

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

<i>D.D¹. by and through his mother and next friend, B.T. ;</i>	:	Case No. 2:10-cv-1097
<i>K.M. by and through his mother and next friend, J.M.;</i>	:	
<i>N.B. by and through his mother and next friend, A.D.;</i>	:	
<i>B.M. by and through her mother and next friend, J.A.;</i>	:	<u>CLASS ACTION COMPLAINT</u>
<i>C.M., by and through her mother and next friend, E.M.;</i>	:	<u>FOR INJUNCTIVE RELIEF AND</u>
<i>W.G., by and through his mother and next friend ,D.G.;</i>	:	<u>DAMAGES WITH JURY DEMAND</u>
<i>J.R.;</i>	:	
<i>and</i>	:	
<i>J.L., by and through his mother and next friend, S.S.;</i>	:	
	:	
Individually and on Behalf of Class of All Others Similarly Situated;	:	
	:	
c/o Gerhardstein & Branch Co. LPA	:	
432 Walnut Street, Suite 400	:	
Cincinnati, OH 45202,	:	
	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
WASHINGTON COUNTY, OHIO/	:	
WASHINGTON COUNTY BOARD OF	:	
COUNTY COMMISSIONERS	:	
205 Putnam Street	:	
Marietta, OH 45750,	:	
	:	
and	:	
	:	
TIMOTHY A. WILLIAMS	:	
Washington County Juvenile Center	:	
1699 Colegate Drive	:	

¹ Plaintiffs are identified through initials and not by their full name in order to protect their juvenile histories which are confidential and not public records. Defense counsel and the Court will be provided with a key revealing the identities of the plaintiffs and, if approved, such key shall be subject to a protective order issued by the Court.

Marietta, OH 45750,
Individually and in his nonjudicial
administrative capacity as presiding official
responsible for the Washington County
Juvenile Center,

and

RAE ANN WARD
Washington County Juvenile Center
1699 Colegate Drive
Marietta, OH 45750,
individually and in her official capacity as
former Director of the Washington County
Juvenile Center,

and

BRIAN HESSON
Washington County Juvenile Center
1699 Colegate Drive
Marietta, OH 45750,
Individually and in his official capacity as
Director of the Washington County Juvenile
Center,

and

BRIAN ORDERS
Washington County Juvenile Center
1699 Colegate Drive
Marietta, OH 45750,
individually and in his capacity as an
employee of Washington County, Ohio,

and

STEPHANIE GALATI
Washington County Juvenile Center
1699 Colegate Drive
Marietta, OH 45750,
individually and in her capacity as an
employee of Washington County, Ohio,

and

routinely invading the privacy of youth through surveillance by staff of the opposite gender; requiring youth to wear suicide smocks as punishment; imposing punishment without due process; forcing youth to work at for profit businesses in the community without remuneration; requiring youth to languish in detention cells for extended periods of time; arbitrarily extending program time for youth; requiring youth to engage in degrading activities such as cleaning an entire gymnasium with toothbrushes; ignoring, delaying and providing inappropriate treatment for scabies and other medical conditions including attention deficit/hyperactivity disorder (ADHD); denying education and other programming; and denying necessary physical and mental health care. Defendants' actions have been deliberately indifferent to Plaintiffs' constitutional and legal rights. Defendants' actions described in this complaint constitute punishment and are a substantial departure from accepted professional judgment, practices, and standards.

2. Plaintiffs seek just compensation and injunctive relief to ensure that if they are ever re-incarcerated at the Center they will not endure these conditions. By bringing a class action, Plaintiffs also seek to ensure that other children do not have to endure these conditions while confined by Defendants. Since Plaintiffs' Counsel first made inquiries of Defendants regarding these claims the population at the Center has dramatically dropped and many youth are now being transferred to other facilities. Plaintiffs need to assess the actual plans for the Center before filing a motion for injunctive relief.

II. JURISDICTION

3. Jurisdiction over claims brought under the Civil Rights Act of 1871 is conferred on this Court by 28 U.S.C. §§ 1331, 1343 (3) and (4). Jurisdiction over the state law claims is conferred by 28 U.S.C. §1367. Venue is proper in this Division.

4. This Court is authorized to grant declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202 and Rules 57 and 65 of the Federal Rules of Civil Procedure
5. The representative plaintiffs are no longer in custody. Therefore the provisions of the Prison Litigation Reform Act do not apply to this case.

III. THE PARTIES

6. Plaintiff D.D. is a resident of Washington County, Ohio, and a citizen of the State of Ohio. Plaintiff is 17 years old and is no longer in the custody of Defendant Washington County. D.D. currently resides with his adoptive mother, B.T., through whom he brings this suit. At all times relevant to this action, D.D. suffered from depression and is a person with a disability pursuant to Title II of the Americans with Disabilities Act. 42 U.S.C. §12132.
7. Plaintiff K.M. is a resident of Washington County, Ohio, and a citizen of the State of Ohio. Plaintiff is 14 years old and is no longer in the custody of Defendant Washington County. K.M. currently resides with his mother, J.M., through whom he brings this suit. K.M. is under the supervision of the Department of Youth Services and is at risk of returning to the Center should he violate the terms of his supervision. K.M. suffers from ADHD and is a person with a disability pursuant to Title II of the Americans with Disabilities Act. 42 U.S.C. §12132.
8. Plaintiffs N.B., B.M., C.M., W.G., J.R. and J.L. have all been previously in the custody of Defendant Washington County. Those who are minors bring this suit through their parents or guardians.

9. All of the individual plaintiffs are hereafter collectively referred to as the “representative plaintiffs.” By using this term plaintiffs intend to rename each of the plaintiffs individually as well as collectively.
10. Defendant Washington County, Ohio is a unit of local government organized under the laws of the State of Ohio. The County is sued through the Washington County Ohio Board of Commissioners who are named only in their official capacity pursuant to O.R.C. § 305.12. Defendant Washington County is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. Washington County is a “public entity” under Title II of the Americans with Disabilities Act. 42 U.S.C. § 12132.
11. Defendant Timothy A. Williams is a judge in Washington County, Ohio, with administrative responsibility for the Washington County Juvenile Center. Defendant Williams is not sued in his judicial capacity, only in his administrative capacity as presiding official responsible for the Washington County Juvenile Center. Defendant is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. He is sued in his individual and official capacity. He was a county policy maker with respect to customs, practices, policies and procedures at the Washington County Juvenile Center.
12. Defendant Rae Ann Ward is an employee of Washington County, Ohio. She is the former director of the Washington County Juvenile Center. Defendant is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. She is sued in her individual and official capacities. She was a county policy maker with respect to customs, practices, policies and procedures at the Washington County Juvenile Center.

13. Defendant Brian Hesson is an employee of Washington County, Ohio. Defendant is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. He was a county policy maker with respect to customs, practices, policies and procedures at the Fairfield County Jail. He is sued in his individual and official capacities.
14. Defendant Brian Orders was at all times relevant an employee of Washington County, Ohio. Defendant is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. He is sued in his individual and official capacities.
15. Defendant Stephanie Galati was at all times relevant an employee of Washington County, Ohio. Defendant is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. She is sued in her individual and official capacities.
16. Defendant Michelle Burkhart was at all times relevant an employee of Washington County, Ohio. Defendant is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. She is sued in her individual and official capacities.
17. Defendant David Matthew Montgomery, DO was at all times relevant a physician under contract with Washington County, Ohio to provide medical care to youth at the Center and establish medical policies, practices and customs for the Center. Defendant is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. He is sued in his individual and official capacities.
18. John and Jane Does Numbers 1-20 are, as of yet, unidentified individuals who were, at all relevant times, employees of Washington County, Ohio assigned to the Washington County Juvenile Center. Defendants are “persons” under 42 U.S.C. § 1983 and at all

times relevant to this case acted under color of law. They are sued in their individual and official capacities.

19. All of the individual defendants (everyone except Washington County) are hereafter referred to collectively as the “individual defendants.” The use of this term is intended to rename each and every one of the individual defendants as individuals and collectively.

IV. CLASS ACTION ALLEGATIONS

20. The representative Plaintiffs, pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) and (b)(3), bring this action on behalf of themselves and on behalf of a class of persons defined as:

All persons twenty-two years of age or less as of the date on which this lawsuit is filed (and others for whom the statute of limitations is legally tolled) who have been, are now, or in the future, held in custody at the Washington County, Ohio Juvenile Center.

21. The class of Plaintiffs is so numerous that joinder of all members is impracticable, with hundreds of youth confined at the Center each year. In addition, as set out in detail in this complaint there are questions of law and fact common to the members of the Plaintiff class. These include the factual circumstances and the legality and constitutionality of the conditions, policies, and practices under which Defendant confines Plaintiffs at the Center.
22. Defendants imposed the conditions, policies, and practices challenged in this action on the representative Plaintiffs and on the members of the Plaintiff class so that the claims of the representative Plaintiffs are typical of those of the class.
23. The representative Plaintiffs will fairly and adequately represent the interests of the class. These Plaintiffs possess the requisite personal interest in the subject matter of the lawsuit. They are represented by counsel experienced in class action litigation on behalf of

children involving conditions of confinement. Alphonse A. Gerhardstein is currently lead or co class counsel on four other pending class actions and has previously served as class counsel on many civil rights and criminal justice class actions during his thirty-four year career. Jennifer Branch has also served as lead or co counsel of multiple civil rights individual and class actions during her twenty-three year career.

24. Defendants have acted and continue to act in a manner generally applicable to the class, thereby making appropriate final injunctive relief and injunctive relief with respect to the class as a whole as required by Civil Rule 23(b) (20).
25. The common questions of fact and law predominate over any questions affecting only individual members of the Plaintiff class, as required by Civil Rule 23(b)(3). Any slight differences among the class members can be accommodated by establishing subclasses as the facts are developed through discovery.
26. A class action is superior to other available methods for fair and efficient adjudication of this litigation, in satisfaction of the requirements of Civil Rule 23(b) (3), since joinder of all members of the Class is impracticable. Even if the members of the Class were able to prosecute their individual actions, it would be unduly burdensome on the courts to proceed with hundreds of individual cases stretched out over an extended period since most of the class members are minors and have many years available within which to bring their claims. By contrast, the class action device presents far fewer management difficulties and provides the benefits of unitary adjudication, economies of scale, and comprehensive supervision by a single court.

27. The injuries suffered by the representative Plaintiffs and the members of the Plaintiff class are capable of repetition, yet may evade review, thereby making class wide injunctive relief appropriate.

V. FACTS

A. Characteristics of the Center and Allegations Common to All Class Members

28. The Washington County Juvenile Center is located in Marietta, Ohio.
29. Center residents are between 12 and 18 years of age and are typically committed to the facility by the Juvenile Judge.
30. In 2009 the Center served approximately 61 youth in its two programs and held approximately 85 youth in detention. The number of youth in custody at the Center was comparable during previous years.
31. Youth held in detention are held in one of four detention cells. The cells are furnished with a bunk and mattress, a toilet, a sink, and a table. The doors to the detention cells are solid, with one window used for observation purposes. The cells have one window to the outside, which remains closed. All detention cells are under 24 hour video surveillance, monitored at a control desk. One detention cell also holds a shower which is used by all juveniles housed in the detention cells.
32. Youth have been held in detention for extended periods of time, some longer than 100 days.
33. Youth in detention receive no outdoor recreation and receive only one hour of indoor recreation per day.
34. Many youth are required to participate in indoor recreation while wearing leg shackles. They suffer physical injuries to their legs and they often fall when they run in shackles.

35. Many youth in detention have been forced to remove all their clothing and wear suicide gowns that drape over their naked bodies – even when they are not suicidal. In these instances the gown is required as punishment for allegedly violating rules at the Center.
36. Many youth in detention have been subjected to intrusive surveillance that violates all privacy while they are showering, toileting, and/or wearing the suicide gown.
37. Detention from 30 – 90 days is imposed by Defendants on all youth who run from the Center and no credit is received for the time they serve in detention.
38. Many youth in detention receive no rehabilitation treatment, no education, no counseling, and no health care and/or the services provided in these areas are so inadequate that they reflect a substantial departure from accepted professional judgment, practices, and standards.
39. Many youth have government benefits improperly taken from them during their stay at the Center.
40. The stated theory behind the programming offered at the Center is cognitive behavioral therapy. Specifically a youth “earns days” by demonstrating “prosocial behavior” during his or her stay. Misbehavior can result in “suspended days” or days that are not counted toward the progress a youth must make to earn release through the various program levels. Critical to this type of treatment is fidelity to the model. Defendants regularly and routinely fail to adhere to the cognitive behavior treatment principles.
41. Many of the youth enrolled in treatment at the Center are not appropriate for treatment because they are not high risk offenders. That is, they do not pose a serious risk of committing crime or recidivating. These youth suffer from overincarceration.

42. Youth enrolled in the treatment programs are often held for inappropriately long periods of time – up to two years – because Defendants apply the standards of conduct and consequences for misconduct in an arbitrary and capricious manner.
43. Youth in programming are denied their free exercise of religion and improperly coerced to engage in “Bible Study” or Protestant Christian services in order to secure programming credit for Sundays when religious programming is offered at the Center.
44. Youth in programming are often assigned to (a) work at private for profit businesses doing unpaid tasks that are not appropriate for their age and status as minors; (b) engage in degrading tasks such as cleaning the floor with a toothbrush; and (c) perform tasks for staff members such as washing their cars.
45. Youth in programming are required to submit to arbitrary rules including but not limited to walking with their hands behind their back and can lose credit for days needed for release if they fail to abide by these rules.
46. The medical director and physician responsible for providing medical care to the youth as well as establishing policies, procedures, customs and protocols for the delivery of medical and mental health care has been Defendant Montgomery. Treatment for the serious medical and mental health needs of the members of the class has routinely been delayed or altogether denied by Dr. Montgomery and the health care provider(s) that he directs.

B. Plaintiff D.D.

D.D. suffered Depression after the deaths of both parents.

47. When he was younger, D.D. was a normal, active child who participated in school sports, including football, and was an average student academically.

48. D.D. was arrested for underage consumption in November of 2007. He was placed on probation.
49. Two days after Christmas, December 27, 2007, D.D.'s father committed suicide. His death devastated D.D.
50. D.D. became despondent and very depressed. He stopped attending school and withdrew from his friends and peers. D.D. attended individual counseling, but failed to attend group counseling for drug and alcohol abuse as required by the terms of his probation.
51. On August 14, 2008, D.D. was taken into the custody of the Center for violating the terms of his probation. He failed a drug screen and was charged with possession of marijuana, a minor misdemeanor.
52. D.D. remained at the Center for approximately one month, spending only one day in detention, and was released to the custody of an aunt and uncle on September 16, 2008.
53. D.D. ran away from his aunt and uncle on or around October 13, 2008. D.D. missed his mother, who was suffering from cancer, and was still distraught over the death of his father, which occurred less than a year prior
54. On August 14, 2009, D.D.'s mother died of cancer.

D.D. was Subjected to Excessive, and Unconstitutional, Periods of Confinement.

55. D.D. was arrested on or around September 3, 2009, and was taken back to the Center, this time spending more than one month (44 days) in a detention cell. During his detention, D.D. was locked in the cell for 23 hours per day, being released only for a one hour, supervised recreation period in the gymnasium. D.D. was shackled during these recreation periods.
56. On October 18, 2009, D.D. escaped from the Center.

57. On November 3, 2009, D.D. was captured and returned to the Center.
58. From November 3, 2009 to March 8, 2010, D.D. was once again locked in a detention cell for 23 hours every day. Thus, he was confined in detention for 126 days. When combined with his prior time in detention, D.D. spent 170 days locked in a cell during the 2009-2010 school year.
59. During the majority of the daytime hours D.D. either sat on his bed and looked out the window or simply lay down.
60. At various times D.D. was exposed to female staff monitoring the surveillance system when he entered or left the shower and/or used the toilet facilities in one of the detention cells.
61. D.D. was permitted a maximum of one hour of recreation per day. On some days, only a half an hour was provided. This time was spent indoors, in the gymnasium. D.D. was shackled at the ankles at all times during this “rec time.” The shackles caused him to fall during recreation and caused cuts and bruising on his ankles.
62. D.D. was not permitted to attend classes. Instead, he was occasionally given some homework assignments to complete in his detention cell. D.D. was provided “school work” on only 25 of the 126 days he was held in detention. Also, he was provided with a pencil, paper, and a bible.
63. D.D. was denied access to an instructor or tutor, despite requests for these services. When D.D. had difficulty completing an assignment, or when the assignment was completed incorrectly, D.D. was simply required to try again and again until he figured it out himself.

64. D.D. was not suicidal at the Center. He was nonetheless ordered to strip and wear a suicide gown. A suicide gown is a stiff, heavy garment which is designed to prevent inmates or patients from using their clothing to hang themselves. Pursuant to County policy, the garment is worn without underwear. D.D. was ordered to wear the gown over his naked body as punishment for misbehaving.
65. D.D. was repeatedly denied visits with his younger brother who moved out of state to live with relatives after D.D. was placed at the Center. Finally, shortly before he departed the area, D.D. was permitted a 30 minute visit. This was extremely frustrating and sad for D.D. who was coping (along with his brother) with the loss of both parents at that time.
66. D.D.'s conditions of confinement in detention only exacerbated his depression.
67. D.D. was required to pay his social security benefits to the Center in violation of Social Security regulations and laws.

Harm to D.D.

68. D.D. suffered physical injury, undue physical confinement, emotional distress, anguish and despair during that physical confinement. D.D. still suffers emotional turmoil and distress, and extreme anxiety as a result of the conditions of his confinement.
69. Defendants' excessive confinement of D.D., and denial of rehabilitative services, resulted in an extreme and needless delay in D.D.'s education and rehabilitation.

C. Plaintiff K.M.

K.M. is a Child with an Emotional Disability.

70. In 2009 K.M. was diagnosed as suffering from attention deficit and hyperactivity disorder (ADHD). This condition makes it hard for him to control his behavior and follow rules.
71. As experienced by K.M., ADHD is a serious medical need and a disabling condition.

72. K.M. has been identified as a child in need of special education services since at least the 2008 academic year.
73. In 2009 K.M. was receiving educational services through the Road to Achievement Program (RAP) in Washington County, Ohio.
74. On November 19, 2009, while engaged in RAP programming, K.M. assaulted another student. He was charged with misdemeanor assault and placed at the Center.
75. At all times relevant to this case K.M. was prescribed medication known as Strattera in order to relieve the symptoms of his ADHD.

K.M. Was Placed in Detention at the Center and Denied Basic Necessities.

76. K.M. was immediately placed in a detention cell when he arrived at **the Center**. Defendant former Director Rae Ward authorized the initial detention.
77. K.M. remained in detention for 20 consecutive days.
78. K.M. was not permitted to have educational materials or class-work in his detention cell. No rehabilitation programming was provided to K.M. during his entire time in the detention cell. During the majority of the daytime hours K.M. either sat on his bed and looked out the window or simply lay down.
79. At various times K.M. was exposed to female staff monitoring the surveillance system when he entered or left the shower and/or used the toilet facilities in one of the detention cells.
80. K.M. would sometimes attempt to talk to juveniles in neighboring cells. When he did so, he was reprimanded and told to stop. Defendants were inconsistent with respect to what conduct was permitted in the cell.

81. K.M. was permitted only one hour of exercise per day. All exercise was conducted in a single room. K.M. was not permitted any outside exercise the entire time he was incarcerated in detention.
82. Upon K.M.'s admission, Defendants Ward, Hesson, Montgomery and Doe(s) were aware of K.M.'s need for prescription Strattera. But Strattera was not provided to K.M. until December 4, 2009, more than two weeks after admission. This medication helps K.M. control his behavior.
83. As a result of his lack of medication and the severe conditions of confinement K.M. had a very difficult time controlling his impulses. It was foreseeable by Defendants Ward, Hesson and Montgomery that the failure to provide medication combined with the severe conditions of confinement in detention would cause K.M. to engage in disruptive conduct.

Forced Removal of K.M.'s Clothing By Mixed Gender Team of Officers.

84. K.M.'s 14th birthday occurred on December 01, 2009. He had been in detention for 12 days and began acting out in various ways: kicking the cell door and the wall, cursing at staff, yelling, and striking the surveillance camera in his cell with his pillow.
85. On the evening of December 2, 2009, K.M. began jumping on the bed and striking a surveillance camera with his pillow.
86. Defendants Stephanie Galati and Brian Orders then entered K.M.'s cell. Defendant Galati demanded that K.M. remove all of his clothing. K.M. refused. Defendant Galati then removed K.M.'s socks and pants.
87. After a period of resistance, K.M. was restrained, clad only in a white t-shirt and his underwear. Defendant Galati told K.M. that he could either remove his underwear

- himself, or that she would remove it. K.M. refused to remove his underwear. Defendant Galati asked that Defendant Michelle Burkhart bring a suicide gown into the cell to be placed on K.M.
88. Defendants Orders and Burkhart then ripped K.M.'s shirt off of him. By this time, all three defendants were actively restraining K.M. and wrestled him to the floor. Defendants Galati and Burkhart then restrained K.M.'s arms. Defendant Orders ripped K.M.'s underwear off in the presence of both female employees.
89. Defendant Galati left the suicide gown for K.M. to put on and then she, Defendant Burkhart and Defendant Orders exited the cell.
90. K.M. was forced to remain naked with only the suicide gown available to him until the afternoon of the following day.
91. Defendants Orders, Galati, and Burkhart all filed reports detailing the incidents of December 2nd. None of the reports indicate that K.M. ever threatened to harm himself or expressed suicidal thoughts or impulses. The purpose of placing K.M. in the gown was to prevent him from hitting the camera and/or to punish him for his actions.
92. At no time did Defendants Montgomery, Ward, Hesson, Orders, Galati, or Burkhart seek or provide a medical or mental health evaluation of K.M. even though his conduct was clearly a manifestation of his disability and an accommodation – including his prescribed medication – was required to help permit him to endure the unbearable conditions of confinement.
93. Defendants Orders, Galati, and Burkhart acted in a shocking manner and with deliberate indifference to the safety and health of K.M. The conduct of all defendants constitutes

punishment and reflects a substantial departure from accepted professional judgment, practices and standards.

Harm to K.M.

94. K.M., a 14 year old boy, was humiliated and embarrassed as a result of having his entire, nude, body exposed to members of the opposite sex.
95. K.M.'s rehabilitation and education were needlessly delayed by Defendants.
96. The conditions of confinement including the denial of his prescription medication caused K.M. to deteriorate emotionally, lose impulse control, and generally suffer pain, embarrassment, humiliation, mental anguish, and psychological and emotional distress.
97. K.M. suffered physical pain and undue physical confinement at **the Center**.

D. Plaintiff N.B.

98. N.B. was fourteen years old when he was admitted to the Center for disorderly conduct.
99. Between October 23, 2009 and June 30, 2010 he served approximately eight months at the Center.
100. N.B. served all of his time on the program side of the Center.
101. N.B. performed 190 hours of community service which was nearly twice the required number of hours he was ordered to perform.
102. Community service for N.B. included extensive work at private businesses including a private, for profit strawberry farm where N.B. would pick berries, pick up plants and pick up black plastic sheeting. N.B. developed blisters on his hands because he was not provided proper protective clothing by Defendants. N.B. was not paid for his work at private businesses.

103. At intake N.B. and his mother advised Defendants that he had back problems and was scheduled for physical therapy. He never received physical therapy while he was at the Center and his back continued to bother him.
104. N.B. and other children at the Center were required by Defendants to clean very large surfaces with toothbrushes.
105. N.B. was denied access to some recreational activities because of his back pain but always required by Defendants to shovel snow regardless of his back pain. N.B. was required to wear boots with holes and had cold, wet feet as he shoveled the snow.
106. N.B. contracted scabies at the Center. He did not know what it was and would itch the mites making him extremely uncomfortable as the condition spread. N.B. complained for weeks about the scabies before he finally received treatment for the scabies.
107. Defendant Does and Hesson were very demeaning in their statements to N.B., telling him that he was a “mama’s boy,” he was stupid, that he would never amount to anything and that he was worthless.
108. While Defendants held N.B. at the Center they received his social security benefits which violated social security regulations and laws.
109. N.B. was not a high risk offender and he was an inappropriate candidate for the treatment program at the Center. The application of the Center program to N.B. was a substantial departure from accepted professional judgment, practices, and standards.
110. N.B. was traumatized by his treatment at the Center. He suffered emotional and physical abuse. He suffered physical injury and pain. He has not yet recovered from the emotional abuse.

E. Plaintiff C.M.

111. C.M. was 13 years old when she was sent to the Center for being unruly C.M. earned 236.25 community service hours from December 2009-July 2010.
112. C.M. entered the Center with a diagnosis of ADHD, a condition she has had since she was 5 years old.
113. C.M. spent 30 days in detention. She was alone in the cell. During the first week, Defendants allowed her out of the detention cell the first week for just one hour per day so she could receive indoor recreation. She was never provided outdoor recreation. The remaining weeks of detention, C.M. was allowed out of the detention cell for indoor recreation and school. She had to wear shackles to recreation and school. During recreation she was required to play kick ball with the other girls while wearing leg shackles, which caused her to fall and caused the skin under the shackles to tear and bleed. The wounds on her ankles became infected. She and her mother asked Defendants for treatment but they denied C.M. proper medical care for this serious medical need. The wounds left scars on her ankles.
114. While C.M. was in detention she was depressed and lonely. She cried a lot alone in the cell. The first day in detention she head butted the table causing a black eye. She had little to do when she was locked in the cell and would pace back and forth so much she wore out her socks. Defendants allowed C.M. to request one book at a time to read, but every night she would have to return the book to staff. The next day she would be given a different book to read. The blinds in her cell were kept shut so she could not see outside unless she squinted through a hole in the blinds.

115. C.M.'s family visited her while she was held in detention. Her mother was shocked to see her daughter crying, rocking back and forth, and biting all her nails down to the skin. Her socks were sticking to the sores on her ankles. Her mother complained to Defendant Brian Hesson who failed to provide medical care to C.M.
116. C.M. requested to see someone for her depression while she was in detention but she was denied adequate mental health treatment. Defendants did not give C.M. with any medication for her depression.
117. C.M. joined the running team in an effort to earn points. Earning points was important to the juveniles in the program because they could not advance in the program unless they earned enough points to "earn a day." If they did not earn a day, that day was "dead time" meaning, the day did not count toward the total number of days they needed to complete to advance through the levels of the program.
118. Defendant Brian Hesson forced C.M. to run even though she was suffering from an asthma attack. She had stopped running and was in pain because her inhaler was not working. Brian Hesson came upon her and ordered her to run another mile. She cried and told him she could not breathe. He discharged her from the running team.
119. C.M. was forced to work on a for-profit strawberry farm. She and other girls and boys from the Center worked about approximately four hours a day for several weeks picking berries at the farm, pulling plants, removing plastic and irrigation hoses. Defendants did not give C.M. proper gloves and her hands were covered in blisters. She requested treatment for the blisters but Defendants denied her adequate medical treatment. She also worked for for-profit private businesses such as Kmart, doing yard work, picking up

trash, or painting at a cemetery, a Wal-Mart parking lot, and a bait shop. She also worked for three days shucking corn for the corn festival.

120. Defendants required C.M., and all the girls in programming, to clean the bathroom stalls and shower, staff bathrooms and visitor bathroom. On Tuesdays the girls were forced to clean the cafeteria floor with toothbrushes.

121. C.M. was traumatized by her treatment at the Center. She suffered emotional and physical abuse. She has not yet recovered from the emotional abuse.

F. Plaintiff B.M.

122. B.M. was 14 years old when she was admitted to the Center for assault. She entered the Center September 2, 2009 and was not released until seven months later on April, 7, 2010. She completed 137 hours of community service.

123. B.M. witnessed excessive force being used on other juveniles, including throwing a boy to the floor and slamming in on his bed; seeing another boy restrained with three sets of cuffs and shackles, and seeing a juvenile tased multiple times. B.M. also witnessed her cell mate attempt suicide.

124. B.M. was on the running team run by Defendant Brian Hesson. She ran in a number of competitive races. She and the other members trained daily, running several miles a day. B.M. decided to quit the running team but Defendant Brian Hesson told her if she quit she would be put back a program level. On another occasion he threatened her with 15 days of "dead time." She did not want to have to repeat a level or loss days, so she continued on the team.

125. B.M. ran with a knee brace but during one three mile race her brace broke and she could not run without it. Brian Hesson forced her to race without her knee brace. When she

wanted to stop before the finish, Brian Hesson told her to finish the race. She finished, she injured her knee.

126. It took B.M. a long time to complete the program because Defendants refused to credit her for the days she completed the program. For example, she spent 30 days in orientation - earning no credit toward the program. She lost two days when she returned to the Center from a home visit without her identification bracelet. Even though her mother brought the bracelet to the Center 10 minutes later, B.M. was penalized. Center officials would write her up, causing her to lose days, for arbitrary reasons: she forgot a rag in the bathroom after cleaning, she did not keep her hands behind her back for extended periods of time, she refused to pick up trash during community service because the rocks by the river were too slippery and she feared she would fall.
127. B.M. was forced to scrub the gym floor, the cafeteria floor, and bathroom floors on her knees with a toothbrush. After her knee injury she was allowed to sit when she scrubbed. She was ordered to clean up urine, feces, and blood from a detention cell after KM was injured in his cell. She was not given any bio-hazard protection to wear nor disinfectant to use.
128. B.M. suffered emotional and physical abuse at the Center. She has not yet recovered from the abuse.

G. Plaintiff W.G.

129. W.G. was thirteen years old when he was admitted to the Center following an altercation with his mother.

130. Between April 10, 2007 and October 26, 2007 he was in detention, released for a short period and also in shelter care for a short period. W.G. spent approximately 90 days in detention.
131. Upon intake at the Center W.G. and other boys must have their hair cut off. The shears used on W.G. were not sanitary. They were used improperly and W.G. was bleeding from several places on his scalp after his hair was cut.
132. While in detention W.G. received no educational programming from the Defendants. He was locked in his cell 23 hours per day. W.G. was released on some days for one hour of indoor recreation. He never received outdoor recreation. On many days Defendants required that W.G. participate in recreation while he was wearing leg shackles.
133. The detention cells were often cold.
134. For many days W.G. was forced by Defendants to remove all his normal clothing and underwear and wear only a suicide smock which was filthy with blood and stains from previous youth who wore the gown. For many of the days W.G. was forced to wear the gown he was not suicidal or reasonably believed by Defendants to be suicidal.
135. W.G. was not permitted to lie down on his bed during the day and was required to endure long days of forced idleness by Defendants.
136. W.G. had no privacy in the detention cells and was observed naked by female staff when changing clothes, when using the toilet and when wearing the suicide gown.
137. From time to time Defendants would turn off the water in the detention cell of W.G. as punishment for misconduct.
138. Defendants also delayed delivery of toilet paper to W.G. in the detention cells.

139. Defendants often delayed delivery of food to the detention cell of W.G. causing him to eat many meals after they were cold.
140. Defendant Galati approved the transfer of W.G. from shelter care to detention on September 6, 2007 after W.G. allegedly pushed another youth. This transfer to detention was accomplished without a hearing and without providing W.G. any due process or opportunity to be heard.
141. W.G. suffered physical injury, emotional distress, anguish and despair as a result of his conditions of confinement at the Center.

H. Plaintiff J.R.

142. J.R. was fifteen years old when he was admitted to the Center for possession of marijuana.
143. Between February, 2007 and January, 2008 he served approximately nine months at the center.
144. J.R. served approximately two months in detention in 2007.
145. While in detention J.R. was permitted by Defendants to leave his cell on some days to attend classes. He was also permitted to go to recreation one hour per day. While in detention J.R. never received outdoor recreation.
146. J.R. was always cold in the detention cells.
147. Defendants severely restricted J.R.'s conduct while he was in detention. He was not permitted to open the shade and let sunlight into his room through the one window that faced the outside. He was permitted to sit on his bed but could not lie down during the day. He was permitted to read but required to deliver the book to staff at night.

148. Early in his stay in detention J.R. was crying and extremely distressed. He was required by Defendants to remove his clothing and wear only a suicide smock. This continued for approximately two days.
149. For many days in detention J.R. was alone in his cell. On some occasions he would have a cellmate. The long days of forced idleness, particularly when he was alone and cold, caused severe emotional and physical distress for J.R.
150. J.R. was assigned by Defendants to the Program side of the Center for approximately seven months.
151. During his stay in the program J.R. was required by Defendants to perform community service at for profit businesses including Wal-Mart, Lowes and Holiday Inn.
152. During his stay in the program, J.R. needed medical treatment on a few occasions. Defendants required that he wear leg shackles and handcuffs fixed to a belly belt when he left the facility. J.R. suffered sores and skin injuries as a result of the restraints. He was also humiliated, embarrassed and severely distressed by the use of these restraints.
153. During his stay in the program J.R. was required by Defendants to clean large surfaces with a toothbrush.
154. J.R. cooperated with staff during treatment and educational programming. He did not seriously misbehave or act out while in detention or in the program. J.R. was a low risk offender and he was not an appropriate candidate for the cognitive behavioral programming at the Center. Given his low risk of engaging in serious offenses, and his high level of cooperation and compliance, the duration of his confinement in the Center, away from his parents and community was excessive and reflects a substantial departure

from accepted professional judgment, practices and standards and violates the evolving standards of decency in a civilized society.

155. J.R. was traumatized by his treatment at the Center. He suffered emotional and physical abuse. He has not yet recovered from the emotional abuse.

I. Plaintiff J.L.

156. J.L. was placed in the Center at 17 based on a trespassing charge. He was forced to stay in the Center for approximately 14 months.

157. J.L. was placed on suicide watch four times during his stay for over 45 total days in isolation. During this time he was forced to wear nothing but a suicide gown. He was not treated for his mental health issues before, during, or after he was placed on suicide watch. His mental health deteriorated during his detention and isolation while on suicide watch. Defendants placed J.L. on suicide watch as a punitive measure.

158. J.L. was in solitary confinement in a detention cell or isolation cell for over 7 months of the 14 months he spent at the Center. For the most part he was locked alone in the cell without any schooling or productive activities to occupy his time. He felt like he was going crazy while in detention and as a result acted out.

159. While in detention, J.L. was never allowed outside recreation. When he was on suicide watch for 45 days he was allowed no recreation, not even indoor recreation. When he was in detention, he was occasionally allowed indoor recreation, which he had to do in leg shackles. When he was not in detention he was forced to wear leg shackles while in gym class. Whenever he wore shackles at recreation or at the gym, the shackles would cause bleeding, cuts, and bruising to his ankles and soak his socks in blood.

160. J.L. was not allowed by Defendants to go to school when he was in detention.

161. The conditions in the detention cell were deplorable. J.L. was left in the detention cell for long periods of time without running water so he could not use the toilet, wash, shower, brush his teeth, or use the toilet. He was placed in hand restraints and leg shackles while in his detention cell on a number of occasions. At times, as punishment, he was deprived of toilet paper during the day and evenings. The temperature in the cell was kept freezing cold and J.L. was deprived of proper clothing, bed covers, and a mattress. At times he was stripped searched in front of female staff members without any regard to his privacy.
162. J.L. was celled with a violent adult male for several weeks until the Center removed the cell mate to an adult facility. The cell mate was in his mid twenties and was being held for stabbing someone. The cell mate made death threats to J.L. J.L. reported the threats but no action was taken to remove the adult cell mate for an extended period of time.
163. Officer Boley used excessive force on J.L. at times causing bruises, scrapes, and cuts on his face and body.
164. J.L. was forced by Defendants to work on two for-profit strawberry farms, picking berries and pulling plants. He was not given proper gloves and suffered blisters on his hands. He was also required to work at other for profit companies like Wal-Mart, Kmart, Holiday Inn, and a private housing complex. None of this work was for wages.
165. J.L. was forced to clean bathrooms and the entire gym floor with tooth brushes. He was also required to wash staff member's cars.
166. J.L. was at the Center he was called names and verbally abused by defendant Boley such as inbred mountaineer, snaggle tooth, or hillbilly, etc.

167. J.L. was traumatized by his treatment at the Center. He suffered emotional and physical abuse, from which he has not yet recovered.

J. Policies, Customs and Practices.

168. At all times relevant to this action, Defendants County, Williams, Ward, Montgomery and Hesson established policies, practices, and customs at **the Center** that resulted in the conditions of confinement described above and experienced by the representative plaintiffs while they were incarcerated at the Center. Those conditions of confinement, including lack of education and programming, denial of medication, lack of privacy, lack of exercise and lack of mental health care all reflect a substantial departure from accepted professional judgment, practices, and standards; shock the conscience, and constitute deliberate indifference to the serious s health and safety needs of residents including the representative plaintiffs and the members of the plaintiff class.

169. The forced removal of K.M.'s clothing by Defendants Orders, Galati, and Burkhart was done consistent with the practice and custom and training provided by Defendants County, Williams, Hesson and Ward.

170. All of the Defendants have acted negligently, recklessly, wantonly, willfully, knowingly, intentionally and with deliberate indifference to the serious medical, mental and safety needs of the representative plaintiffs and members of the class. The conduct of the Defendants was a substantial departure from accepted professional judgment, practices, and standards.

171. At all times relevant to this case the Defendants failed to reasonably accommodate K.M.'s disability and D.D.'s disability and they denied to K.M. and D.D. services

because of their disabilities. On information and belief there are numerous other members of the class who have disabilities that were not accommodated.

172. At all times relevant to this case, Defendants County, Williams, Ward, Hesson and Montgomery failed to train and supervise Center staff to protect persons and property in the Center without violating the privacy and other rights of the residents. That failure to train and supervise staff was a substantial departure from accepted professional judgment, practices, and standards, shocks the conscience and was deliberately indifferent to the health and safety of the residents at the Center including the representative plaintiffs and members of the plaintiff class.
173. The emotional and behavioral deterioration of those representative plaintiffs and class members in detention was foreseeable but Defendants acted in a shocking manner, a manner reflecting a substantial departure from accepted professional judgment, practices, and standards, and with deliberate indifference to needs of the representative plaintiffs and members of the plaintiff class for mental health treatment, nonetheless caused the injuries suffered by the representative plaintiffs and the members of the plaintiff class.
174. The conduct of the Defendants and the conditions of confinement in detention at the Center shocks the conscience, reflects a substantial departure from accepted professional judgment, practices, and standards and violates the evolving standards of decency in a civilized society.
175. The policies, customs and practices of Defendants described above were the moving force behind the deprivations suffered by the representative plaintiffs and members of the plaintiff class.

176. Defendants Williams, Ward, Montgomery and Hesson acted negligently, knowingly, intentionally, recklessly, maliciously and with deliberate indifference when they retained and failed to supervise and train the staff members who violated the rights of the representative plaintiffs and the members of the plaintiff class.

K. Need for Injunctive Relief

177. Defendants have acted and continue to act in violation of the law as described herein. Plaintiffs do not have an adequate remedy at law. As a proximate result of the policies, practices, acts, and omissions of Defendants, Plaintiffs have suffered and continue to suffer serious and irreparable physical, psychological, mental, and emotional injuries. Without action by this Court members of the Plaintiff class will continue to suffer irreparable injuries from the conditions of confinement at the Center and the application of Defendant's policies, practices, acts, and omissions.

V. FIRST CAUSE OF ACTION – 42 U.S.C. §1983

178. Defendants deprived the representative plaintiffs and members of the plaintiff class of rights secured under the Fourteenth Amendments to the United States Constitution by imposing unconstitutional conditions of confinement on them in detention including, but not limited to, the right to exercise, education, physical and mental health care, fair discipline, privacy and rehabilitation.

179. The actions of Defendants are a substantial departure from accepted professional judgment, standards, and practices, and thereby subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution. The actions of Defendants also reflect conduct that

shocks the conscience and that reflects deliberate indifference to the health, safety and other rights of the representative plaintiffs and the members of the plaintiff class.

180. The conditions of confinement at the Center and Defendants' policies, practices, acts, and omissions complained of herein constitute punishment and subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution.

VI. SECOND CAUSE OF ACTION – 42 U.S.C. §12132

181. K.M. and D.D. are qualified individuals with a disability. Defendant Washington County is a public entity. Defendants were aware of K.M.'s and D.D.'s disabilities and intentionally deprived K.M. and D.D. of the benefit of education, mental health services, medication, and rehabilitation services in violation of Title II of the Americans with Disabilities Act. Numerous additional class members also were disabled and denied rights to services because of their disabilities.

VII. THIRD CAUSE OF ACTION – 29 U.S.C. §794

182. K.M and D.D. are qualified individuals with disabilities. Defendant County receives federal funding. Defendants' actions in denying K.M. and D.D. access to government services constituted a violation of Section 504 of the Rehabilitation Act. Numerous additional class members also were disabled and denied rights to services because of their disabilities.

VIII. FOURTH CAUSE OF ACTION – OHIO REVISED CODE §4112.99

183. Defendants deprived K.M. and D.D. and other members of the class of access to educational, medical, and other services in violation of the Ohio Civil Rights Act.

IX. FIFTH CAUSE OF ACTION – STATE LAW– OHIO REV. CODE §2933.32

184. Defendants Orders, Galati and Burkhart, pursuant to official custom and/or policy established by Defendants County, Williams, Ward, and Hesson, subjected Plaintiff K.M. to an illegal strip search in violation of §2933.32(B)(1) of the Ohio Revised Code. Defendants had no probable cause to suspect that K.M. carried contraband, nor was there any legitimate medical or hygienic reason justifying their actions. Further, the involvement of Defendants Galati and Burkhart clearly violated §2933.32(B) (6) of the Revised Code §2933.32 waives immunity and permits a victim to pursue a civil action against public officials who violate this act.

X. SIXTH CAUSE OF ACTION – STATE LAW – ASSAULT AND BATTERY

185. Defendants Orders, Galati, and Burkhart battered K.M. when they intentionally touched him in a harmful and offensive way and without his consent. Defendants' forcible removal of K.M.'s clothing was offensive to a reasonable sense of personal dignity.

XI. SEVENTH CAUSE OF ACTION – STATE LAW – INTENTIONAL INFLICTION OF EMOIONAL DISTRESS

186. The Individual Defendants intentionally inflicted severe emotional distress on the representative plaintiffs and the members of the Plaintiff Class.

XII. EIGHTH CAUSE OF ACTION – STATE LAW – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

187. The Individual Defendants negligently inflicted emotional distress on the representative plaintiffs and the members of the Plaintiff Class.

XIII. NINTH CAUSE OF ACTION – NEGLIGENT RETENTION AND SUPERVISION

188. Defendants Williams, Ward, Hesson, and Washington County negligently, knowingly recklessly and wantonly supervised and retained staff that caused the injuries to the representative plaintiffs and the members of the plaintiff class described above and

thereby also proximately caused the injuries to the representative plaintiffs and the members of the plaintiff class.

XIV. TENTH CAUSE OF ACTION – MEDICAL MALPRACTICE

189. After K.M. was admitted to the Center, Defendant Dr. Montgomery failed to use reasonable care in diagnosing and treating the ADHD symptoms experienced by K.M., including his risk of acting out in response to the undue restrictions on his liberty in the detention cells at the center. Defendant Montgomery breached his duty of care to K.M.
190. Defendant Medical Director Dr. Montgomery failed to ensure that adequate policies, practices and customs were in place at the Center to appropriately diagnose, treat and monitor inmates housed at the Center who were at risk of harming themselves, others or property, due to ADHD or similar conditions.
191. The conduct of Defendant Dr. Montgomery deviated from standard medical practice, all in violation of Ohio law. See Declaration of Lynne H. Milliner, MD (attached). His conduct was a proximate cause of K.M.'s injury.
192. To the extent the treatment of K.M. is typical of the treatment of other class members, Defendant Montgomery has similarly failed to use reasonable care with respect to all of the members of the class.

XV. JURY DEMAND

193. Plaintiff requests a trial by jury on all claims triable to a jury.

XVI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand that the Court:

- A. Assume jurisdiction over this action and permit the Plaintiffs to proceed by pseudonym;
- B. Certify this case as a class action pursuant to Civil Rule 23 (a), (b)(2) and (b)(3);

- C. Issue declaratory and Injunctive relief barring the continued implementation of the customs, policies and procedures challenged herein and ensuring that the Washington County Juvenile Center meets minimum constitutional standards in the treatment and confinement of current and future juvenile detainees housed in the Center;
- D. Compensatory damages in an amount to be shown at trial;
- E. Punitive damages in an amount to be shown at trial against the individual defendants (not the County);
- F. Award Plaintiffs pre- and post – judgment interest;
- G. Reasonable attorney fees, costs, expenses;
- H. Such other relief as the Court might deem proper and just.

Respectfully submitted,

Alphonse A. Gerhardstein (0032053)
Trial Attorney for Plaintiffs
Jennifer L. Branch (0038893)
Attorney for Plaintiffs
GERHARDSTEIN & BRANCH CO. LPA
432 Walnut Street, Suite 400
Cincinnati, Ohio 45202
(513) 621-9100
(513) 345-5543 fax
agerhardstein@gbfirm.com
jbranch@gbfirm.com