



Jl-CO-001-007

Case: E.R. v. McDONNELL, Civil Action No. 94-N-2816

Court: U.S. District Court, D. Colorado

Date Filed: December 8, 1994

Site: Phillip B. Gilliam Youth Services Center, Denver

Current Status: The judge signed the Settlement Agreement on May 26, 1995. The Settlement Agreement was finally approved in September 1995, after notice to the class members of the Agreement. The Settlement Agreement will remain in effect for 3 years, with monitoring by a juvenile institutional expert and an education expert to be jointly selected by the parties.

Summary of Case: This lawsuit, on behalf of children confined in the Phillip B. Gilliam Youth Services Center against officials in the Colorado Department of Human Services, the Division of Youth Services, and the Denver Public School District, alleged unconstitutional crowding; problems with safety, health and sanitation; deficiencies in the educational services; the absence of a special education program; insufficient exercise and recreation; inadequate medical and mental health services; over-reliance on mechanical restraints and isolation; the absence of meaningful classification; and inadequate, insufficiently trained staff. Plaintiffs also alleged that children were not allowed to have writing implements or games (other than books or cards) in the rooms, so most simply languish or sleep for as long as 22 hours on thin mattresses on the floor. The week after the case was filed, there were 195 children held in the facility; the design capacity is 78.

Harms Alleged: FIRST AMENDED COMPLAINT, pp. 7 - 16:

27. Gilliam has 64 rooms designed for single occupancy, but by designating a few slightly larger rooms as double occupancy, defendants have deemed Gilliam to have a 78 bed capacity. Population at the facility has consistently and dramatically exceeded even that number for several years. For fiscal year 1993-1994 the average daily population (through September, 1994) was 154. In October, 1994, the population was consistently about 175, and sometimes exceeded 200.

28. Length of stay at Gilliam ranges from less than a day to many months. A significant number of children spend several months confined in the facility pending adjudication, disposition and placement or commitment.

29. Detained children may range from 10 to 21 years of age. Offenses for which children may be detained range from relatively minor offenses (e.g., traffic offenses or park-municipal misdemeanors) or violations of probation (e.g., orders to attend school or report to probation officers), to serious offenses. Children are also held at Gilliam who are dependent or neglected children, or who are runaways, on violations of court orders such as running away from placement.

B. Impact of Overcrowding

30. Overcrowding at Gilliam has caused and continues to cause serious problems in every aspect of the operation of the facility, resulting in inadequate educational services; inadequate monitoring and supervision of children, including those who are suicidal or undergoing emotional crises; inadequate medical and mental health services; interference with children's right to reasonable visitation and access to the courts; insufficient exercise, recreation and other program activities; and inhumane, unhealthy, unsafe living conditions.

31. Defendants confine as many as five children in rooms designed for one. In slightly larger rooms, defendants confine as many as eight children. Children are routinely required to sleep on thin mattresses on the floor and are subjected to other inadequate living conditions.

32. Defendants confine children in locked rooms for periods that are unhealthy and inhumane. Whenever population reaches 135, staff at Gilliam operate living pods on a "half-in/half-out" policy. This means that at times when the children would otherwise be allowed out of their rooms, only half the children at a time are allowed to be out. The other half remain locked in their rooms. Children who are not selected to go to school (more than half of the population) may spend twenty or more hours per day locked in their rooms, even though they are not being disciplined.

33. Defendants subject children confined in locked rooms to inhumane conditions. The only recreational items children may have during the many hours they are locked in their rooms are two books, a Bible and a deck of cards (or a specified number of letters instead of one of the books.) As a consequence of lack of stimulation and sensory deprivation, many children sleep or simply lie on their beds for long periods during the day.

34. Defendants provide inadequate supervision and monitoring of children. Because of understaffing and overcrowding, there is often only one staff person on duty to supervise youth in living pods, and one person at a control booth, charged with the duty of monitoring the seclusion rooms. This results in dangerously inadequate monitoring of children confined because of suicide risk, out-of-control behavior, or for disciplinary reasons.

35. Defendants have inadequate capacity to respond to emergencies such as behavioral disturbances, fires, or other situations requiring evacuation.

36. Defendants unreasonably restrict children's right to visitation with their families. Because of overcrowding and understaffing, visiting hours are severely limited and parents must set up formal appointments to see their children.

37. Defendants interfere with children's access to counsel. Children are brought out in groups for attorney interviews prior to their detention hearing; interviews occur in a public area where others are able to hear conversations between attorney and client. Children's access to counsel by telephone is unreasonably restricted. Defendants also fail to provide children with meaningful access to the courts to redress complaints about conditions of their confinement.

C. Inadequate Living Conditions

38. Defendants cause children on the living units to sleep in small, locked

rooms that are small and bare, without sinks or toilets. The rooms contain, at most, one or two metal framed beds covered with thin mattresses. In many rooms, children are forced to sleep on thin mattresses on the floor. In some of the rooms the mattresses are squeezed so closely together that there is barely room to walk between them or to open the door to the room. There is a small window in the door, and a frosted window to the outdoors. The only decoration, if any, consists of photographs or pictures from magazines which must be placed constantly in the presence of several other youth. There is inadequate ventilation, heating and cooling in the rooms, and the rooms often smell of sweat and urine. The walls of some of the rooms are smeared with blood, urine or feces.

39. Defendants fail to provide adequate staff to provide confined children with reasonable use of toilet facilities. Because all but the seclusion rooms lack toilets, children must knock on the door of their room and wait for a staff person to individually unlock it so that the child may go to the bathroom. Because living units may have twice or three times as many children as the rated capacity, this means that children wait unreasonable amounts of time to use the toilet. In some cases, children have been forced to urinate or defecate in their clothes or on the bare floor.

40. Seclusion rooms at Gilliam are furnished with toilets, but because defendants confine as many as three children in the rooms, some children are forced to sleep and sit with their head in close proximity to the toilet. Also, since there are no dividers for privacy, children must use the toilet in full view of other children.

41. Defendants fail to maintain the plumbing in Gilliam in adequate and sanitary condition. In each living unit, approximately 40 to 60 children use the bathroom; the sinks, toilets and drains are frequently stopped up or otherwise unusable. The bathrooms often have mold and human excretions on the floors, fixtures and walls.

D. Violence and Unsafe Practices

42. Defendants fail to provide a safe environment for children at Gilliam. Numerous assaults, sexual assaults, suicide attempts and institutional disturbances have occurred and continue to occur in the facility because of overcrowding and understaffing.

43. Defendants fail to protect children from assaults and abuse from other residents. Vulnerable children are forced to give up food or perform humiliating acts for older, more aggressive youth under the threat of physical violence. Also, children have suffered injuries as a result of assaults or fights at Gilliam. Some of these incidents resulted in broken bones, wounds requiring sutures, and other injuries necessitating medical treatment. Other children have been sexually assaulted by youth at Gilliam. All of the above acts are a result of the defendants' failure to adequately supervise the children within the facility.

44. Defendants subject children who are physically out of control to dangerous and humiliating practices, including the use of mechanical restraints. Defendants fail to provide adequate mental health intervention for children placed in mechanical restraints or isolation, including children on suicide watch.

Defendants fail to properly visually monitor children who are placed in mechanical restraints or isolation, including children on suicide watch.

E. Inadequate Classification and Screening

45. The defendants do not adequately separate and classify children in Gilliam by offense, age, size, and temperament. As a result of overcrowding and the inadequate policies and practices of the defendants, small, youth, and otherwise vulnerable children in the living units are subjected to threats, intimidation, and assaults from other youngsters in the units.

46. Defendants fail to provide for appropriate seclusion of children for disciplinary or other purposes. Because of overcrowding, seclusion rooms have been and are used for the confinement of as many as three children. Children who are on "suicide watch" because they are suicide risks are sometimes housed with children being punished for assaultive behavior, or other rules violations; or they are housed with children who themselves have been victims of assaults.

47. When children are first admitted to Gilliam, the defendants fail to provide adequate psychological or psychiatric screening for depression, mental illness, or other psychological infirmities.

48. Defendants fail to ensure that children who are not a danger to themselves or to the community and do not need secure detention are released or placed in non-secure alternatives. Defendants fail to provide adequate alternatives to secure detention for such children.

F. Inadequate Education, Recreation and Programming

49. Overcrowding and understaffing severely interfere with the provision of rehabilitative and treatment services to confined children.

50. The defendants fail to provide an adequate educational program for children at Gilliam. As a result of overcrowding and the inadequate policies and practices of the defendants, less than half the children in Gilliam attend school on any given day. Of the children who attend school, many do not receive academic programming in conformity with state educational requirements.

51. Defendants confine a substantial number of children in Gilliam who are eligible for and require special education services. Defendants fail to provide these children with adequate special education services. Defendants fail to adequately identify, assess, or evaluate children to determine whether they have special needs, and how such special needs can be met. Defendants fail to develop appropriate individualized education plans for children who need special education or to ensure parental involvement or appointment of surrogate parents for these children. Defendants fail to provide related services, such as speech therapy and psychological therapy, to children with disabilities who need such services to benefit from their education. Defendants fail to obtain adequate information from schools that children attended prior to their detention at Gilliam, in order to properly ascertain the children's special education needs. Defendants fail to employ adequately trained, certified special education teachers to provide special education services to children who need these services at Gilliam.

52. Defendants fail to provide children in Gilliam with adequate recreational time. Because of overcrowding and understaffing, children receive

only half the scheduled recreational time and spend the other half locked in their rooms.

53. Defendants fail to provide children with adequate outdoor and indoor exercise, including large muscle exercise. Defendants deny many children needed exercise due to overcrowding, shortage of staff, for administrative reasons, or as a method of discipline.

54. Children confined in seclusion for disciplinary or other reasons are allowed out of their rooms only for an hour per day (excluding meals), and in that time must shower, do their laundry and exercise. In addition, some of the children on disciplinary status are required to eat meals in their room. Some children are permanently confined in seclusion rooms, even though the appropriate period of punishment for specific acts has long since passed.

55. As a result of overcrowding and understaffing, children are subjected to arbitrary and unfair disciplinary practices. Staff use room confinement as the sanction for most violations of institutional rules, regardless of how minor the violation. In addition, staff sometimes inappropriately use mechanical restraints or restrain children to fixed objects. Staff also use group punishments, and other inappropriate disciplinary measures.

G. Inadequate Staffing

56. Defendants fail to provide adequate staff to supervise and protect children in the facility. The facility is chronically understaffed. There are not adequate staff to make classification decisions, monitor children in the facility, protect children from violence or provide rehabilitative services. The lack of adequate staff results in many children unnecessarily being locked in their rooms.

57. Overcrowding and understaffing causes defendants to curtail school or other programming. Because of crowding and inadequate staff to handle children, staff eat together in the cafeteria to provide more of a presence. This means that there are even fewer staff on the living units to monitor children left on the units. Concern over potential violence causes staff to keep children locked in their rooms for many more hours than would be the case absent that concern.

58. Defendants fail to provide adequate staffing and emergency response procedures to assure the safety of children in case of fire or other institutional disturbances.

59. Defendants fail to provide adequate training to staff in safety, emergency procedures, crisis intervention, behavior management, use of restraints and seclusion, children's rights and institutional policies and procedures.

H. Medical, Dental, and Mental Health Care

60. Defendants fail to provide confined children with adequate medical, dental and mental health care. Defendants fail to provide children with adequate medical, dental and mental health screening or examination. Defendants fail to provide sufficient qualified staff to meet the medical, dental and mental health needs of confine children. Defendants fail to provide adequately for children who are suicidal or in emotional crisis. Defendants also fail to provide adequately for segregation of children suffering from contagious diseases or needing medical isolation.

I. Knowledge of Overcrowding and Inadequate Conditions

61. Defendants have long been aware of serious problems at Gilliam. In 1993 and 1994, the Colorado Department of Public Health and Environment conducted physical inspections of Gilliam and presented its reports to defendants. The 1993 report found the facility overcrowded and understaffed. The 1994 report found that youths were being double and triple bunked in most of the pods throughout the facility, and that youths were even being double bunked in seclusion rooms. The reports in both year found dozens of violations of state codes, regulations, and professional standards. Violations included malfunctioning plumbing and occluded drains, filth (including blood, mucus, and other bodily fluids), dust, mold, rust and debris in various parts of the facility, fire safety hazards, inadequate sanitation and food storage, and extremes of temperature (hot and cold) in parts of the facility, inadequate lighting in showers, blockage and filth in heating, air conditioning, and ceiling vents, unrepaired damage to walls, ceilings, carpets and stairways, and dirty or tattered bed linens, blankets, and mattresses.

62. The 1992 Performance Audit of the Colorado Juvenile Justice System found state-operated facilities, including detention facilities in a near-crisis state. The Audit found that overcrowding had produced inadequate supervision of youth, backlogs of youth awaiting placement, increased employee turnover, substandard health conditions, and non-compliance with educational requirements.

63. A 1991 report to DYS on specifically addressed overcrowding in state facilities. The report documented and discussed the dangers of overcrowding for children and staff in detention centers and other state facilities, and its impact on the rehabilitative mission of the Division.

Type of Remedy: Screening, population cap, alternatives to detention, staffing, and no sleeping on the floor

Remedy: SETTLEMENT AGREEMENT AND ORDER, pp. 5 - 6:
POPULATION AND MANAGEMENT

12. The State Defendants shall confine no more than seventy-eight (78) youths in Gilliam. The State Defendants shall have ninety (90) days after approval by the Court to implement this population limit.

13. Youths shall not be detained within Gilliam solely because they are abused or neglected. Except with respect to youths accused of violations involving the possession or use of a handgun or other deadly weapon, status offenders shall not be detained within Gilliam absent a judicial finding of violation of a valid court order.

14. Because no more than 78 Denver youths can be housed at Gilliam pursuant to this agreement, any other youths under the jurisdiction of the Denver Juvenile Court may be placed, pursuant to court order for detention or sentence, at new facilities provided by Denver and the State Defendants.

CLASSIFICATION AND DETENTION SCREENING

15. The State Defendants shall require adherence to detention criteria at intake, as provided by C.R.S. § 19-2-1601 et seq. (Supp. 1994); and the State Defendants shall provide alternatives to secure detention for appropriate youths.

16. The State Defendants shall adhere to a classification system to meet the individual needs of confined youths, bases, inter alia, on their offense, age, size; separating violent, aggressive youths from vulnerable youth; and addressing the needs of youths with particular medical or mental health conditions, or special housing needs.

STAFFING

17. The State Defendants shall provide staffing at a ratio of at least one (1) child careworker per nine (9) youths during waking hours, and one (1) child careworker per sixteen (16) youths during sleeping hours. At least one staff person shall be physically present in each living unit whenever children are present in the living unit.

GENERAL CONDITIONS

18. Each child confined in Gilliam shall be provided a bed off the floor.

Contact: Plaintiffs' counsel - Susan L. Burrell, Youth Law Center, 114 Sansome Street, Suite 950, San Francisco, CA 94101, (415) 543-3379; David H. Miller, American Civil Liberties Union of Colorado, 400 Corona Street, Denver, CO 80218, (303) 777-5482; Frank N. Dubofsky, Canyon Center Building, 1881 9th Street, Suite 210, Boulder, CO, 80302, (303) 447-0201.

Pleadings Available from YLC:

First Amended Complaint, 2/3/95

Settlement Agreement and Order, 5/26/95

Memorandum of Agreement to Amend Settlement Agreement and Order, 5/29/95