

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

FILED
JAMES RONINI
CLERK

2004 JUL 29 12 3:45

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J.P., and all others similarly situated, :
c/o Children's Law Center :
Children's Law Center, Inc. :
104 East Seventh Street :
Covington, Kentucky 41011, :

Case No. _____
Judge _____

S.J., and all others similarly situated, :
c/o Children's Law Center :
Children's Law Center, Inc. :
104 East Seventh Street :
Covington, Kentucky 41011, :

MAGISTRATE JUDGE KING

D.B., a minor child, by and through her :
next friend Shanda Spurlock, :
and all others similarly situated, :
c/o Children's Law Center :
Children's Law Center, Inc. :
104 East Seventh Street :
Covington, Kentucky 41011, :

and :

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

H.H., a minor child, by and through her :
next friend Shanda Spurlock, :
and all others similarly situated, :
c/o Children's Law Center :
Children's Law Center, Inc. :
104 East Seventh Street :
Covington, Kentucky 41011, :

Plaintiffs, :

V. :

BOB TAFT, :
Governor of the State of Ohio, :
in his official capacity only, :
77 South High Street, 30th Floor :
Columbus, Ohio 43215, :

OHIO DEPARTMENT :
OF YOUTH SERVICES, :
51 North High Street :
Columbus, Ohio 43215, :

and :

GENO NATALUCCI-PERISCHETTI, :
Director of Youth Services, :
in his official capacity only, :
51 North High Street :
Columbus, Ohio 43215, :

Defendants. :

INTRODUCTORY STATEMENT

1. This is a civil rights class action suit challenging the denial of access to the courts for juveniles committed to the Ohio Department of Youth Services ("ODYS") as juvenile delinquents or serious juvenile offenders and incarcerated in institutions, secured facilities, or community corrections facilities operated by or funded in part or in total by contract with ODYS throughout the State of Ohio. Plaintiffs bring this action for declaratory, injunctive and other equitable relief on behalf of themselves and all other juveniles similarly situated who are or will in the future be committed to ODYS and placed in an institution, secured facility, or community corrections facility operated by or funded in part or in total by contract with ODYS without a means to exercise their constitutional right to access the courts in violation of the First, Sixth, and Fourteenth Amendments of the United States Constitution and related provisions of the Ohio Constitution.

2. Plaintiffs bring this action under the federal Civil Rights Act, 42 U.S.C. § 1983, to redress the violation by Defendants, acting under color of state law, of rights guaranteed to Plaintiffs

under the First, Sixth, and Fourteenth Amendments to the United States Constitution as more particularly set forth in this Complaint.

JURISDICTION

3. Jurisdiction over Plaintiffs' claims for declaratory and injunctive relief is proper in this Court pursuant to 28 U.S.C. §§ 1331(a), 1343(3), and 1343(4).

4. This Court has supplemental and pendent jurisdiction pursuant to 28 U.S.C. § 1367 to review and decide Plaintiffs' state law claims.

5. Venue is proper in this district and division as the various acts which form the basis of this complaint occurred within the Southern District of Ohio, Columbus Division.

PLAINTIFFS

6. Plaintiff J.P. is and has been incarcerated at the Scioto Juvenile Correctional Facility since January of 2002 as a result of an adjudication through the Hamilton County Juvenile Court. She has had significant needs concerning mental health and medical care that have been largely ignored by the facility staff. On or about February 14, 2003, J.P. was sexually assaulted by a Juvenile Corrections Officer ("JCO") while on "suicide watch" in a special unit. She was 17 years old at the time. The JCO has since been convicted of sexual battery in this case and that of another juvenile resident and is in prison. J.P. has filed grievances, including a complaint to the Chief Inspector, regarding the assault, and the failure to receive adequate medical and mental health care, and has specifically requested legal counsel to assist her. The Defendants have failed to provide her with any legal assistance to address these matters.

7. S. J. is and has been incarcerated at the Scioto Juvenile Correctional Facility since October of 2003 as a result of an adjudication through the Hamilton County Juvenile Court. On or

about December 27, 2003, she was physically assaulted by a male Juvenile Corrections Officer who followed her into her room and slapped her on the side of her face with the palm of his hand repeatedly, causing her eardrum to rupture, and causing bruises and welts on her face. S. J. was 17 years old at the time of the assault. S. J. was threatened with retaliation if she reported the incident, and was instructed by the JCO to report the injury as self-inflicted. S. J. was also threatened with receiving more time at Scioto if she told the truth about what happened. S. J. has filed grievances regarding this matter, including a complaint to the Chief Inspector, regarding the assault, and has specifically requested legal counsel to assist her. The Defendants have failed to provide her with legal assistance to address these matters.

8. D.B. is and has been incarcerated at the Scioto Juvenile Correctional Facility since July of 2003, although she was briefly released from the period of May 31, 2004 through July 12, 2004 on parole. She was placed at Scioto as a result of an adjudication through the juvenile court in Paulding County. On or about February 3, 2004, she was physically assaulted by a male Juvenile Corrections Officer who followed her into her room, grabbed her and threw her to the floor, pulled her arm behind her back, and punched her arm, breaking it. D.B.'s head also hit the floor during the assault. D.B. has been required to have surgery on her arm for it to properly heal. D. B. was 16 years old at the time of the incident. She has filed grievances, including with the Chief Inspector, and has asked for the incident to be investigated and for legal assistance. The Defendants have failed to provide her with legal assistance to address these matters. The JCO continues to work at Scioto.

9. H.H. is and has been incarcerated at the Scioto Juvenile Correctional Facility as a result of an adjudication through the juvenile court in Franklin County. She was 13 at the time of her adjudication. In December of 2003, H.H. was involved in an altercation with a Juvenile

Corrections Officer who slapped her in the back of the neck, grabbed her and slammed her down on her bed, hit her in the forehead, and continued to punch her in the back and kick her in the stomach. The incident was witnessed by several other youth in the facility. H.H. suffered bruises and swelling, and had difficulty breathing after the incident. H.H. filed grievances regarding the assault, including with the Chief Inspector, and included a request for an attorney to assist her in handling this matter. The Defendants have failed to provide her with legal assistance to address these matters. The JCO continues to work at Scioto.

DEFENDANTS

10. Defendant Bob Taft is the duly elected governor of the State of Ohio and functions as the head of the State's executive branch. In addition, pursuant to Ohio Rev. Code § 5139.01(B), Governor Taft is statutorily required to appoint a director to head the Ohio Department of Youth Services with the advice and consent of the Senate.

11. Defendant Ohio Department of Youth Services ("ODYS") is an agency of the State of Ohio mandated by Ohio Rev. Code § 5130.03 to control and manage all state institutions or facilities established or created for the training or rehabilitation of delinquent children committed to the Department. Pursuant to Ohio Rev. Code § 5139.04, ODYS must receive custody of children committed to it and house those children within an institution or community corrections facility.

12. Defendant Geno Natalucci-Perischetti is and at all relevant times has been the appointed Director of Youth Services. As the Director, he has the powers of a department head set forth in Chapter 121 of the Ohio Revised Code. These powers and duties include, but are not limited to, adopting rules for the government of the Department, the conduct of its officers and employees, the performance of its business, and the custody, use, and preservation of the Department's records

and property. Any duties imposed by law on ODYS must be performed by or implemented by the Director.

CLASS ACTION

13. Plaintiffs bring this action on behalf of themselves and all others similarly pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The class consists of all juveniles (approximately 2500 children per year) who are or will in the future be committed to ODYS and placed in an institution, secured facility, or community corrections facility operated by or funded in part or in total by contract with ODYS.

14. The members of the class are so numerous that joinder of all members is impractical. In addition, there are questions of law and fact common to the members of the Plaintiff class regarding practices of Defendants and the claims of the members of the Plaintiff class. In addition, Defendants have refused to act on grounds generally applicable to the Plaintiff class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

15. The named Plaintiffs in this action, as well as Plaintiffs' counsel, will fairly and adequately protect the interests of the members of the class. All three counsel for the Plaintiff class are civil rights attorneys who have experience representing individuals in federal class action suits. In addition, one of Plaintiffs' attorneys, Kim Brooks Tandy, is the Director of the Children's Law Center and focuses her practice almost exclusively on legal issues pertaining to and affecting juveniles.

STATEMENT OF THE FACTS

A. Facts Concerning Plaintiffs

16. As noted above, each of the named Plaintiffs in this action have suffered serious physical injuries as a result of being incarcerated. They believe they have valid claims challenging the conditions of their confinement, but are unable to access the courts to bring these claims without legal assistance. Each named Plaintiff has filed grievances regarding the incidents and has specifically requested an attorney to assist them. To date, none of the Plaintiffs have been provided legal counsel with regard to their claims.

B. Facts Concerning ODYS

17. ODYS operates or funds by contract several community corrections facilities for juveniles committed as juvenile delinquents or serious juvenile offenders, including but not limited to Butler County Juvenile Rehabilitation Center, Hocking Valley Community Residential Center, Juvenile Residential Center of Northwest Ohio, Lucas County Youth Treatment Center, North Central Ohio Rehabilitation Center, Oakview Group Home, Perry County Group Home, and West Central Juvenile Rehabilitation Facility. A community corrections facility is a county or multi-county rehabilitation center for felony delinquents committed to ODYS and diverted from custody and care in an institution and placed in a rehabilitation center.

18. ODYS operates or funds by contract several institutions, including but not limited to Circleville Youth Center, Cuyahoga Hills Boys School, Indian River School, Marion Juvenile Correctional Center, Maumee Youth Center, Mohican Youth Center, Ohio River Valley Youth Center, Scioto Juvenile Correctional Center, and Lighthouse Youth Center at Paint Creek. These institutions are state facilities created by the General Assembly under the management and control

of ODYS or a private entity with which ODYS has contracted for institutional care and custody of felony delinquents.

19. In addition to maintaining these facilities, ODYS supervises committed juveniles housed in institutions or community corrections facilities throughout the State of Ohio.

20. Juveniles who are adjudicated delinquent for committing acts that if committed by an adult would constitute felonies may be committed to ODYS for an indefinite period of time up to and until the child turns 21.

21. Juveniles who have been adjudicated felony delinquents are eligible for placement at community corrections facilities. A felony delinquent is a child at least 12 and less than 18 who has been adjudicated a delinquent child for committing an act that if committed by an adult would be a felony offense or an adult between the ages of 18 and 21 who is in the legal custody of ODYS and has committed an act while in custody that would constitute a felony if committed by an adult.

22. Juveniles committed to ODYS range in age from 12 to 21. Placement in an institution or community corrections facility may be from several months for as long as several years. The average age of admission in Ohio is 15.9 years.

23. Committed juveniles, by virtue of their age, lack of maturity, and education levels, are often unfamiliar with their legal rights and remedies. In addition, they are often unaware of how to obtain access to the courts or challenge the legality of their commitments, their continued confinement, and institutional practices and conditions that may violate their civil rights.

C. Juveniles and Right to Access the Courts

24. Defendants are obligated pursuant to the First, Sixth, and Fourteenth Amendments to the United States Constitution and related provisions of the Ohio Constitution to provide a system

whereby committed juveniles placed in ODYS institutions or community corrections facilities may access the courts for any matters related to the fact, duration, or conditions of confinement that may violate the juvenile's federal statutory or constitutional rights.

25. Defendants presently provide no adequate, effective, and meaningful system for committed juveniles who are placed in institutions or community corrections facilities to gain access to the courts for any matters related to the fact, duration, or conditions of confinement which may violate their federal statutory or constitutional rights.

26. The only legal representation presently provided for committed juveniles is by the Ohio Public Defender's Office. The Public Defender has a staff of three attorneys, one of whom is a temporary employee, who are responsible for screening juveniles at the Scioto Village intake center. These attorneys are only available to represent committed juveniles who elect to pursue direct appeals of their orders of commitment. The Office has no resources and no state statutory mandate to represent juveniles who desire to pursue claims pertaining to the fact, duration, or conditions of confinement. Consequently, there is no governmental or other entity that routinely provides representation to the Plaintiffs for filing writs of habeas corpus, post-conviction petitions, or civil lawsuits regarding the conditions of a juvenile's confinement.

27. As reported in the media, Defendant ODYS is presently meeting with the Ohio Public Defender's Office to discuss providing additional legal representation for committed juveniles. To Plaintiffs' knowledge, no formal agreement has been reached to date. Moreover, there are indications that the proposal being discussed is not only inadequate, but would unduly restrict the Ohio Public Defender's ability to provide constitutionally adequate access to the courts. In this

regard, Ohio Public Defender David Bodiker recently described the proposal as follows: "I had the impression we were supposed to be up there and look pretty and provide a nice facade."

CAUSE OF ACTION

Claim One: The Right to Redress Grievances and to Due Process through Access to the Courts

28. Plaintiffs hereby incorporate by reference each and every allegation set forth above.

29. The right to petition the government for redress of grievances is guaranteed by the First and Sixth Amendments to the United States Constitution and the Due Process Clause of the Fourteenth Amendments to the United States Constitution, as well as related provisions of the Ohio Constitution. These guarantees encompass a right of access to the courts for inmates of state institutions so that they may challenge the legality and conditions of their confinement. When the Ohio Department of Youth Services takes commitment of a juvenile, particularly for the purposes of placing that juvenile in an institution or community corrections facility, it has an affirmative duty to provide access to the courts by providing legal counsel for the juvenile. *See John L. v. Adams*, 969 F.2d 228 (6th Cir. 1992). Defendants have failed to effectively meet their constitutional obligation to afford committed juveniles with representation and access to the courts to redress their grievances. Such failure denies Plaintiffs and all others they seek to represent the rights guaranteed to them under the First, Sixth, and Fourteenth Amendments to the United States Constitution and analogous provisions of the Ohio Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that on their behalf and on the behalf of all others they seek to represent, that this Court:

1. Assume jurisdiction of this cause and set this case for a prompt hearing;
2. Permit Plaintiffs to proceed in this action under their initials as opposed to their full legal names in order to protect their anonymity;
3. Determine by order, pursuant to Rule 23(b)(2) and (c)(1) of the Federal Rules of Civil Procedure, that this action be maintained as a class action on behalf of the class defined herein;
4. Enter a final judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Rules 54, 57, and 58 of the Federal Rules of Civil Procedure that Defendants failure to provide a meaningful program of legal assistance to juveniles committed to the Ohio Department of Youth Services for placement in an institution or community corrections facility violates the First, Sixth, and Fourteenth Amendments to the United States Constitution and related provisions of the Ohio Constitution, and deprives these juveniles of their right to access the courts for redress of grievances and their right to due process under the law;
5. Enter an order directing Defendants to develop a program for the effective delivery of legal services to the class members and to submit a plan for the prompt implementation of that program;
6. Award Plaintiffs reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988; and
7. Grant such other relief to Plaintiffs and all others similarly situated as the Court deems to be just, proper, and equitable.

Respectfully submitted,

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