We were advised that DYS has revised their policy “Intervention Procedures for Youth with Mental Illness, Cognitive or Developmental Disabilities (policy 303.01.04). Policy now requires that clinicians attend intervention hearings if: there are mental health and/or developmental issues that may have impacted the youth’s behavior at the time of the rule violation, and if there are mental health and/or developmental issues that should be considered regarding disposition of the youth if found proven.

This was recommended in our earlier Mental Health findings report, and it is all to the good that DYS is incorporating this recommendation into their operating procedures.

I have substantial concern however, that DYS is continuing to seclude mentally ill youth who are charged with rule infractions. While some amount of room confinement may be appropriate in some instances, when mentally ill youth are secluded, especially for protracted periods, they suffer harmful consequences. When a mentally ill youth winds up in seclusion, it is incumbent on the practitioners to modify the ITP appropriately to extinguish the behavior. If the youth continues in seclusion without a corresponding modification of his/her ITP, the seclusion will just exacerbate the behavior problems DYS is seeking to extinguish.

In a Behavioral Health Staff Meeting note from Dr. Hamning at Scioto (8/21/13), he documents that “half of the kids are in seclusion (on Buckeye) a good majority of time.” In particular, I have concern about how youth who were transferred off the Progress Units – all of whom were on the mental health caseload – are being managed in their new units. Historically – before DYS undertook drastic reforms to change the PROGRESS Unit program design – the PROGRESS Unit and SMUs before it exacerbated challenging youth behavior by keeping youth locked in their cells for most or all of the day, for weeks or months on end. Dr. Hamning’s note raises concerns that the youth who have transitioned out of the PROGRESS Unit are still being managed with long stays in seclusion, by way of the IRAY and sanction seclusion processes rather than by way of a maximum security housing unit. If DYS’s treatment interventions have not evolved enough to identify why these youth and others with serious mental health issues are behaving in the ways that they are, it is more likely that these youth will spend significant lengths of time in seclusion, an intervention that actually undermines the effectiveness of treatment.

In order to establish whether or not this is occurring, it will be necessary to review AMS logs, ITPs, Behavior Management Plans and seclusion hours for all the youth who transferred off Progress to other units.

Of course the concern extends to other mentally ill youth in DYS facilities.

Since DYS’s announcement regarding the closure of Scioto, plaintiffs have expressed their concern “that youth on the mental health caseload who did not receive adequate treatment in the PROGRESS Unit will now be dispersed to the remaining institutions and continue to have deficient case formulation, treatment planning, behavior contracts, excessive discipline and excessive segregation. Similar youth who would have otherwise been transferred to the PROGRESS unit may be facing the same problem.” It is clear to me that the deficiencies in behavioral health care led to high rates of seclusion for youth at Scioto, and that the same deficiencies exist at the other three DYS facilities. What I do not know from the documentation I have been provided is whether youth with mental illnesses are experiencing high rates of seclusion at the other three DYS facilities. Given the recent closures of both the PROGRESS Unit and Scioto JCF, plaintiffs’ question regarding whether youth with behavioral challenges at other facilities spend a significant portion of their DYS stays in seclusion is a valid one. Such a determination, however, could be made only after a more thorough review of the AMS data and treatment files of mental health caseload youth who have experienced multiple Intervention Hearings over the last six months.

Required Action: By mid-January DYS should produce documentation that identifies the seclusion hours for “frequent fliers” and indicate whether they are on the mental health caseload. This, along with their ITPs and Intensive Behavior Management Plans will help to determine if IDTs are addressing the behavior that has led to seclusion, and the harmful effects of seclusion itself.

Attachment H

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF OHIO, *et al.*,

Defendants.

CIVIL ACTION NO:
2:08-cv-475

DECLARATION OF PAUL DEMURO

Paul DeMuro declares as follows under penalty of perjury:

1. My name is Paul DeMuro. I submit this declaration in support of the United States' motion for a temporary restraining order. My address is 1201 Futch Creek Rd., Wilmington, N.C. 28411. I have been retained by the United States to, among other things, provide my opinion whether limitations proposed by the United States on the use of seclusion of juveniles are reasonable, appropriate, and capable of being implemented rapidly without causing significant disruption to security and operations in a juvenile justice facility.
2. I have over forty-three years of experience in juvenile justice and child welfare services. I have been superintendent of a large urban, secure juvenile detention center, as well as superintendent of a large training school for juvenile delinquents. I have served as Assistant Commissioner of the Massachusetts Department of Youth Services, overseeing all parole supervision for adjudicated juveniles in Massachusetts. In the late 1970's, I was appointed by the Governor of Pennsylvania to serve as the Commissioner of Children and Youth in Pennsylvania. As the Commissioner, I supervised the superintendents of Pennsylvania's juvenile justice institutions, including all of the state's secure institutions for the most violent juvenile offenders. As Commissioner, I developed state regulations that governed the operation of secure county juvenile detention centers. I have developed public and contract residential and non-residential programs for delinquent youth, including model secure treatment programs for violent offenders.
3. I am knowledgeable about contemporary juvenile justice and child welfare program standards, policies and practices. For over six years I served as the

Federal Court monitor in a class action case in Florida, overseeing on a regular basis conditions of confinement in Florida's secure juvenile correctional institutions. I held a similar appointment for the Federal District Court in Oklahoma. As Federal Court monitor, I monitored Florida's and Oklahoma's secure institutional and community programs for youths and reported to the Federal Court. More recently, I have served as a Federal Court monitor in a New Orleans secure juvenile detention case, and I presently serve as a Federal Court Monitor in Mississippi in a case involving a secure commitment program for youth tried and convicted as adults. The use of disciplinary seclusion is severely limited in both the New Orleans and Mississippi secure programs. I have been appointed as a mediator in a number of cases to help resolve class action juvenile justice and child welfare cases. As a consultant, I routinely evaluate juvenile justice and child welfare programs and services. I have reviewed juvenile justice institutions, including juvenile justice secure institutions and child welfare programs in Alabama, Arizona, California, Florida, Georgia, Kentucky, Illinois, Louisiana, Maryland, Mississippi, New Jersey, New York City, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota and Texas. I have evaluated a variety of state and county run juvenile correctional institutions, including secure juvenile facilities, for the United States Department of Justice (the "DOJ"). My clients have included state juvenile justice agencies, state child welfare agencies, county juvenile justice agencies, the U.S. Department of Justice, the National Juvenile Detention Association (now part of the National Partnership for Juvenile Services), and private Foundations. I have co-edited an anthology regarding violent offenders (Violent Juvenile Offenders, 1984) and have co-authored a book regarding the problems of overcrowding in the California Youth Authority's secure institutions (Reforming the CYA, 1988). I have written a number of reports and articles concerning young offenders and secure institutional and alternative programs designed to serve them. Exhibit I contains my cv and my consulting prospectus, which contains a list of my publications. Exhibit II identifies court cases in which I have served as an expert witness or court-appointed expert/monitor.

4. The opinions expressed in this declaration are based on my experience in the field and my knowledge of juvenile justice standards, policies and practices. I have not reviewed Ohio Department of Juvenile Corrections' ("DYS") policies or practices, nor have I reviewed DYS data or records or interviewed Ohio staff or juveniles. However, it is clear that the use of seclusion in juvenile institutions causes more harm than good and, therefore, the use of and the duration of seclusion should be limited to the absolute minimum degree possible.¹ Youth in isolation cannot participate in programs designed to address their problems. In

¹ See, "The Use of Seclusion IS Not Evidence Based Practice", The Journal of Child Abuse and Adolescent Psychiatric Nursing, Oct-Dec. 2001. Linda Finke, the author of this article, concludes that "the scientific evidence available illustrates that the use of seclusion with children is not therapeutic and is, in fact, harmful..." Also consider what a non-academic expert John Mc Cain says about isolation: "It's an awful thing, solitary....It crushes your spirit and weakens your resistance more than any other form of mistreatment." The New Yorker, March 30, 2009, Atul Gawande, "Annals of Human Rights: Hellhole".

essence youth who are perceived as being most in need of rehabilitative services are, when they are in isolation, denied access to those supportive interventions. In addition, isolation has direct negative consequences. Youth in isolation are more likely to commit suicide and/or to self mutilate than youth in the general population. Youth in isolation often become depressed; many youth in isolation become angry and more agitated and thus even more resentful of staff. The use of isolation is counterproductive. Isolated youth often feel more depressed and desperate. Locking a youth in a cell does not reduce a youth's acting out. Its use only makes matters worse.

5. I understand that the United States has proposed the following limitations on the use of seclusion at facilities operated by DYS. (My specific observations regarding them are set forth in italics):
 - A. Refrain from secluding any boy with an identified mental health disorder for more than 24 hours without providing him, outside of his confinement area and during normal facility programming times, at least four hours of programming (e.g., mental health counseling, exercise, education or combinations thereof);
 - B. Refrain from imposing more than three consecutive days of seclusion in any form (e.g., prehearing seclusion and intervention seclusion) on any boy with an identified mental health disorder. *In fact, the pre-hearing time should be limited to the degree possible. Youth should not be placed in seclusion on a pre-hearing basis if they are in control. All youth in seclusion either on a pre-hearing basis or on a disciplinary basis should be out of the confinement area/cell for at least four hours in any given twenty-four hour period during normal programming time. There is no evidence to suggest that longer periods of seclusion improve a youth's behavior. In fact the available evidence strongly points in the exact opposite direction, for all youth, and particularly for youth with mental health problems.*
 - C. Refrain from imposing more than three days of seclusion in any form within a 30-day period on any boy with an identified mental health disorder without first:
 1. Conducting a comprehensive mental health treatment review of the boy that includes the treatment team meeting and reviewing the boy's mental health treatment plan to consider and address potential problems with the plan and its implementation. *The treatment review should include the key staff responsible for the youth (including the security, clinical and educational staff). In all possible cases the specific youth should participate in the treatment review. The purpose of the review/meeting would be to develop a specific and detailed behavioral plan that is designed to*

safely supervise the youth in the program – without relying on seclusion/isolation;

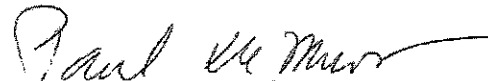
2. Obtaining the prior written approval of the Deputy Director of DYS responsible for Facility programming; and
3. Providing written notice to the United States and monitor within 24 hours of a youth exceeding three days of seclusion within a single month, describing the amount of seclusion, reason for seclusion, treatment provided in response to seclusion, whether the youth's behavior intervention plan was modified or created, and alternatives to seclusion that were rejected.

D. Refrain from imposing restraints as an alternative to seclusion.

6. In my opinion, these limitations are reasonable, appropriate, and capable of being implemented in a short period of time without causing significant disruption to security and operations.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 7, 2014


Paul DeMuro

DeMuro: CONSULTING PROSPECTUS

PROFESSIONAL EXPERIENCE

Forty-three years experience managing people, programs, budgets and processes for youth serving programs; extensive experience providing a wide range of consulting services to support progressive efforts to improve programs for troubled youth and families. Examples: Functions as a senior consultant to the Annie E. Casey Foundation's child welfare and juvenile justice initiatives; helps plan and evaluate innovative child welfare and juvenile justice projects. Experienced at conducting fact-finding evaluations of community-based and institutional programs; retained by public interest attorneys in a variety of federal and state court cases. Experienced expert witness.

Developed mediated settlements in child welfare and juvenile justice class action litigation in Oklahoma, Tennessee and Hamilton County, Ohio. Appointed by Federal Courts in Florida and Oklahoma and New Orleans to monitor consent decrees designed to improve services for children, youth and families. Designed case management systems for Hawaii's and Missouri's state youth services organization; conducts risk assessment studies and other policy studies for a variety of states; designs and conducts training seminars for child welfare and juvenile justice staff. Editor, Violent Juvenile Offenders: An Anthology, 1984; co-author, Reforming the California Youth Authority, 1988; author of Annie E. Casey training monographs and several articles; former Vice-president, National Council on Crime and Delinquency. Held a variety of leadership positions within state governments: e.g., Pennsylvania Commissioner of Children and Youth. Curriculum vitae available.

CONSULTING SERVICES

Developing and Monitoring Court Ordered Settlements

Designs, implements and monitors step-by-step plans to comply with court ordered mandates, usually as a result of class action litigation. Examples: Developed settlement agreements/court ordered implementation plans for class action law suits in Florida, Indiana, New Mexico, New Orleans, Oklahoma, Tennessee and Hamilton County, Ohio. Appointed by Federal District Courts to serve on Court appointed Panels to develop and negotiate settlement agreements, and in Oklahoma and Florida to monitor class action settlements. Able to develop agreements among parties regarding settling class action litigation.

Fact Finding, Negotiating and Expert Witness Services

Organizes and implements fact-finding investigations to help resolve litigation involving

Exhibit I, Consulting Prospectus

public and private youth serving agencies. Expert in assessing conditions of confinement. Identifies and leads highly qualified teams of professionals to evaluate community based and institutional programs. Able to enter adversarial situations, discover the facts, and assist in either resolving/mediating the case or preparing for trial. Experienced at interviewing children, youth and staff involved in law suits. Has helped develop settlement agreements and has testified at numerous trials in Federal and state courts.

Examples: Retained by the Civil Rights Division of U.S. Justice Department and public interest law firms to investigate and document alleged unconstitutional conditions in a number of private and public institutions throughout the country.

Policy Oriented Research

Over forty years experience writing and directing policy studies, articles, reports, evaluations and other materials designed to analyze public policy questions and present alternative courses of action. Examples: Directed risk assessment studies of institutional populations in five states; these studies often help bring about major organizational change. Retained by state legislative committee in Tennessee to conduct studies on juvenile justice issues, child welfare and managed health care issues. Co-authored book analyzing California's juvenile justice system. Co-edited a book on violent juvenile offenders and published a number of reports and articles concerning troubled youth and public policy.

Evaluation and Technical Assistance

Conducts management and program evaluations of public & contracted youth serving programs and agencies. Analyzes problems and develops specific recommendations. Examples: Foundation supported evaluation of Hawaii's juvenile justice system ("Opportunity for Reform", 1987) and program evaluation of Toledo, Ohio's substance abuse programs; developed mediated settlement in a New Mexico conditions of confinement case (2009). Conducts comprehensive evaluations of detention centers and training schools. Examples: evaluation of Maryland training school (Hickey) which led to the reform and privatization of that institution; evaluation of Cleveland's detention center and Toledo's detention system. Conducts program and systemic reviews of public youth serving programs for state legislative committees. Example: Review of Iowa's residential programs for delinquent youth. Provides technical assistance/planning to Directors of state agencies. Examples: Senior consultant to the Annie E. Casey's highly successful initiative aimed at reforming juvenile detention (JDAI) in several public jurisdictions. Helped develop case management and day treatment services in Missouri. Assisted public interest law firm in Mississippi to close a reform school for girls (Columbia).

Plan and Conduct Staff Training

Plans, directs and offers a variety of training workshops, seminars and other training efforts designed to improve the skill level and knowledge of direct service staff.

Exhibit I, Consulting Prospectus

Examples: designed and conducted team-building and case management training for executive staff of the Missouri and Alabama Departments of Youth Services. Plans and conducts skill-building workshops for public defenders sponsored by the American Bar Association; plans and conducts training workshops for child welfare staff sponsored by the Annie E. Casey Foundation. Conducts child welfare training: e. g. , "Team Decision Making" in a number of jurisdictions.

Direct Services -- Program Development

Plans, organizes and implements innovative and cost effective, youth services within government and non-profit organizations at the local, state and national levels.

Examples: Developed statewide system of non-residential interventions in Massachusetts for adjudicated delinquents. Planned and directed nationally recognized community-based program model for adjudicated delinquents in Cook County. Planned crisis intervention program for Toledo, Ohio. Implemented model correctional program for the U.S. Department of Justice, developing multi-site, state-of-the-art, intensive, secure programs for violent juvenile offenders.

PARTIAL CLIENT LIST

Government Agencies:

U. S. Justice Department, Civil Rights Division, Washington, DC.

State Human Service Departments, Child Welfare & Juvenile Justice Agencies:
(e.g., Hawaii, Indiana, Missouri, New Jersey, Oklahoma, Pennsylvania, Tennessee & Texas)

State Legislative Committees: Iowa & Tennessee

County Human Service, Child Welfare & Juvenile Justice Agencies: (e.g. Cook, Ill.; Cuyahoga, Hamilton, Lucas Counties, Ohio; Jefferson County, Ala.; Multnomah, Oregon.)

County Juvenile Probation: (e.g.. Lucas Co. Ohio; Tarrant County, Fort Worth, Texas)

Federal Courts:

Federal District Courts: Tallahassee, Fl.; Oklahoma City, OK. & Washington, DC

Private Foundations:

The Annie E Casey Foundation, Baltimore, Maryland.
The MacArthur Foundation, Chicago, Ill.

Exhibit I, Consulting Prospectus

Public Interest Law:

The American Bar Association's Juvenile Justice Center
Juvenile Law Center, Philadelphia, PA
National Center for Youth Law, San Francisco
Public Defenders Office, Dade Co., FL
Youth Law Center, San Francisco.
The Southern Poverty Law Center, AL

Private Attorneys:

Goldstein & McGroder, Phoenix, Arizona
Robert Link, Jacksonville, Fla.
Covington & Burling, Washington, DC

Research, Policy & Technical Assistance Centers:

The National Juvenile Detention Association
The John Howard Association
The Urban Institute.

List of Publications and Reports As of 1/31/14

Books

Violent Juvenile Offenders: An Anthology, National Council on Crime and Delinquency, 1984.
Co-editor.

Reforming The California Youth Authority, Common Knowledge Press, 1988. Co-author.

Articles and Reports [some co-authored]

"Preliminary Plan: Reducing the Population in Florida's Training Schools", March 1986. Report to the Federal District Court, Tallahassee, FL.

"Report of the Jerry M. Panel", March, 1987. Submitted to Washington, D.C. Superior Court.

"Adjudicated Youth in Delaware Who Need Secure Care", National Council on Crime And Delinquency, 1987.

"Hawaii's Juvenile Justice System: Opportunity for Reform", August 1987. Funded by the Clark Foundation, New York, NY.

"Resisting the Adulthoodification of Juvenile Corrections: Rational Programs for Violent Juvenile

Exhibit I, Consulting Prospectus

Offenders", American Psychological Association Newsletter, Winter, 1988.

"At the Crossroads: A Population Profile of Youth Committed to the Alabama Department of Youth Services", 1989. Funded by the Clark Foundation, New York, NY.

"Population Profile and Risk Assessment Study: Mississippi Department of Youth Services", February 1989, Center for Study of Youth Policy, University of Michigan.

"Risk Assessment of Adjudicated Delinquents, Division for Children and Youth Services, State of New Hampshire," December 1989, Center for Study of Youth Policy, University of Michigan.

"Framework for Dispositional Decisions", Alabama Division of Youth Services, 1990.

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"Comprehensive Services for Oklahoma's Delinquent, Deprived, INT & INS Children: The Terry D. Panel Report", December 1990. Submitted to the Federal District Court, Oklahoma City, Okl.

Final Report of the Alabama Detention Project", July 1991. Prepared for the State of Alabama, Juvenile Detention Advisory Committee.

"Final Report: Iowa's Service Delivery System For China & Delinquent Youth", June 30, 1993. Study conducted for the Iowa State Legislature.

"OverCrowding in Juvenile Detention: Some Concrete Suggestions", June 1996.

"Conditions of Confinement Review: Cuyahoga County Juvenile Detention Center", NJDA, September 1997.

"Developing Partnerships with Neighborhoods and Local Communities", the Family to Family Initiative, the Casey Foundation, 1997.

"Team Decision-making: Involving the Family and Community in Child Welfare Decisions", the Family to Family Initiative, the Casey Foundation, 1997.

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Consider the Alternatives: Planning & Implementing Non-Secure Detention Alternatives", the Casey Foundation, November, 1999.

Exhibit I, Consulting Prospectus

“Be All You Can Be – Reflection on Leadership Development & Staff Training”, Spring 2003, Journal for Juvenile Justice and Detention Services, Spring 2003.

“Good News From Toledo: Real Improvements in Detention”, Journal for Juvenile Justice and Detention Services, Fall 2003.

“Boot Camps Revisited”, Journal of Juvenile Justice Services, National Partnership for Juvenile Services, Vol. 22, # 1, 2008.

“Why Child Welfare Agencies Should Limit the Role of Residential Care”, Journal of Juvenile Justice Services, National Partnership for Juvenile Services, Vol. 22, # 1, 2008.

“Toward Abolishing the Use of Disciplinary Isolation in Juvenile Justice Institutions: Some Initial Ideas”, January 22, 2014. Published on the web.

Paul DeMuro

PROFESSIONAL STRENGTHS

- * Providing a wide variety of consulting services to youth serving agencies
 - * Planning and conducting fact-finding and dispute resolution efforts
 - * Planning and directing program and policy oriented research and evaluation efforts
 - * Communicating effectively to staff, the public and media
 - * Planning and implementing successful programs
 - * Providing imaginative and cost effective leadership for innovative youth policy initiatives
 - * Managing complex contract, budget, personnel and program interventions
 - * Planning & providing a variety of staff training initiatives
 - * Supervising, developing and motivating staff
 - * Producing successfully under intense financial, political and time pressures
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BACKGROUND

Forty three experience managing staff, programs, budgets and processes designed to improve a wide variety of youth serving agencies. Experienced at conducting fact-finding evaluations of community-based and institutional programs; expert on conditions of confinement. Retained by the US Justice Department and public interest attorneys in a variety of federal and state court cases. Experienced expert witness. Developed mediated settlements in child welfare class action litigation in Oklahoma, Tennessee and Hamilton County, Ohio. Appointed by Federal Courts in Florida and Oklahoma to monitor statewide consent decrees designed to improve services for children, youth and families. Designed case management systems for Hawaii's and Missouri's state youth services organizations; conducted risk assessment and policy studies for state and county agencies; designed and conducted training seminars for child welfare and juvenile justice staff. Presently serves as a senior consultant for the Annie E. Casey Foundation and the National Juvenile Detention Association. Consulting prospectus, list of publications and references available upon request. Married with four children. Interests include reading, tennis and music.

EDUCATION

BA, Villanova University, 1963.

MA, Villanova, 1965.

EMPLOYMENT HISTORY

1983 - to present. *Founder and principal staff* of a small, flexible consulting firm that provides a variety of policy, program, management and conflict resolution services to private and public youth serving agencies. Clients include the US Justice Department, federal Courts, state and county agencies, private foundations, public interest attorneys and the private Bar.

1979 - 1983. *Vice-President for Program Services, National Council on Crime and Delinquency.* Responsible for field related activities of nationally prominent criminal justice agency. Managed national projects, maintained liaison with other national and state organizations; conducted policy and evaluation studies; supervised and delivered technical assistance to state and local juvenile justice agencies. Prepared and delivered testimony to US Congress and state legislative bodies. Prepared publications; developed and offered training to professional staff. While with NCCD, directed two national juvenile justice projects: (1) Citizen Advocacy Network project, a \$1.5 million dollar, four state effort to involve local citizens in efforts aimed at improving their juvenile justice systems; (2) Violent Juvenile Offender Research and Development Project, a \$3.5 million dollar project aimed at testing innovative interventions for violent offenders: developed program models and request for proposals; supervised competitive bidding process; and oversaw all fiscal and program reporting to the US Justice Department.

1978 - 1979. *Commissioner of Children and Youth, Pennsylvania Department of Public Welfare.* Responsible for \$300 million dollars of state funding to provide management and program supports for services to over 35,000 children and youth. Policy and program responsibilities included the state's day care, child welfare and juvenile justice programs. Prepared budgets, developed regulations, drafted legislation and represented the Governor's office in local, state and national negotiations. Supervised the state training school system.

1975 - 1978. *Director, Office of Corrections Education*. Created and directed this office which had fiscal, planning and evaluation responsibility for educational programs in the state's run adult and juvenile correctional institutions which held over 9,000 offenders.

1973 - 1975. *Director, Unified Delinquency Intervention Services, Illinois Department of Children and Family Services*. Planned and implemented this nationally recognized model that serves adjudicated youth. UDIS diverts youth from institutional placement by using a network of community-based placements and strong case management.

1970 - 1973. *Massachusetts Department of Youth Services (DYS)*. With DYS held three positions of increasing responsibilities: *Assistant Commissioner for Aftercare (1972 - 73)*, supervised all non-institutional programs for adjudicated youth (e.g., parole, group homes, non-residential interventions, etc.). Supervised seven regional offices with 220 staff and a purchase of service budget of \$5 million; *Director of Non-Residential Programs (1971 - 72)*, developed and administered a statewide network of non-residential interventions providing educational, vocational, counseling and mentoring supports to more than 1000 youth living at home or in foster care. Sponsors of programs included churches, community groups and traditional youth serving agencies. *Superintendent, Shirley Industrial School (1970- 71)*, responsible for 125 bed reform school for "hard core" delinquents aged 14 - 18.

1963 - 1970. *University English Instructor, Ohio State University (1965 - 70); Villanova (1963 -1965)*.