

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

T.Y., a minor, by her next friend,  
Lynette Petty, B.A., a minor, by  
his next friend, P.C., D.S.,  
a minor by his next friends,  
A.M. and Lynette Petty,  
on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

Board of County Commissioners  
of the County of Shawnee,  
DONALD J. COOPER, Chairman,  
VICTOR W. MILLER, Vice-  
Chairman, WINIFRED KINGMAN,  
member of the Shawnee  
County Commission  
in their official capacities;

EARL HINDMAN, Director of  
the Shawnee County Department  
of Corrections, in his  
official capacity;

GARY BAYENS, Administrator of  
Shawnee County Youth Center,  
in his official capacity,

Defendants and  
Third-Party  
Plaintiffs,

v.

STATE OF KANSAS, Department  
of Social and Rehabilitation  
Services; and Donna L. Whiteman,  
the Secretary of Social and  
Rehabilitation Services, in her  
official capacity;

BOARD OF EDUCATION-UNIFIED  
SCHOOL DISTRICT 501, Shawnee  
County, Kansas,

Third-Party  
Defendants.

T.Y. v. Shawnee Co.



JI-KS-001-001

Case No. 94-4079-DES



## JOINT STIPULATION OF PARTIAL SETTLEMENT

The Amended Complaint and Class Action was filed on June 3, 1994. A Motion for Preliminary Injunction was filed by plaintiffs on June 23, 1994. The parties have agreed to resolve the issue of overcrowding raised in the Amended Complaint and Class Action for hearing at the Motion for Preliminary Injunction. Accordingly, the parties stipulate and agree as follows:

1. Defendants shall comply with the provisions of K.S.A. 65-504(a) with regard to the maximum number of children who may be admitted to and confined in the current SCYC facility. In particular, the following shall apply:

(a) The maximum number of children who will be housed at SCYC shall not exceed that number which is acceptable to the Kansas Department of Health and Environment. Admissions which would cause this maximum population limit to be exceeded shall be refused by County defendants and the Shawnee County Department of Corrections unless the release of one or more children from SCYC is scheduled within 24 hours which would bring the population back within that number deemed acceptable by the Kansas Department of Health and Environment. In no case shall the number of children at SCYC exceed 25.

Defendants shall be temporarily released from the requirement to comply with the provisions of K.S.A. 65-504(a) in the event of an emergency. An emergency is triggered by an exceptional circumstance involving a single mass arrest involving five or more juvenile offenders who otherwise could not be placed at SCYC due to population limits. The five or more juvenile offenders will not be admitted to SCYC until the duty juvenile judge issues an order setting out findings of fact necessary to admit the children to SCYC on an emergency basis. The



five or more juvenile offenders may be placed at SCYC until their detention hearing. During the course of the emergency exception, no other children may be admitted to SCYC. In the event an emergency occurs, a copy of the judge's order will be forwarded to the attention of the plaintiffs' counsel.

(b) The third-party defendant Department of Social and Rehabilitation Services of the State of Kansas (SRS) agrees that it will remove from SCYC facility any juvenile offender directly committed by the Court to a state youth center pursuant to K.S.A. 38-1671 within 72 hours of said disposition and upon receipt of the "necessary documents" required under K.S.A. 38-1671. Said removal requirement excludes Saturdays, Sundays and legal holidays. It is understood that the necessary documents required under this paragraph are the certified copies of the complaint, the journal entry of the adjudicatory hearing and the dispositional order. It is further understood that the receipt of the necessary documents by SRS means delivery of the documents to the reception desk located at the SRS Topeka Area Office, 1035 South Kansas Avenue, Topeka, Kansas, or by delivery to the SRS representative in attendance at the court hearing. An acknowledgment of receipt of these documents by SRS shall be in writing and filed with the Clerk of the District Court by the District Attorney's office. In the alternative, receipt of the certified documents by SRS may be obtained through the use of a facsimile transmission and a telephone call made to the attention of the Legal Division of the Topeka Area SRS Office.

(c) The third-party defendant Department of Social and Rehabilitation Services of Kansas agrees that it will remove from the SCYC facility any juvenile offender placed in its custody for appropriate placement



within 48 hours after receiving written court order by the Court, unless (1) the juvenile is committed to the custody of SRS after 12:00 noon on a Friday; or (2) the juvenile has not previously been in the custody of SRS. If either of these two exceptions occur, SRS will have an additional 24 hours to remove the juvenile from SCYC, for a total of 72 hours. Said requirement excludes Saturdays, Sundays and legal holidays. It is understood that the receipt of the written Court Order by the court to SRS means delivery of the documents to the reception desk located at the SRS Topeka Area Office, 1035 Kansas Avenue, Topeka, Kansas, or by delivery to the SRS representative in attendance at the court hearing. An acknowledgment of receipt of these documents by SRS shall be in writing and filed with the Clerk of the District Court by the District Attorney's office. In the alternative, receipt of the documents by SRS may be obtained through the use of a filed-stamped copy of the order by facsimile transmission and a telephone call made to the attention of the Legal Division of the Topeka Area SRS Office. The time limits provided in this paragraph may be extended up to seven days for sexual offenders to the extent that SRS has built up credits as provided herein. SRS may accumulate credits by removal of other juveniles in SRS custody prior to the time limitations required herein. Said credits shall be acquired in twelve hour increments. Sexual offender shall be defined as a juvenile who has been adjudicated or is currently charged with a violation as defined in Article 35, Chapter 21 of K.S.A. The parties agree there will be a review of the 48 hour provision contained in Paragraph 1(c) at the end of three months from the time this agreement is entered. Any dispute with respect to the 48 hour placement will be submitted to the Judge of the United States District Court for resolution at that time.





- (d) When the defendants notify SRS that the population of SCYC has reached 22 and (1) SRS has not removed juveniles from its custody as required by paragraphs 1(b) or 1(c) above, and (2) the SCYC has been required to transfer one or more juveniles to some other secure detention facility to maintain the population at 22, SRS agrees to increase the per diem compensation paid to SCYC from the present rate to \$140.00 per day or any contract rate SCYC is able to negotiate or any contract rate SRS is able to negotiate, whichever is less for each juvenile required to be transferred. The increased rate shall apply to each juvenile required to be transferred due to SRS' inability to remove juveniles as required by paragraphs 1(b) or 1(c) above. SCYC will not admit juveniles who are not subject to the jurisdiction of the Shawnee County District Court. The defendants agree to keep SRS informed of the population at SCYC on a daily basis in writing and addressed to either the Topeka Area Office Chief of Social Services or Legal Division. The parties agree there will be a review of the rate at the end of three months from the time this agreement is entered. Any dispute with respect to the rate will be submitted to the Judge of the United States District Court for resolution at that time.
- (e) During evenings, weekends or holidays SRS shall establish a system of communications by which one or more SRS workers are designated to receive the necessary documents.
- (f) Juveniles classified solely as children-in-need-of-care will not be confined in the SCYC facility for more than 24 hours. If a child in need of care is subsequently charged as a juvenile offender, the child will not be treated as a child-in-need-of-care for purposes of determining whether secure detention is necessary.



2. There is hereby established the Shawnee County Juvenile Facility Population Control Task Force. The members of the task force shall be the Third Judicial District (Shawnee County) Administrative Judge or his designee, who shall Chair the Task Force, the Director of the Shawnee County Department of Corrections, the Secretary of the Kansas Department of Social and Rehabilitation Services, or their designees, an educator, a mental health professional, an at-large member of the community, a juvenile judge and a juvenile advocate. The Task Force may, at its discretion, invite professionals or representatives of some other agencies to provide information or to otherwise participate in task force duties. Such professionals or agencies may include, but are not limited to, the following: the District Attorney for the Third Judicial District Shawnee County, Court Services, Clerk of the District Court, defense counsel, Shawnee County Sheriffs Department, Topeka Police Department, Plaintiffs' attorneys, members of the Community Corrections Advisory Board or representatives of certain social service agencies such as the Kansas Children's Service League.
3. The Task Force shall perform the duties prescribed below and such other duties relating to resident population control at SCYC as may in the future be requested by this Court and accepted by the Task Force.
4. The Task Force shall meet on an as necessary basis at a time and place established by the Chair. The Task Force may establish its own rules and procedures, including any necessary subcommittees, consistent with the directives herein provided, including the removal or release of SCYC residents as may be necessary from time to time.
5. A subcommittee of the Task Force shall monitor resident population at SCYC to ensure that detention at SCYC is restricted and available only to those children for whom secure detention is clearly indicated. Whenever the number of



children detained at SCYC reaches twenty-two, the Director of the Shawnee County Department of Corrections, or his designee, shall notify the Chair of the Task Force of that fact. The members of the subcommittee shall be a Third Judicial District judge who is not active in the juvenile court, who shall chair the committee, a representative from the Shawnee County Department of Corrections, and a representative from the Kansas Department of Social and Rehabilitation Services. The Subcommittee shall:

- (a) Review and screen the resident population to determine which, if any, residents may be released.
  - (b) Prepare a list of residents whom the committee reasonably believes
    - (i) may be released as the juvenile is not dangerous to self or others and is likely to appear for further proceedings pursuant to K.S.A. 38-1632 and 38-1640;
    - (ii) could be placed in the custody of a parent or other suitable person or youth residential facility pursuant to K.S.A. 38-1632, or other appropriate placement; or
    - (iii) could be placed in the custody of the Secretary of the Department of Social and Rehabilitation Services pursuant to K.S.A. 38-1632.
6. From the above mentioned list, the Sub-committee shall make recommendations to the committing Judge designating those juveniles who may be considered for release. The committing Judge shall thereafter enter an order releasing or detaining the juvenile based on the criteria set forth in sections (i) or (ii) above. SCYC agrees to release said juvenile pursuant to the order of the Court.
7. Prior to the Dispositional Order, no juvenile offender shall be ordered detained and placed in SRS custody other than to provide medical or psychological services. The Court shall make findings of fact upon which the decision is made. Should the committing Judge order that the juvenile should be placed in



SRS custody based on the criteria set forth in Section (iii), the responsibility of securing an alternative placement lies with SRS as provided in paragraphs 1(b) and 1(c).

8. The Task Force shall develop clear criteria for secure detention at SCYC, consistent with the provisions of K.S.A. 38-1624 and 38-1640, and develop an objective Risk Assessment and Screening Instrument for use in determining need for secure detention at SCYC. The screening instrument developed for this purpose is approved by all parties and attached as Attachment #1. The Task Force has the continuing responsibility for reviewing and modifying, as necessary, the Risk Assessment and Screening Instrument to ensure its adequacy to maintain SCYC resident population requirements established by Paragraph 1(a) above. The defendants will not admit a child to SCYC without a court order directing the child be detained there unless the child has been screened to determine that the child is in need of secure detention by use of the above referenced objective Risk Assessment and Screening Instrument. The screening function will be performed by trained juvenile intake service personnel presently located at the Kansas Children's Service League Emergency Shelter. In the event the Kansas Children's Service League should no longer perform the screening function for juveniles admitted to SCYC, the Administrative Judge of the Third Judicial District shall designate the entity to perform this function. The Task Force will also present the admission criteria and risk assessment and screening device to the Shawnee County District Court for its consideration as criteria for its use in determining the need for secure detention of children alleged to be juvenile offenders or children in need of care.
9. The Task Force shall review the existence of other, less restrictive, placement alternatives to secure detention in Shawnee County and determine the need, if





any, for the creation of additional alternatives to secure detention. Such alternatives may include, but are not limited to, home detention, electronic monitoring, intensive supervised probation, day reporting, group homes and foster homes. The conclusions and recommendations of the Task Force shall be presented to the defendant Shawnee County Board of County Commissioners and third-party defendant Secretary of Social and Rehabilitation Services for their consideration.

10. The Task Force shall consider ways to expedite the movement of children through the juvenile court system and thereby reduce the length of time spent by children in temporary secure detention. The conclusions and recommendations of the Task Force shall be presented to all affected parties for their consideration.
11. All parties to this stipulation will use their best efforts to assist the Task Force in any way possible in performing its functions and shall provide the Task Force with any requested data or information which is reasonably at their disposal. Should there be changes in either Federal or State law or other unanticipated events that affect the implementation of this Agreement, the parties may meet to seek modifications or review by the Federal Court.
12. Paragraph 1 of this stipulation shall remain in effect until further order of this Court. Paragraphs 2-10 of this stipulation, relating to the creation and duties of the Shawnee County Juvenile Facility Population Control Task Force, shall remain in effect until the promulgation and implementation by the judges of the Third Judicial District of the State of Kansas of a local court rule providing for the continuing performance of all of the essential functions of the Task Force as provided for in this stipulation, including the population control subcommittee.



13. All parties will be in compliance with this agreement within thirty days following the entry of the Court's Order. This stipulation will remain in full force and effect for eighteen months following the entry of the Court's Order, subject to extension by the Court for good cause shown.

THIS AGREEMENT is executed this \_\_\_\_\_ day of November, 1994.

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11-17-94



## DETENTION RISK ASSESSMENT

### I. ADMISSION (Release if No - Complete II if any are Yes)

Yes \_\_\_ No \_\_\_ Alleged violation of probation, placement, or felony warrant.

Yes \_\_\_ No \_\_\_ Alleged violation of A, B or C Felony involving violence to persons.

Yes \_\_\_ No \_\_\_ Alleged violation of burglary, weapon involved, or sale of drug AND in addition:

Y\_\_\_ N\_\_\_ Prior failure to appear; or

Y\_\_\_ N\_\_\_ Presently awaiting adjudication or disposition; or

Y\_\_\_ N\_\_\_ Prior arrests for crimes of violence

### II. RISK ASSESSMENT

#### A. Most Serious Current Offense

- |  |    |  |
|--|----|--|
| 1. Any Class A Felony  | 15 |  |
| 2. Any Class B Felony  | 12 |  |
| 3. Any Felony Warrant Outside Jurisdiction                   | 12 |  |
| 4. Any Felony Involving Firearm, Burglary, Sale of Drug      | 10 |  |
| 5. Any Class C Felony Involving Violence, Vehicular Homicide | 8  |  |
| 6. Any DUI, Reckless or Eluding                              | 4  |  |

#### B. Unrelated Pending Cases

- |                                 |   |  |
|---------------------------------|---|--|
| 1. Each Felony                  | 2 |  |
| 2. Each Misdemeanor             | 1 |  |
| 3. Each Felony Within Past Week | 6 |  |

#### C. Priors

- |  |   |  |
|--|---|--|
| 1. 3 Felony Arrests or Adjudications in Last 12 Months | 4 |  |
| 2. 2 Felony Arrests or Adjudications in Last 12 Months | 2 |  |
| 3. 1 Felony Arrests or Adjudications in Last 12 Months | 1 |  |

#### D. Legal Status

- |   |   |  |
|---|---|--|
| 1. Presently Committed to Any State Youth Center                        | 8 |  |
| 2. Presently Placed Out of Home and Last Adjudication<br>Within 90 Days | 6 |  |
| 3. Presently Placed Out of Home and Last Adjudication<br>Over 90 Days   | 2 |  |

#### E. Aggravating or Mitigating Factors

- |   |  |  |
|---|--|--|
| 1. Juvenile Judge Contacted & Finds Aggravation<br>(May Add 1-2 Points W/Reason(s) Documented)    |  |  |
| 2. Juvenile Judge Contacted & Finds Mitigated<br>(May Subtract 1-2 Points W/Reason(s) Documented) |  |  |

### TOTAL SCORE (Add A thru E)

0 - 6 = Release

7 - 11 = Shelter Screen

12+ = Secure Detention

