

The Honorable Kenny Guinn
Governor of Nevada
Capitol Building
Carson City, NV 89701

Re: Findings of Investigation of Nevada Youth Training Center, Elko, Nevada

Dear Governor Guinn:

On December 6, 2001, we notified you, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997, and the pattern or practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, that we were investigating conditions of confinement at Nevada Youth Training Center ("NYTC"), a facility located in Elko, Nevada, operated by the Department of Human Resources for juvenile males who have been adjudicated delinquent. During February 11-13, 2002, we and our expert consultants toured NYTC. At an exit interview conducted on the last day of our visit, we verbally conveyed our preliminary findings to counsel and senior Department of Human Resources and facility officials. Consistent with the requirements of CRIPA, we are now writing to apprise you of our findings.

As a threshold matter, we wish to acknowledge, and express our appreciation for, the extensive cooperation and assistance provided to us by the NYTC staff, the leadership of the Department of Human Resources and the office of the Attorney General. We hope to continue to work with the State of Nevada and the administration of NYTC in the same cooperative manner in addressing the problems that we found. Further, we note that, though certain conditions at NYTC require immediate attention, the facility possesses many positive attributes.

I. BACKGROUND

We conducted our investigation by reviewing numerous facility records; interviewing current and former NYTC staff, including supervisory personnel, mid-level managers and line staff; interviewing NYTC youths residing in each of the facility's living units; observing and speaking informally with staff and youths; and touring the facility's buildings and grounds.

At the time of our visit, NYTC's population was approximately 160 male youths, between the ages of 13 and 18. Most of the youths during our visit were 15 to 18 years old. The majority of them came from the Reno and Las Vegas areas and were committed to NYTC for seven to twelve months because of property offenses, drug charges, and failures in residential placements.

The facility operates seven living units. Each of the three larger units can house approximately 30 youths. The remaining four can accommodate approximately 20 youths. The living units are overseen by approximately 11 head staff and 40 supervisory staff. The facility also has 5 counselors and a vacant position for a psychologist.

NYTC has many positive elements. It is configured as a residential boarding school, with no perimeter fences. It has a fully accredited academic and vocational educational program. It maintains an active interscholastic athletic program. Its behavior point system appears to function reasonably well. Its fire fighting program offers an unusual, positively affirming experience for its youth participants. Finally, many of its staff appear to be motivated by the youths' welfare, and its newly installed administration has voiced a commitment toward implementing a quality program. However, certain conditions at NYTC are not consistent with constitutional standards.

As a general matter, the State must provide confined, adjudicated juveniles with reasonably safe conditions of confinement. See *Youngberg v. Romeo*, 457 U.S. 307, 315-16, 24 (1982) (recognizing that a person with mental retardation in state custody has rights under the Fourteenth Amendment, including the right to reasonable safety); *Bell v. Wolfish*, 441 U.S. 520, 535-36 & n.16 (1979) (applying the Fourteenth Amendment standard to adult pre-trial detainees); *Gary H. v. Hegstrom*, 831 F.2d 1430, 1432 (9th Cir. 1987) (applying Fourteenth Amendment standard to facility for adjudicated juveniles). It must also provide a means of grievance that reasonably does not expose juveniles to risk of retribution. *Bradley v. Hall*, 64 F.3d 1276 (9th Cir. 1995). The State must provide minimum procedural safeguards before placing juveniles in disciplinary confinement. *Milonas v. Williams*, 691 F.2d 931, at 941-942 & n.4 (10th Cir. 1982). It must also not censor mail based on criticisms of the juvenile institution. *Id.* at 940-941. Finally, it must provide juveniles with adequate mental health care. *Youngberg*, 457 U.S. at 315. The conditions that do not meet constitutional standards, and the minimum remedial steps that we believe need to be undertaken in response, are detailed below.

II. FINDINGS

Our findings address the following areas: (1) excessive force; (2) an inadequate grievance system; (3) lack of procedural due process in the imposition of seclusion and time out; (4) improper screening of mail for statements critical of the facility; (5) inadequate mental health care and safety; and (6) unsafe transportation of youths.

A. Excessive Force Is Prevalent at NYTC

In operating NYTC, the State is constitutionally required to "take reasonable measures to guarantee the safety of inmates." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994)(internal quotation marks and citations omitted). A corollary obligation is to refrain from use of excessive force against prisoners. *Id.* These obligations extend to juveniles in detention. See *H.C. v. Jarrard*, 786 F.2d 1080, 1089 (11th Cir. 1986)(juvenile's rights violated when juvenile detention facility superintendent slammed juvenile against wall and metal cot for laughing and protesting imposition of isolation on another detainee); *Milonas v. Williams*, 691 F.2d 931, 942 (10th Cir. 1982)(prohibiting physical force for any purpose other than to restrain juvenile who is physically violent and immediately dangerous to himself or others or physically resisting institutional rules); *Nelson v. Heyne*, 355 F. Supp. 451, 454 (N.D. Ind. 1972)(beating juveniles with boards violated juveniles' constitutional rights), *aff'd*, 491 F.2d 352 (7th Cir. 1974).

Most of the youths, and a number of current and former staff, whom our consultants interviewed credibly recounted instances in which they had seen staff use excessive force against youths. These instances included punching youths in the chest, kicking their legs, grabbing shirts and shoving youths against lockers and walls, "dipping" or throwing youths to the floor, slapping youths in the face, smashing youths' heads in doors, and pulling youths from their beds to the floor. Staff and youths further indicated that, typically, the triggers for the use of force were youths disobeying or failing to follow directions, rather than youths posing an immediate threat of harm to themselves or others.

Similarly, most of the youths, and a number of current and former staff, whom our consultants interviewed reported that youths frequently were subjected to verbal abuse, in which their race, family, physical appearance and stature, intelligence, or perceived sexual orientation were aggressively attacked. It was evident that some staff used verbal abuse to provoke youths into physical confrontations to provide a pretext for the use of force.

In conducting record reviews, our consultants found numerous memoranda, incident reports, abuse reports, written reprimands and other documentation of incidents where: (1) use of force was treated as

"horse play" or otherwise trivialized when the described circumstances suggested more serious physical contact occurred, without significant repercussions to the involved staff; and (2) the same staff person was identified in multiple incidents, without significant interventions. In this regard, it does not appear that the facility's reporting system includes the possible relationship between verbal abuse and use of force.

The frequency with which particular instances were corroborated by more than one person, and with which particular staff and/or abusive practices were independently identified by record review, youths and staff, lead us to conclude that there is a pattern or practice of use of excessive force at NYTC.

These problems were especially prevalent at the Reception and Classification ("R&C") Unit, in which all new youths are "oriented," although they were by no means isolated to that living unit. Almost every one of the youths we interviewed in that living unit related instances of physical or verbal abuse that occurred there. Further, the unit is extremely regimented -- youth spend extended periods in silence and in their rooms, and their exposure to meaningful educational programing is inadequate. Youths in R&C are often threatened, especially around food issues. For relatively minor infractions they are placed in "time out," and forced to sit upright on their bed frame for extended periods of time. A number of youths and a long-term staff member indicated that, as of the time of our visit, staff regularly threaten to force feed R&C youths who do not take a portion of everything offered in the foodline and then eat it all. In effect, the R&C Unit is a place where newly arrived youths at NYTC are taught that, notwithstanding its written policies, the facility will subject them to excessive force, verbal abuse and intimidation as means to control them.

Our consultants' interviews and record reviews identified several factors contributing to the excessive force at NYTC. First, certain staff persons in management positions were frequently identified as regularly using excessive force against youths. Despite their reputations, these persons have received insignificant, if any, sanctions regarding their use of excessive force. In fact, some of them were promoted to management positions after NYTC had determined that they had used inappropriate force on youths. In the same vein, a number of current and former staff related to us their perception that NYTC's administration had tolerated this conduct, at least when engaged in by certain staff members.

Record reviews confirmed this perception. In the facility's documentation, staff's use of force is often described as "horseplay" or otherwise minimized. A November 20, 2001 memorandum is typical; it detailed an investigation of an incident in which a youth received a one-inch laceration at the back of the head as a result of a physical altercation with a staff member, and stated, ". . . [the youth] initiated the altercation by making fun of [the staff's] sweater [T]he staff grabbed [the youth] and wrestled him to the ground" It then recounted that the staff was "told that he could expect a memo (oral warning) on Horseplay."

A July 20, 2000 written reprimand of R.B. recounted that:

As a result of [a youth's] slow response to your instructions, you kicked his posterior with your foot to get his attention. It was determined that the ward was not injured and that you just meant to get his attention, however, kicking a ward for any reason, playing or to get a point across is unacceptable.

The youth was not out of control, nor did he pose a risk of danger to anyone. He was subjected to use of force "to get his attention." Yet, the facility described the incident in the context of playful activity and limited R.B.'s sanction to a written reprimand. It was quickly apparent during our interviews of youths and staff that R.B. was widely known to use excessive force. Nevertheless, he continued to

supervise youths until shortly after our tour, following which he reportedly was dismissed.

Second, NYTC's staffing patterns often leave only one staff person responsible for 20 to 28 youths. This staffing pattern exposes staff to group control issues that undoubtedly contribute to a perception among many staff members that even minor infractions must be met swiftly with physical intimidation to maintain control.

Third, the facility's behavior management/crisis intervention training for staff is provided once annually: Newly hired staff can supervise youths for up to a year before receiving it. Even then, there is some doubt whether all staff supervising youths receive it. Further, the non-violent intervention techniques that are taught require two or more staff to implement. Because staff often are providing single coverage when supervising youths, many staff regard these techniques as useless. In fact, in our record review, we could not find a single reference indicating that these techniques had been implemented at NYTC.

Fourth, quality assurance and documentation practices at NYTC are weak. Frequently, incident reports and other NYTC documentation fail to justify why staff used force and why other non-physical interventions were not implemented. The documentation is mainly silent about the nature and amount of force used in any given incident. Further, we saw no evidence indicating that the facility can track or systemically analyze critical incidents, including factors such as time, place, nature of force, involved persons, and antecedent events.

Fifth, the abuse investigation process at NYTC is often ineffective, which, in addition to the more immediate problems associated with responding properly to a particular incident, reinforces the perception among staff that excessive force against youths is tolerated. Currently, when a formal abuse investigation, which is conducted by state officials and local law enforcement, is initiated, the facility typically does not take responsive action until that investigation is completed. However, these formal investigations often are conducted weeks or months after the alleged incident, by which time visible evidence of injury, if any, is lost. Under such circumstances, the facility should at least take steps to ensure that relevant evidence is preserved and that youths are adequately protected from harm. Further, the facility's investigations are often conducted by staff who directly supervise the people whom they are investigating. Finally, as noted above, NYTC most often employs mild sanctions, such as "letters of instruction" or "guidance," in response to instances in which it found excessive force was used.

B. NYTC's Grievance System Is Ineffective and Fails to Protect Youth from Harm

Just as prisoners and juvenile detainees have a constitutional right of access to the courts, they have a right to a grievance system that does not carry risk of punishment as a price for using it. See *Bradley v. Hall*, 64 F.3d 1276 (9th Cir. 1995); see also *Bounds v. Smith*, 430 U.S. 817, 822 n.17 ("Our main concern here is protecting the ability of an inmate to prepare a petition or complaint.") (internal quotation marks and citations omitted). For the entire calendar year 2001, only five youth grievances were filed. Youths do not use the facility's grievance system because they do not trust it. Many youths told us that they did not believe that the facility would seriously investigate their grievances, and some related that some staff had threatened to retaliate against those who grieved. When we asked a youth whether he felt safe at NYTC, he described his fearful reaction to witnessing a staff member striking another youth. Although this incident, which other youths witnessed, frightened him enough to relay fears for his safety in a letter to his father, the youth did not report it to anyone at the facility. Significantly, NYTC's administration reportedly began investigating this incident after the father brought it to the superintendent's attention, not in response to a grievance.

C. NYTC's Seclusion and Disciplinary Confinement Practices Lack Adequate Due Process

Juveniles should not be involuntarily secluded for periods longer than necessary to regain control of themselves and to eliminate significant risks to the safety of the juvenile, other persons and the security of the institution.

Courts have held that, in the case of juvenile correctional and detention facilities, use of isolation triggers the due process protections of the Fourteenth Amendment. In *Milonas*, the Tenth Circuit affirmed a permanent injunction barring a facility from ever placing juveniles in isolation rooms. 691 F.2d at 941-42 & n.4. The Ninth Circuit has held that, in juvenile facilities, due process hearings are warranted before inmates are placed in disciplinary confinement for extended periods of time. See *Gary H.*, 831 F.2d at 1432-33 (9th Cir. 1987) (due process hearing prior to confinement in excess of 24 hours constitutionally warranted). Further, juvenile facilities must also abide by whatever state-created process pertains to liberty restrictions involving significant hardship.

The NYTC Policy Manual (9-3 and 9-4) indicates that Seclusion, or "Time Out" (isolation in a small, locked room, interrupted only by latrine breaks) can be used to protect youths from harming themselves or others, to prevent escapes, and to prevent program disruption. Youths involved in fighting may be placed in time out for up to an hour, with extensions of time made based upon a written justification. Policy 9-3. Youths in time out are to receive psychological, medical and educational services, and large muscle activity. Policy 9-4. Procedurally, such time out intervention must be reviewed after 60 minutes by the Superintendent or his designee and can be extended for up to 24 hours. *Id.* Thereafter, "due process protections," including an evidentiary hearing, are required for further extensions of time. *Id.* Time out is not to be used as a punishment. *Id.*

NYTC's actual practice does not comport with its procedure. For instance, according to NYTC's "time out" log, on February 10, 2002, two youths were placed in "time out" for 7.75 hours, for "gang related" activities. There was no indication that their condition was reviewed by a staff person after 60 minutes, that a written recommendation was made to exceed 60 minutes, or that they were kept in time out to establish calm or safety. The time out log further indicates that, also on February 10, a youth remained in time out for 13 hours as a consequence of fighting, again without substantiating the need for this extension. Youths are sometimes isolated in excess of 24 hours without a due process hearing. The log contains a January 9, 2002 entry, for example, indicating that a youth was placed in time out for 32 hours for fighting, without any evidence that a due process hearing was provided.

Our interviews of youths and review of records makes clear that "time out" is an almost automatic response to fighting and that its duration often runs well beyond the time that individual behavior control has been reestablished. That is, it appears that "time out" is used in contravention of NYTC procedures as a form of summary punishment. At a minimum, NYTC must comply with its own procedures regarding the imposition of "time out" and disciplinary confinement. Cf. *Bass v. Perrin*, 170 F.3d 1312, 1318 (11th Cir. 1999) (even adult prisoners enjoy state-created liberty interest when prison deprives them of yard time, in contravention of its procedures, after placing them in segregation).

D. NYTC's Practice and Policy Regarding Screening of Outgoing Mail is Unconstitutional

NYTC's Policy (15-4) identifies as "unacceptable" mail relating "[s]ituations or incidents that could or would bring discredit to the Institution or staff." In many, if not all, living units, staff routinely read youth's outgoing mail. Prohibiting mail because it is critical of an institution and routinely subjecting outgoing mail to screening has been held to be unconstitutional. *Milonas*, 691 F.2d 931, 940-941 (10th Cir. 1982) (affirming order permanently enjoining, as violative of the 1st and 14th Amendments, policy

and practice of a Utah school for youths monitoring and censoring outgoing mail that was critical of the institution.)

E. Inadequate Mental Health Care and Safety

NYTC is not providing adequate mental health care and safety for its youths. Youths receiving psychotropic medications at the time they are admitted to the facility are not systemically screened and evaluated before a professional determination is made whether to discontinue such medications; psychotropic medications are automatically and permanently discontinued at the youths' arrival, without the provision of alternative psychiatric supports.

Also, the single rooms in the infirmary area contain suicide risks (e.g., grated windows, metal door arms) that should be eliminated. In the same regard, toxic cleaning materials are sometimes stored in unlocked containers in some of the cottages. Such materials should be secured.

F. Unsafe Transportation of Youths

The facility typically handcuffs youths together during transport to and from the airport. This is an unsafe practice that substantially departs from professional standards and places youths at risk of harm.

III. MINIMUM REMEDIAL MEASURES

To remedy the deficiencies discussed above and to protect the constitutional rights of juveniles at NYTC, Nevada promptly should implement the minimum remedial measures set forth below.

A. Excessive Force

NYTC must take reasonable measures to guarantee the safety of the youth in its custody and to protect them from harm from the use of excessive force. In particular, the facility should:

1. Limit the use of force to situations in which youths pose a risk of harm to themselves or others.
2. Ensure that, regardless of position or seniority, all staff are held accountable, through meaningful disciplinary action, for the use of excessive force and verbal abuse used to provoke youths into confrontations.
3. Maintain staff ratios that will permit staff to supervise, and maintain control of, youths without resort to excessive use of force.
4. Ensure that all instances of use of force are immediately, thoroughly, and reliably documented and investigated.
5. Ensure that quality assurance mechanisms are in place that adequately monitor and analyze incidents where force is used, identify corrective action, as appropriate, and ensure that such action is successfully undertaken.
6. Ensure that all allegations of abuse are investigated in a timely and thorough manner.
7. Provide appropriate behavior management/crisis intervention training to staff before

staff may work in direct contact with youths.

B. Grievances

NYTC must provide youth with an effective, reliable process to raise grievances, without exposing them to retribution from staff. In particular, the facility should:

1. Ensure that grievances are examined by persons other than the staff, and the direct and indirect supervisors of those staff, who supervise the youth making the grievance.
2. Ensure that youths making a grievance are informed of the results of the grievance process.

C. Seclusion and Disciplinary Confinement

NYTC must not place youths in seclusion in contravention of its own policies. In particular, the facility should:

1. Ensure that youths do not remain in time out after they no longer pose a significant risk of danger to themselves, others or the security of the institution.
2. Ensure that, before youths are placed in confinement in excess of 24 hours, they are afforded adequate due process protections, including an evidentiary hearing.

D. Screening And Censoring Outgoing Mail

NYTC staff must not censor youths' outgoing mail for material critical of the institution.

E. Mental Health Care and Safety

1. The decision to discontinue a youth's psychotropic medications should be made based on a professional assessment of the youth, not on a blanket prohibition of such medications.
2. Suicide risk hazards, such as grated windows and door arms, in single rooms near the infirmary should be eliminated, and toxic cleaning chemicals in the living units should be safeguarded properly.

F. Transportation of Youths

Youths should not be handcuffed together when being transported to or from the airport.

* * * * *

The collaborative approach that the parties have taken thus far has been productive. We hope to be able to continue working with the State in an amicable and cooperative fashion to resolve our outstanding concerns regarding NYTC.

We will forward our expert consultants' reports under separate cover. Although their reports are their work - and do not necessarily represent the official conclusions of the Department of Justice - their observations, analyses, and recommendations provide further elaboration of the relevant concerns, and

offer practical assistance in addressing them. We hope that you will give this information careful consideration and that it will assist in facilitating a dialogue swiftly addressing areas requiring attention.

In the unexpected event that the parties are unable to reach a resolution regarding our concerns, we are obligated to advise you that the Attorney General may initiate a lawsuit pursuant to CRIPA, to correct deficiencies or to otherwise protect the rights of NYTC residents, 49 days after the receipt of this letter. 42 U.S.C. § 1997b (a)(1). Accordingly, we will soon contact State officials to discuss in more detail the measures that the State must take to address the deficiencies identified herein.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General

cc: The Honorable Frankie Sue Del Papa
Attorney General
State of Nevada

Michael J. Willden
Director
Nevada Department of Human Resources

Dale E. Warmuth
Superintendent
Nevada Youth Training Center

Daniel G. Bogden, Esq.
United States Attorney