

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JEFFERY HONESTY; :
BRANDON HETTINGER; :
G.M.; STEPHANIE MOATS; :
T.T.; CASEY WILLIAMS, :
B.F.; GLENDA FRAVEL; :
W.S.; WAYNE SCHOENBERGER; :
N.O.; TRACY O'BRIEN; :
R.N.; THERESA THOMPSON; :
J.J.; SALOME BEBBS.¹ :

Plaintiffs, :

v. :

MULTI-COUNTY JUVENILE :
DETENTION FACILITY, :
923 Liberty Dr. :
Lancaster, OH 43130-8045, :

DANA C. MOORE, in both her individual :
and official capacities, :
Superintendent :
Multi-County Juvenile Detention Facility :

-and- :
:

STEVE DAVIS in his official capacity :
Fairfield County Commissioner :
210 East Main Street Room 301 :
Lancaster Ohio, 43130, :

-and- :
:

Civil Action No. 2:14-CV-01608

JUDGE GRAHAM

MAGISTRATE JUDGE KING

JURY DEMAND ENDORSED HEREON

¹ Plaintiffs consist of individuals adjudicated to be juvenile delinquents and, for Plaintiffs who are still minors, their guardians. Plaintiffs who remain under the age of 18 are identified by initial only pursuant to This Court's Order dated December 18, 2014 Docket Number 20.

MIKE KIGER in his official capacity :
Fairfield County Commissioner :
210 East Main Street Room 301 :
Lancaster Ohio, 43130 :

-and- :

DAVID LEVACY in his official capacity :
Fairfield County Commissioner :
210 East Main Street Room 301 :
Lancaster Ohio, 43130 :

-and- :

TIM BUBB in his official capacity :
Licking County Commissioner :
20 South Second Street Fourth Floor :
Newark Ohio, 43055 :

-and- :

DOUG SMITH in his official capacity :
Licking County Commissioner :
20 South Second Street Fourth Floor :
Newark Ohio, 43055 :

-and- :

DUANE FLOWERS in his official capacity :
Licking County Commissioner :
20 South Second Street Fourth Floor :
Newark Ohio, 43055 :

-and- :

CLARK SHEETS in his official capacity :
Hocking County Commissioner :
1 East Main Street Courthouse :
Logan Ohio, 43138 :

-and- :

JOHN WALKER in his official capacity :
Hocking County Commissioner :

1 East Main Street Courthouse :
Logan Ohio, 43138 :

-and- :

SANDY OGLE in her official capacity :
Hocking County Commissioner :
1 East Main Street Courthouse :
Logan Ohio, 43138 :

-and- :

DAVID FRERIKS in his official capacity :
Perry County Commissioner :
121 West Brown Street :
New Lexington Ohio, 43764 :

-and- :

ED KEISTER in his official capacity :
Perry County Commissioner :
121 West Brown Street :
New Lexington Ohio, 43764 :

-and- :

JIM O'BRIEN in his official capacity :
Perry County Commissioner :
121 West Brown Street :
New Lexington Ohio, 43764 :

Defendants. :

FOURTH AMENDED COMPLAINT

I. Preliminary Statement

1. The Plaintiffs and other children incarcerated in the Multi-County Juvenile Detention Center are suffering harm at the hands of the Defendants through their policies and practices involving excessive and unnecessary solitary confinement and the use of mechanical restraints. This action seeks declaratory, injunctive, and equitable relief; compensatory and,

from the individual defendant, punitive damages; post-judgment interest; costs; and reasonable attorneys' fees, when, despite the entreaties of children institutionalized at the Multi-County Juvenile Detention Facility, their families, and Defendants' staff, they established and pursued policies that had their Juvenile Detention Officers (1) use restraint chairs unnecessarily, excessively, and for punitive purposes, locking Plaintiffs Jeffery Honesty, Brandon Hettinger., T.T., N.O., and other children in them for up to 20 hours at a time, long after any need to restrain them had ended, proximately causing pain and emotional distress; and (2) place Plaintiffs and other children arbitrarily, unnecessarily, and for lengthy periods in solitary confinement in isolation cells where the temperatures were regularly in the 50's, inadequate clothing and blankets were provided, and leaving the cells for exercise, schooling or other activities was rare or nonexistent, proximately causing detained children to suffer the symptoms of frostbite and hypothermia, such as burning, numbness, tingling, itching, cold or diminished sensations, swelling, blisters, and/or purplish blue skin on their fingers or toes, uncontrollable shivering of their body and chattering of their teeth, dizziness, nausea, confusion, and impaired decision-making; the emotional distress of having their pleas for relief ignored; and the anxiety that the symptoms would result in permanent injury.

2. Defendants' conduct constitutes deliberate indifference in violation of the 8th Amendment of the United States Constitution, and is a substantial departure from acceptable professional standards and judgment in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and applicable Ohio constitutional provisions. Defendants' punitive and damaging practices of unnecessary and excessive restraint and seclusion run contrary to the basic rehabilitative nature upon which the juvenile court system is

based, and are often imposed upon children who are presumptively innocent and being detained pre-trial.

II. Jurisdiction and Venue

3. Jurisdiction over claims brought under the Civil Rights Act of 1871, 42 U.S.C. § 1983, is conferred on this Court by 28 U.S.C. §§1331, 1343(3) and (4).

4. Declaratory, injunctive, and equitable relief and compensatory and, from the individual Defendant, punitive damages are sought pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201; 2202.

5. Costs and attorneys' fees may be awarded pursuant to the 42 U.S.C. § 1988 and Fed. R. Civ. P. 54.

6. Venue lies in this forum pursuant to 28 U.S.C. § 1391(b) and S.D. Ohio Civ. R. 82.1 because the events or omissions giving rise to the claim occurred in Fairfield County, Ohio, where Defendants are located and institutionalize children.

III. Plaintiffs

7. Jeffery Honesty, age 18, was institutionalized at Defendant Multi-County Juvenile Detention Facility under the supervision of Defendant Moore from late April 2013 through August 2013.

8. Brandon Hettinger, age 18, was institutionalized at Defendant Multi-County Juvenile Detention Facility under the supervision of Defendant Moore from May of 2013 through February of 2014.

9. G.M., age 16, was institutionalized at the Defendant Multi-County Juvenile Detention Facility from September 18, 2014 until October 28, 2014 under the supervision of

Defendant Moore, and has previously been held there on several occasions, including from mid-January, 2014 to May 14, 2014.

10. Stephanie Moats is the adoptive mother and guardian of G.M., and brings this action on her behalf.

11. T.T., 16, is presently institutionalized at Defendant Multi-County Juvenile Detention Facility under the supervision of Defendant Moore and has previously been held there on several occasions, including from July 25, 2014, through September 2, 2014.

12. Casey Williams is the mother and guardian of T.T., and brings this action on his behalf.

13. B.F., age 16, was institutionalized at Defendant Multi-County Juvenile Detention Facility under the supervision of Defendant Moore on several occasions, most recently from April 25, 2014, through June 9, 2014.

14. Glenda Fravel is the mother and guardian of B.F., and brings this action on his behalf.

15. W.S., age 15, was institutionalized at Defendant Multi-County Juvenile Detention Facility under the supervision of Defendant Moore from November 14, 2013, to February 13, 2014.

16. Wayne Schoenberger. is the father and guardian of W.S., and brings this action on his behalf.

17. N.O., age 17, was institutionalized at Defendant Multi-County Juvenile Detention Facility under the supervision of Defendant Moore on several occasions, most recently from mid-January of 2014 until May 14, 2014.

18. Tracy O'Brien is the mother and guardian of N.O., and brings this action on his behalf.

19. R.N., age 16, was institutionalized at Defendant Multi-County Juvenile Detention Facility under the supervision of Defendant Moore on eight separate occasions from 2008-2014. Most recently from mid-July 2014 through September 9, 2014.

20. Theresa Thompson is the legal guardian of R.N., and brings this action on his behalf.

21. J.J., age 15, was institutionalized at Defendant Multi-County Juvenile Detention Facility under the supervision of Defendant Moore on several occasions, most recently in in January 2015.

22. Salome Bebbs is the mother and guardian of J.J. and brings this action on his behalf.

23. Jeffery Honesty, Brandon Hettinger, G.M., T.T., B.F., W.S., N.O., and R.N. were institutionalized at Defendant Multi-County Juvenile Detention Facility pending or subsequent to an adjudication in juvenile court.

IV. Defendants

24. Defendant Multi-County Juvenile Detention Center ("Center"), a maximum security facility, is funded by the Ohio Counties of Fairfield, Licking, Hocking, and Perry, whose Commissioners comprise the Center's Joint Board of Commissioners which adopts an annual budget, appropriates all monies, and approves all grants and contracts for the Center; has sue-and-be-sued capacity under O.R.C. § 305.12; at all times material to this Complaint, was a "person" under 42 U.S.C. § 1983 and acted under color of law; and controls through its policies the use and conditions of its isolation cells and restraint chairs. The facility has 54 beds and is

designed to hold youth pending adjudication of their cases in juvenile court, although some youth are sentenced for short periods after disposition.

25. Defendant Dana C. Moore, who is being sued in both her individual and official capacities, initially served as the Assistant Superintendent of the Center when it opened in February 2004 and since became Superintendent; establishes the policies and directs the use by Juvenile Detention Officers of restraint chairs, the isolation bench, and solitary confinement in isolation cells and the conditions surrounding their use; and, at all times material to this Complaint, was a “person” under 42 U.S.C. §1983 and acted under color of law.

26. Defendant Steve Davis is being sued only in his official capacity as Fairfield County Commissioner. Fairfield County is one of the counties that provide funding to MCJDC.

27. Defendant Mike Kiger is being sued only in his official capacity as Fairfield County Commissioner. Fairfield County is one of the counties that provide funding to MCJDC.

28. Defendant David Levacy is being sued only in his official capacity as Fairfield County Commissioner. Fairfield County is one of the counties that provide funding to MCJDC.

29. Defendant Tim Bubb is being sued only in his official capacity as Licking County Commissioner. Licking County is one of the counties that provide funding to MCJDC.

30. Defendant Doug Smith is being sued only in his official capacity as Licking County Commissioner. Licking County is one of the counties that provide funding to MCJDC.

31. Defendant Duane Flowers is being sued only in his official capacity as Licking County Commissioner. Licking County is one of the counties that provide funding to MCJDC.

32. Defendant Clark Sheets is being sued only in his official capacity as Hocking County Commissioner. Hocking County is one of the counties that provide funding to MCJDC.

33. Defendant John Walker is being sued only in his official capacity as Hocking County Commissioner. Hocking County is one of the counties that provide funding to MCJDC.

34. Defendant Sandy Ogle is being sued only in her official capacity as Hocking County Commissioner. Hocking County is one of the counties that provide funding to MCJDC.

35. Defendant David Freriks is being sued only in his official capacity as Perry County Commissioner. Perry County is one of the counties that provide funding to MCJDC.

36. Defendant Ed Keister is being sued only in his official capacity as Perry County Commissioner. Perry County is one of the counties that provide funding to MCJDC.

37. Defendant Jim O'Brien is being sued only in his official capacity as Perry County Commissioner. Perry County is one of the counties that provide funding to MCJDC.

V. Facts Concerning Solitary Confinement and Mechanical Restraints at MCJDC

38. At its facility, Defendants maintain three isolation cells. The cells are approximately six feet by ten feet, have a concrete floor without a rug or carpet, a metal sink and toilet, and a concrete sleeping bench, and are supplied only at night with a mattress and blanket.

39. Each of the isolation cells maintained by Defendants have a vent which maintains the temperature in the cell, and Defendants use this vent to adjust the temperature in the isolation cells to be in the mid-50's year round.

40. In addition to isolation cells, Defendants make use of a bench to which Plaintiffs and other children are shackled for days on end as punishment for rules infractions

41. Defendants also make use of two restraint chairs which are used to immobilize the arms and legs of children so that they can only move their head. Defendants use these chairs as punishment for rules infractions

VI. Facts Concerning Plaintiff Jeffery Honesty.

42. From April 2013 through August 2013, then 17-year-old Jeffery Honesty spent the majority of his four-month sentence in solitary confinement either in an isolation cell or in a similar cell in Defendants' intake area. While in isolation, Jeffery Honesty was only permitted to leave for a five minute shower each day. He spent his time in the isolation cells in mid-50's temperature dressed only in a smock top, a short sleeve shirt akin to a scrub top used in medical facilities, and shorts, with no underwear, and only received a blanket and mattress during nighttime hours. At times, even his smock top and shorts were taken away from him, and he was forced to endure the cell wearing nothing but paper shorts. During his time in isolation, Jeffery Honesty's skin would turn purple and his limbs would go numb.

43. On several occasions between April 2013 and August 2013, Jeffery Honesty was placed in a restraint chair where he was unable to move anything but his head. On one occasion, Plaintiff Jeffery Honesty was placed in a restraint chair from 5:30 a.m. until 9:30 p.m. for three straight days. When he was woken up in the morning, the restraint chair was beside him, and he was placed directly into it. Plaintiff Jeffery Honesty's wrists and ankles were cut to the point of bleeding by the restraints.

44. On another occasion, Plaintiff Jeffery Honesty and another child were placed in restraint chairs and placed in the gymnasium, which was also kept at a chilly temperature, wearing nothing but paper shorts from 10 a.m. until the next morning.

45. While placed in a restraint chair, Jeffery Honesty was frequently not permitted to get out for long periods of time even for the purpose of urinating, with the result that he urinated while sitting in the chair.

46. In addition to time spent in isolation, on numerous occasions Jeffery Honesty was shackled to a bench on the floor of the isolation hallway or the intake hallway for long periods.

On one occasion he was shackled to a bench for six consecutive days. On this and other occasions, he was forced to sleep on the floor in the hallway while his legs remained shackled to the bench.

VII. Facts Concerning Plaintiff Brandon Hettinger

47. From May of 2013 through February of 2014, then 16 year old Brandon Hettinger spent four months of a nine-month sentence in isolation. On one occasion, he spent between 40 and 50 days continually in an isolation cell. While in isolation, Brandon Hettinger was only permitted to leave for a five-minute shower each day. He spent his time in isolation in temperatures in the mid-50's wearing only a smock top and shorts, with no underwear, socks or shoes, and only received a blanket and mattress during nighttime hours. At times, even his smock top and shorts were taken away from him, and he was forced to endure the cell wearing nothing but paper shorts. On one occasion, Brandon Hettinger was allowed no clothing other than paper shorts for eleven straight days.

48. During his time in isolation, Brandon Hettinger's toes and fingers would turn purple, his limbs would go numb, his lips would crack and he would have uncontrollable chattering of his teeth.

49. Brandon Hettinger was placed in a restraint chair on three separate occasions, the last time for five and a half to six hours during which time his limbs were not rotated.

50. Brandon Hettinger was shackled to a bench in the isolation hallway four to five times during his time at the Center. On one occasion he was so shackled for more than two days. On this and other occasions, he was forced to sleep on the hallway floor with his ankles shackled to the bench.

VIII. Facts Concerning Plaintiff G.M.

51. From mid-January, 2014, to May 14, 2014, 16-year-old G.M. was repeatedly placed in solitary confinement in both the isolation and intake cells. While in isolation, G.M. was only permitted to leave for a five-minute shower each day. On one occasion, she was placed in an isolation cell for a full month. She spent her time in isolation in mid-50's temperatures wearing only a shirt and shorts, with no underwear bra, socks or shoes , and only received a blanket and mattress during daytime hours.

52. G.M. had been placed in isolation in earlier stays at the Center. On one stay, because of her involvement in a fight, she was placed in isolation for two months until when she was released from the Center. The next time that she was sent to the Center, G.M. was immediately placed back in isolation for an additional two months. Defendants claimed that G.M. "owed" them time in isolation.

53. During her time in isolation, G.M.'s feet turned purple, and she felt her hands losing circulation. At the end of one stay at the Center, when G.M. returned home her feet turned red, skin on her feet began peeling off, and black spots were observed on her feet by her parents. For a period of several days afterwards, G.M.'s feet caused her a great deal of pain.

IX. Facts Concerning Plaintiff T.T.

54. During his stay at the Center from July 25, 2014, through September 2, 2014, 16 year old T.T. was placed in an isolation cell for 18 straight days. While in isolation, T.T. was only permitted to leave for a five-minute shower each day. He spent his time in isolation in mid-50's temperatures wearing only a smock top and shorts, with no underwear, socks or shoes, and only received a blanket and mattress during nighttime hours.

55. During his time in isolation, T.T.'s lips and scars on his arms and legs would turn purple, his toes went numb, and he would have uncontrollable shivering and chattering of his teeth.

56. On several occasions, when T.T. pulled his arms and legs inside of his smock top for warmth, he would be directed by staff members to remove his arms and legs from his shirt.

57. On one occasion, T.T. was placed in a restraint chair for nine and a half hours without any rotation of his limbs except for the temporary freeing of his right hand so that he could feed himself a meal.

X. Facts Concerning Plaintiff B.F.

58. During his stay at Center from April 25, 2014 through June 9, 2014, 16 year old B.F. was placed in an isolation cell for 25 straight days. While in isolation, B.F. was only permitted to leave for a five-minute shower each day. He spent his time in isolation in mid-50's temperatures wearing only a smock top and shorts, with no underwear, socks or shoes, and only received a blanket and mattress during nighttime hours.

59. During his time in isolation, B.F. suffered from uncontrollable shivering and chattering teeth, and skin began to flake off of his feet.

XI. Facts Concerning Plaintiff W.S.

60. During his stay at the Center from November 14, 2013, through February 13, 2014, then-14 year old W.S. was placed in an isolation cell for 38 days. While in isolation, W.S. was only permitted to leave for a five-minute shower each day. He spent his time in isolation in mid-50's temperatures wearing only a smock top and shorts, with no underwear, socks or shoes, and only received a blanket and mattress during nighttime hours.

61. During his time in isolation, W.S.'s fingers and toes turned purple, his lips turned blue, and he suffered from uncontrollable shivering.

XII. Facts Concerning Plaintiff N.O.

62. During his time at MCJDC from December of 2012 through February of 2013, then-15 year old N.O. spent several days in an isolation cell. While in isolation, N.O. was only permitted to leave for a five-minute shower each day. He spent his time in isolation in temperatures in the mid-50's wearing only a smock top and shorts, with no underwear, socks or shoes, and only received a blanket and mattress during nighttime hours.

63. N.O. was placed in a restraint chair on approximately 20 occasions for various lengths of time. On approximately one half of these occasions, he remained in the restraint chair for 8 or more hours. During N.O.'s time in the restraint chair, only one of his limbs would be rotated every hour.

64. For the last six weeks that he was at the center, N.O. was continually shackled to a bench in the intake area, and was unshackled only to go to the bathroom and to take a daily shower. During this time, he was required to sleep on the hallway floor while shackled to the bench, receiving only a CV Blanket (similar to a moving blanket) to sleep on.

65. On one occasion, N.O. was transported back to MDJDC following a juvenile court proceeding. When he arrived at MDJDC, one of his legs was shackled to a bench and he was ordered to strip, meaning that he was to remove his court clothing so that he could be placed in his smock and shorts. He refused to do so. Ms. Moore, who was physically present, ordered that N.O. be taken to the ground and have his clothing removed for him. N.O. was then forcibly taken to the ground by MCJDC employees and transport officers. N.O.'s left leg was still

shackled to the bench at the time he was taken down, and the resulting strain on his left leg tore his anterior cruciate ligament (ACL).

66. Following his injury, N.O. did not receive medical attention for his injury despite frequent requests and complaints. Instead, he was required to walk around and “stretch” his leg. Finally, N.O. went on a four day hunger strike until his leg injury was addressed. This resulted in a medical examination, which resulted in the diagnosis of a torn ACL.

XIII. Facts Concerning Plaintiff R.N.

67. During his stay at the Center from mid-July 14, 2014, through September 9, 2014, then-15 year old R.N. was placed in an isolation cell for approximately 50 days. While in isolation the temperatures were in the 50’s, and R.N. was only permitted to wear a smock top and shorts, with no underwear, socks or shoes, and only received a blanket and mattress during nighttime hours.

68. On several occasions, R.N. was not permitted to wear a smock top and was left in the cold isolation cells with only a pair of shorts.

69. In addition to being placed in isolation cells, R.N. was placed in intake isolation for several days at a time. While in intake isolation R.N. became so cold that his entire body turned purple prompting a nurse to remove him from his cell and provide R.N. with several blankets to help warm him.

70. On numerous occasions, R.N. complained to staff that the isolation cells were too cold, but these complaints were futile as Defendant’s staff did nothing to alleviate the cold conditions.

71. R.N. was placed in the restraint chair between 20 and 30 times, the amount of time he spent in the chair varied between one and a half and three and a half hours. R.N. was not

permitted to use the bathroom while restrained in the chair and never had his limbs rotated, even on occasions where he spent more than 2 hours in the chair.

XIV. Facts Concerning Plaintiff J.J.

72. During his incarceration between September 4, 2014 and September 9, 2014, 15 year old J.J. was tackled to the ground despite having his hands placed on their opposite shoulders in the designated position which signaled compliance. Because his hands were in this position, J.J. was unable to break his fall and received a gash under his chin which required stitches.

73. During his incarceration between November and December of 2014, 15 year old J.J. was placed in intake for approximately one week.

74. During the same incarceration, after an incident in the isolation cells involving another youth, J.J. was moved from intake to isolation for the remainder of his incarceration, a period of around three weeks.

75. While in the isolation cell, J.J. was subjected to cold temperatures. While in the isolation cell, J.J.'s teeth chattered uncontrollably, his lips chapped, and he felt numbness in his arms and legs.

76. On one occasion, while in isolation J.J. was denied access to a mattress overnight.

77. On one occasion, J.J. was placed in a restraint chair for three hours and was not provided with limb rotation.

XV. Other Facts Concerning the Use of Solitary Confinement and Restraints on Plaintiffs

78. Plaintiffs and other children confined in the isolation cells developed methods to stay warm, including lying down by the base of the cell door to get heat from the hallway and

pulling their arms, legs and face into their smock top. Defendants forbid both practices, and Defendants' employees would monitor isolation cells to ensure that children were not laying by the door crack or pulling their extremities into their smock top.

79. Some Plaintiffs and other children would attempt to stop up the air conditioning vent with toilet paper or clothing to keep the cold air out.

80. If toilet paper was used to stop up the air conditioning vent, Defendants would remove the toilet paper to ensure the passage of cold air, and the children would face discipline, including additional time in the isolation cells.

81. Some Plaintiffs and other children placed in the Center's isolation cells claimed to be suicidal in order to receive suicide suits which covered more of their bodies and helped keep them warm.

82. Some Plaintiffs and other children actively sought being placed in additional body restraints while in their cell because these restraints would help keep them warm.

83. To protest how cold the Center's isolation cells were and get temporary relief, some children, including Plaintiff's Jeffery Honesty, Brandon Hettinger, N.O, and R.N. would destroy or attempt to destroy sprinkler heads in their cell, thereby soaking their cell and requiring the child's removal from the cell.

84. In another protest against how cold the Center's isolation cells were and another effort to get temporary relief, some children, including Plaintiff's Jeffery Honesty, Brandon Hettinger, N.O., and R.N., would clog or rapidly and repeatedly flush toilets until they overflowed and soaked their cell, thereby requiring their removal.

85. When Plaintiffs Jeffery Honesty and Brandon Hettinger and other children misused their clothing or blankets to protest how cold the Center's isolation cells were, their

clothing or blanket was removed and replaced with paper underwear and sometimes a thin T-shirt.

86. Having only paper underwear and sometimes a thin T-shirt resulted in Plaintiffs Jeffery Honesty and Brandon Hettinger and other children being even colder in the Center's isolation cells.

87. Plaintiffs and other children placed in the Center's isolation cells for lengthy periods regularly suffered the symptoms of hypothermia and frostbite, such as burning, numbness, tingling, itching, cold or diminished sensations, swelling, blisters, and/or purplish blue skin on their fingers or toes; had uncontrollable shivering of their body and chattering of their teeth; became dizzy or nauseous; and experienced confusion and impaired decision-making.

88. Those symptoms were usually painful and produced anxiety about permanent injury to their fingers or toes.

89. The body temperature of Plaintiffs and other children placed in the Center's isolation cells often dropped to 95 degrees or so.

90. When a child's body temperature falls below 96 degrees, medical care for hypothermia should be sought.

91. The healthy range for a child's body temperature is 97.5 degrees to 98.9 degrees.

92. Hypothermia is defined as a drop in body temperature to 95 degrees or less. The condition develops over a period of time, anywhere from a several hours to a few days, and can be fatal if not detected promptly and treated properly.

93. Even consistent, mildly cool indoor temperatures of 60 degrees to 65 degrees can trigger hypothermia over time if a child is not properly clothed.

94. When checked by Defendants' staff, some children even had to be removed from their isolation cells to have their extremities warmed, and Defendants' staff knew or should have known that these prisoners exhibited symptoms of hypothermia.

95. Plaintiffs and other children placed in the Center's isolation cells consistently complained to Defendants about how cold the isolation cells were, as did the families of Plaintiffs and other children and members of Defendants staff.

96. Defendant Moore and the Center's Juvenile Detention Officers and health care providers visited the isolation cells and had personal knowledge of the cold temperature. They were also aware of the temperature in the cells due to the complaints by Plaintiffs and other children, their families, and coworkers about how cold the Center's isolation cells were.

97. Because Plaintiffs knew that Defendants were aware of how cold the Center's isolation cells were and did nothing to change the conditions, they also suffered emotional distress at having their plight ignored.

98. Defendants' use of isolation and restraint practices is arbitrary, unnecessary, and ineffective as a behavior management tool. Defendants used isolation cells to punish children who failed to conform their conduct to the Center's rules and/or engaged in destructive or disruptive behavior and, when the isolation cells were unavailable, used shackling to a bench in the hallway or isolation in intake cells to punish them. The decisions made to use prolonged isolation and shackling with these children were extreme and unnecessary measures to manage behaviors; the fact that they continued well beyond the time youth were calm and under control indicates that the practices serve no legitimate penological purpose and are strictly punitive in nature.

99. Defendants calculated the amount of time a child had to spend in an isolation cell as if the child had been sentenced to the cell; for example, when Plaintiff G.M. returned from spending a holiday with her family, she was placed back in the isolation cell because Defendants claimed that G.M. “owed” Defendants more time there.

100. Defendants purposely ignored and/or were deliberately indifferent to the complaints from Plaintiffs and other children about how cold the isolation cells were because Defendants wanted those prisoners to suffer pain, anxiety, and emotional distress.

101. Defendants reasoned that, the more intemperate the Center’s isolation cells were, the more placement there would be a deterrent to Plaintiffs and other children who failed to conform their conduct to the Center’s rules and/or engaged in destructive or disruptive behavior.

102. Defendants further reasoned that, when Plaintiffs and other children failed to conform their conduct to the Center’s rules and/or engaged in destructive or disruptive behavior, they deserved to be punished, and suffering pain, anxiety, and emotional distress from intemperate isolation cells was such a punishment. Such practices are incongruent with sound juvenile detention behavior management practices and fail to make facilities safer or more secure.

103. Defendants used shackling to the bench in the hallway and isolation in intake cells as another form of punishment, and those Plaintiffs and other children who were shackled or isolated in place suffered physical and emotional pain from this treatment; sleeplessness when they were not returned to cells with a mattress and bed; and anxiety and resentment at being treated in an inhumane manner.

104. Some of the Plaintiffs and other children institutionalized at the Center have been diagnosed with mental health or other behavioral disorders, including trauma, learning

disabilities or cognitive impairments, and Defendants have, at all times material to this action, known that some of the Plaintiffs and other children institutionalized at the Center suffer from these conditions.

105. Plaintiffs and other children subjected to the isolation cells and mechanical restraints are socially isolated and forbidden to converse with others without reprimand. The social isolation of these youth adds additional stress and anxiety beyond the extreme physical conditions to which these youth are subjected.

106. Under Ohio Admin. Code § 5120:1-8-0.4, the temperature in an isolation cell is to be mechanically raised or lowered to acceptable comfort levels.

107. Defendants were obligated to comply with Ohio Admin. Code § 5120:1-8-04.

108. Defendants purposely and/or with reckless indifference violated Ohio Admin. Code § 5120:1-8-04 to serve their deterrent and punitive ends. Maintaining cold isolation cells in these circumstances served no legitimate penological interest.

109. Plaintiffs and other children placed in the Center's isolation cells were not provided alternative ways, such as sweaters, gloves, heavy socks, thermal underwear, or thick blankets to keep warm.

110. Plaintiffs and other children placed in the Center's isolation cells typically remained in those cells for weeks.

111. Plaintiffs and other children placed in the Center's isolation cells were seldom if ever provided significant time out of the cells for exercise and other activities and allowed out only for a brief shower.

112. Some of the Plaintiffs and other children placed in the Center's isolation cells were seldom if ever permitted to attend class in the Center's school. Rather, they were given

math worksheets, crossword puzzles or books under their door without direct instruction from a teacher or assistant. Students placed in isolation who were qualified for specially designed instruction and related services because of a learning disability or other qualifying condition did not receive the services required in their individual education plan. Prolonged isolation over the course of days, weeks and months denied children the right to attend school, including the right to special services as a student under a disability.

113. The Center's restraint chair was a sturdy wheelchair to which straps were affixed in a way that, when a child was bound in it, would prevent movement of the shoulders, torso, arms, and legs.

114. Defendants had their Juvenile Detention Officers maintain records reflecting that children never spent more than two hours immobilized in a restraint chair.

115. Those records were falsified.

116. The purpose of the restraint chair is only to restrain a person who is posing an immediate threat to themselves or others. It is not a device to be used for punishment.

117. Plaintiffs Jeffery Honesty, Brandon Hettinger, T.T., N.O. and other children were locked in a restraint chair long after any need to restrain them while they regained self-control had ended.

118. Defendants assumed that Plaintiffs Jeffery Honesty, Brandon Hettinger, and other children who, while in a restraint chair, said they had to urinate or defecate were lying in order to be released for a break from the immobilization and adopted a policy that Juvenile Detention Officer should regularly refuse to release them to urinate or defecate.

119. Defendants assumed that Plaintiffs Jeffery Honesty. and Brandon Hettinger and other children who, while in a restraint chair, said they were thirsty were lying in order to be

given liquids which they could then spit at Juvenile Detention Officers, and Defendants adopted a policy that Juvenile Detention Officers should regularly refuse to provide requested liquids.

120. Plaintiffs Jeffery Honesty, Brandon Hettinger, T.T., N.O., R.N. and other children suffered significant discomfort after the first hour or so of being locked in a restraint chair, and that discomfort turned into pain the longer they were in the chair as their circulation was largely cut off, they felt dehydrated or the urge to urinate or defecate, and pressure sores developed.

121. Plaintiffs Jeffery Honesty, Brandon Hettinger, T.T., N.O., R.N. and other children who were locked in a restraint chair for hours at a time felt anger, resentment, and frustration and suffered emotional distress.

122. Defendants used restraint chairs to punish children who failed to conform their conduct to the Center's rules and/or engaged in destructive or disruptive behavior.

123. Defendants calculated the amount of time a child had to spend in a restraint chair as if the prisoner had been sentenced to the chair; for example, Plaintiffs heard Juvenile Detention Officers tell a child who was completely calm that he still owed them time in the restraint chair.

124. Plaintiffs Jeffery Honesty. and Brandon Hettinger and other children complained to Defendants about misuse of the restraint chair as corporal punishment.

125. Defendants purposely and/or with recklessly indifference ignored the complaints from Plaintiffs and other children about misuse of the restraint chair as corporal punishment because Defendants wanted those prisoners to suffer pain and emotional distress.

126. Defendants reasoned that, the longer and more uncomfortable a child's immobilization in a restraint chair, the more placement there would be a deterrent to Plaintiffs and other children who failed to conform their conduct to the Center's rules and/or engaged in

destructive or disruptive behavior. Such practice is contrary to well accepted professional standards regarding behavior management in juvenile justice facilities, is unnecessary, and serves no legitimate penological purpose.

127. Defendants further reasoned that, when Plaintiffs and other children failed to conform their conduct to the Center's rules and/or engaged in destructive or disruptive behavior, they deserved to be punished, and suffering pain and emotional distress from a restraint chair was such a punishment.

128. By 2013, a reasonably competent superintendent of a juvenile detention facility would have known that punishing children by exposing them to cold isolation cells in the circumstances surrounding that confinement, and prolonged immobilization in restraint chairs or chained to a bench violates the constitutional rights of these children.

XVI. Claim for Relief: Eighth Amendment Cruel and Unusual Punishment

129. Paragraphs 1 through 128 above are re-alleged and incorporated herein.

130. Defendants, through the policies they established and pursued for their Juvenile Detention Officers, acted with callous and reckless disregard, inflicting cruel and unusual punishment on Plaintiffs in violation of the Eighth Amendment by their purposeful and/or deliberate indifference to Plaintiffs' risk of harm and injuries from being placed unnecessarily and for lengthy periods in cold isolation cells without means to keep warm and under the circumstances of their confinement in those cells, and the injuries of Plaintiffs Jeffery Honesty, Brandon Hettinger, T.T., and N.O. suffered from being immobilized in restraint chairs hours after they had regained their self-control

XVII. Claim for Relief: Fourteenth Amendment Substantive Due Process Rights

131. Paragraphs 1 through 130 above are re-alleged and incorporated herein.

132. The policies and practices of the Defendants regarding extended use of isolation and mechanical restraints under physically and mentally harmful conditions as a form of behavioral management are punitive, excessive and unnecessary, and deprive children subjected to them the required educational services, large muscle exercise, socialization and appropriate skill building opportunities. Such practices constitute a substantial departure from accepted professional standard and judgment and deny the Plaintiffs and other children the right to substantive Due Process as guaranteed by the Fourteenth Amendment to the United States Constitution.

XVIII. Prayer for Relief

WHEREFORE, Plaintiffs pray that this Court:

- a. declare that Defendants jointly and severally have violated Plaintiffs' civil rights, inflicting on them pain, emotional distress, and anxiety;
- b. declare that the actions of Defendants regarding extended restraint and seclusion constitute a substantial departure from accepted professional standards and judgment, and are unnecessarily, punitive and harmful in the treatment of detained children;
- b. order such equitable relief as will make Plaintiffs whole for Defendants unlawful conduct; costs; and reasonable attorneys' fees;
- c. enjoin Defendants from operating the Center's isolation cells and restraint chairs in an unconstitutional manner;
- d. award to each Plaintiff compensatory damages in excess of \$25,000, and, from Defendant Moore, punitive damages in excess of \$25,000; and
- e. grant such other relief as the Court may deem appropriate.

Respectfully submitted,

By: _____
Edward R. Forman (0076651)
(eforman@marshallandmorrow.com)
John S. Marshall (0015160)
(jmarshall@marshallandmorrow.com)
Samuel M. Schlein (0092194)
(sschlein@marshallandmorrow.com)
Trial Counsel for Plaintiffs
MARSHALL AND MORROW LLC
250 Civic Center Dr., Suite 480
Columbus, Ohio 43215-5296
(614) 463-9790
Fax (614) 463-9780

Andrew Biller (0081452)
(andrewbilleresq@gmail.com)
Co-counsel for Plaintiffs
The Law Firm of Andrew Biller
Easton Town Center
4200 Regent Street, Suite 200
Columbus, OH 43219
(614) 604-8759
Fax (614) 583-8107

Kim Tandy (0076173)
Rickell L. Howard (0081982)
Co-counsel for Plaintiffs
Children's Law Center, Inc.
1002 Russell Street
Covington, Kentucky 41011
Telephone: (859) 431-3313
Fax: 859-655-7553
ktandy@childrenslawky.org
rhoward@childrenslawky.org

Attorneys for Plaintiffs

OF COUNSEL:

Louis A. Jacobs (002101)
(LAJOHio@aol.com)

177 19th St., Apt. 9C
Oakland, CA 94612
(614) 203-1255
Fax (510) 250-9007

Jury Demand

Plaintiffs demand a trial by jury of eight (8) on all issues and defenses triable to a jury.

By: _____
Edward R. Forman (0076651)

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was filed with the Court on this 9th day of January, 2015, using the CM/ECF system, which will send notification of such filing to all counsel of record. Parties may access this filing through the court's filing system.

By: _____
Edward R. Forman (0076651)