



Jl-KY-002-001

UNITED STATES DISTRICT COURT Eastern District of Kentucky
EASTERN DISTRICT OF KENTUCKY
COVINGTON DIVISION

FILED

MAY 7 1992

91-187

AT COVINGTON
KESLIE G. WHITMER
CLERK U.S. DISTRICT COURT

JOHN DOE, a minor (by his Next Friend
and mother, Mary Doe, and JEAN DOE,
a minor (by her Next Friend or a Mother,
BARBARA DOE, on behalf themselves
and all others similarly situated)

PLAINTIFFS

vs.

JAMES KNAUF, in his
official capacity as Jailor of the
Kenton County Detention Center;

KENTON COUNTY FISCAL COURT,
COUNTY JUDGE EXECUTIVE, CLYDE MIDDLETON,
in his official capacity; and

JACK LEWIS, Secretary of Corrections,
Commonwealth of Kentucky.

DEFENDANTS

Civil No. 91-187

AMENDED CIVIL RIGHTS COMPLAINT FOR
DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE RELIEF

(CLASS ACTION)

INTRODUCTORY STATEMENT

1. This is a civil rights class action challenging conditions of confinement for juveniles in the Kenton County Detention Center, in Covington, Kentucky, and the policies and practices of defendants of confining juveniles in that Detention Center. Plaintiff John Doe, through Mary Doe, his guardian and Next Friend and plaintiff Jean Doe, through her Mother and Next Friend, Barbara Doe, bring this action for declaratory, injunctive, and other equitable relief on behalf of themselves

and all other juveniles similarly situated who are, have been, or will in the future be confined in the Kenton County Detention Center and subjected by defendants to cruel, unconscionable, and illegal conditions of confinement in the Detention Center and to illegal incarceration in the Detention Center without adequate separation from confined adult offenders.

2. Plaintiffs bring this suit pursuant to 42 U.S.C. § 1983, to redress the violations by defendants, acting under color of state law, of the rights guaranteed to plaintiffs under the Fourteenth Amendment to the United States Constitution; under statutory rights enumerated in the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. Sections 5601 et seq. ("Juvenile Justice Act"), as more particularly set forth in this Complaint. Plaintiffs also bring this action under applicable Kentucky constitutional provisions and statutes.

JURISDICTION

3. This Court has jurisdiction of this action under 28 U.S.C. Section 1343(3), this being an action to redress the deprivation, under color of state law, of rights secured by the U.S. Constitution of the United States and the Juvenile Justice Act, 42 U.S.C. Sections 5601 et seq.

4. This Court also has jurisdiction of this action under 28 U.S.C. 1343(4), this being an action to secure declaratory, injunctive, and other equitable relief for violations of civil rights.

5. This Court also has jurisdiction of this action under 28 U.S.C. 1331(a), this being an action in which the matter in controversy arises under the Constitution

and laws of the United States.

6. This Court has jurisdiction to issue declaratory relief under 28 U.S.C. Sections 2201 and 2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure.

7. This Court has pendant jurisdiction of plaintiffs' state law claims which permits federal courts to determine state law claims which form separate but parallel grounds for relief sought in substantial claims based on federal law.

PLAINTIFFS

8. Plaintiff John Doe is years old and a citizen of the United States. At all relevant times, he has resided in Kenton County, Kentucky. During the month of October he was taken into custody and incarcerated by defendants in the Kenton County Detention Center awaiting an adjudication or disposition hearing. He is currently under the Court's jurisdiction as a committed public offender as that term is defined by the Kentucky Revised Statutes Annotated. He sues through his mother and next friend, Mary Doe.

9. Plaintiff Jean Doe is 16 years old and a citizen of the United States. At all relevant times, she has resided in Kenton County, Kentucky. During the month of October she was taken into custody and incarcerated by defendants in the Kenton County Detention Center awaiting an adjudication or disposition hearing. She is currently under the Court's jurisdiction as a status and public offender as defined by the Kentucky Revised Statutes Annotated. She sues through her mother and next

friend, Barbara Doe.

DEFENDANTS

10. Defendant Clyde Middleton is the County Judge Executive of the Kenton County Fiscal Court. As such he is responsible pursuant to §67.0831 of the Kentucky Revised Statutes Annotated for appropriating such sums of money as will provide for the maintenance and operation of the Kenton County Detention Center and for providing suitable facilities for the detention of juveniles. Said defendant is sued in his official capacity.

11. Defendant James Knauf is the Jailor in Kenton County, Kentucky. As such, this defendant is responsible under Kentucky law for the safety and welfare of all persons confined in the Kenton County Detention Center. This defendant is sued in his official capacity.

12. Defendant, Jack Lewis, as the Secretary of Corrections for the Commonwealth of Kentucky, is responsible pursuant to § 196.070 of the Kentucky Revised Statutes Annotated for the inspection of the Detention Center and is required to investigate the treatment, security and condition of persons detained in the Detention Center as well as monitor all necessary precautions against escape, sickness or danger at the Detention Center. This defendant is sued in his official capacity.

13. All policies, practices and omissions complained of in this action are the official practices, customs and usages of defendants.

CLASS ACTION

14. Plaintiff John Doe and plaintiff Jean Doe bring this action on behalf of

themselves and all others similarly situated, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The class consists of all juveniles who are currently, have been or will be in the future confined in the Kenton County Detention Center.

15. The members of the class are so numerous that joinder of all members is impracticable. In addition, there are questions of law and fact common to the members of the plaintiff class regarding practices of the defendants, and the claims of the named plaintiffs are typical of the claims of the members of the plaintiff class. Named plaintiff and this counsel will fairly and adequately protect the interests of the members of the class.

16. By their policies, the defendants have acted and continue to act in a manner generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

17. The injuries suffered by the named plaintiffs and the members of the plaintiff class are a result of the policies and practices of defendants and are capable of repetition, yet may evade review, thereby making class relief appropriate.

FACTUAL ALLEGATIONS

Conditions of Confinement Allegations Juvenile Detention and the Physical Plant

18. The Kenton County Detention Center is a secure facility located in Covington, Kentucky.

19. Juveniles are located on the 8th floor of this facility. This portion of the Detention Center is referred to as the Juvenile Detention Center. This is a

misnomer in that this facility was not constructed as a separate detention center for juveniles. The Detention Center does not provide the environment, programs or services that an appropriate juvenile detention center would provide.

20. Defendants confine juveniles and adults in the Kenton County Detention Center. Juveniles are often confined in the Detention Center for several days at a time. In fact, in recent times one juvenile was held in this facility for approximately 45 days.

21. As a result of the design of the facility as well as practices invoked by defendants, juveniles confined in the holding cells can hear the voices of adult prisoners and can converse with them (albeit in loud tones). Moreover, adults in the facility often have direct contact with the juveniles, in violation of state and federal law.

Supervision by Staff

22. Juveniles in the Kenton County Detention Center are not adequately supervised or monitored. It is a regular policy and practice to leave juveniles unsupervised for long periods of time.

23. Defendants further do not have an adequate electronic monitoring system for juveniles at the Detention Center.

24. Defendants have not implemented or promulgated rules and regulations for the proper handling and treatment of children who are detained in the Detention Center.

Training and Supervision of Staff

25. Defendants do not employ Detention Center personnel who are trained in identifying and responding to problems of juveniles. Defendants' failure to employ adequately trained staff results in lack of attention to plaintiffs' problems during confinement, lack of appropriate assessment of plaintiffs' physical, mental, emotional and spiritual needs and lack of remedial programming. Such failure subjects plaintiffs to serious harm from institutional personnel, other detainees and themselves as well as neglect for their general well-being.

26. Defendants do not hire program personnel who can respond to and provide for the needs of plaintiffs in the Detention Center.

27. Defendants do not adequately supervise Detention Center personnel who are responsible for the care of plaintiffs in the Detention Center.

28. Defendants do not adequately train staff to deal with or counsel juveniles held at the Detention Center.

Intake and Classification

29. Defendants have failed to develop and implement a classification system for juveniles. As a result, children are arbitrarily and inappropriately housed.

30. Defendants fail to provide adequate medical or psychological screening or examination for plaintiffs when plaintiffs are taken into custody. Defendants fail to provide regular medical or mental health services to plaintiffs.

31. The Kenton County Detention Center is often overcrowded and fails to provide an adequate environment for its juvenile detainees. Consequently, many juveniles suffer forced idleness in small, confined space. Moreover the level of danger

increases since staff are undertrained and do not monitor properly.

Programming

32. Defendants do not provide juveniles with any appropriate educational program, including identification and provision of special education services while in the Detention Center.

33. Defendants do not provide juveniles with any appropriate indoor or outdoor activities while at the Detention Center.

34. Defendants fail to provide defendants with any appropriate religious programs.

35. As a result of defendants' policies, practices, acts and omissions, described herein, plaintiffs' confinement by defendants in the Kenton County Detention Center is cruel, harsh, punitive and oppressive.

Juvenile Justice Act Allegations

Public Offenders

36. 42 U.S.C. Section 5633(13), provides that, in order to receive funding under the Act, a state must comply with the requirement that juveniles alleged or found to be delinquent shall not be detained or confined in any institution in which they have regular contact with adult persons who are incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges. The State of Kentucky receives funds under this Act.

37. In violation of the Act, defendants routinely confine and detain juveniles alleged or found to be delinquent in the Kenton County Detention Center

where they have regular contact with adult persons who are incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges.

38. Section 501 Kentucky Administrative Regulations subsection 9:110 provides that a Detention Center must provide separate and distinct housing for five categories of inmates:

1. male/female
2. mental inquest detainees
3. mentally ill or retarded detainees
4. juveniles with communicable diseases
5. juveniles with violent propensities or those who can be harmed by others.

Defendants regularly confine and detain juveniles in the Detention Center in violation of this requirement.

39. Kentucky Revised Statutes Annotated §600.020 (30) requires that a secure juvenile holding facility separate children from adult offenders such that there be no sight or sound contact between the two groups; as well as physical separation. Defendants routinely violate this statutory provision.

Status Offenders

40. 42 U.S.C. Section 5633(12)(A), provides that, in order to receive funding under the Act, a state must comply with the requirement that juveniles that are status or non-offenders be removed from secure detention. The State of Kentucky receives funds under this Act.

41. In violation of the Act, defendants routinely securely detain status offenders in the Kenton County Detention Center which subjects plaintiffs to regular contact with adult persons who are incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges. Juveniles have been similarly confined and detained at the Detention Center in the past, and will continue to be so confined and detained in the future unless plaintiffs are granted the relief requested.

Knowledge of the Defendants

42. Clyde Middleton is County Judge Executive of Kenton County. As such, he is responsible pursuant to section 67.0831 of the Kentucky Revised Statutes Annotated for appropriating such sums of money as will provide for the maintenance and operation of the Kenton County Detention Center and for providing suitable facilities for the detention of juveniles. In such capacity defendant knows or should know that children are being confined in unconstitutional conditions in the Kenton County Detention Center. By allowing said conditions to continue, defendant has breached his duty and is responsible in part for said conditions. This defendant therefore shares responsibility with other defendants mentioned herein for violations of plaintiffs constitutional rights.

43. Defendant James Knauf is the Jailor in Kenton County, Kentucky. As such, this defendant is responsible under Kentucky law for the safety and welfare of all persons confined in the Kenton County Detention Center. In such capacity defendant Knauf directly burdened with knowing that children are being confined in unconstitutional conditions in the Kenton County Detention Center. By allowing said

conditions to continue, defendant has breached his duty and is responsible in part for said conditions. This defendant therefore shares responsibility with other defendants mentioned herein for violations of plaintiffs' constitutional rights.

44. Defendant Jack Lewis, as the Secretary of Corrections for the Commonwealth of Kentucky, is responsible pursuant to § 196.070 of the Kentucky Revised Statutes Annotated for the inspection of the Detention Center and is required to investigate the treatment, security and condition of persons detained in the Detention Center as well as monitor all necessary precautions against escape, sickness or danger at the Detention Center. In such capacity defendant Wigginton knows or should know that children are being confined in unconstitutional conditions in the Kenton County Detention Center. By allowing said conditions to continue, defendant has breached his duty and is responsible in part for said conditions. This defendant therefore shares responsibility with other defendants mentioned herein for violations of plaintiffs' constitutional rights.

Necessity for Injunctive Relief: No Adequate Remedy At Law

45. Defendants regularly subject plaintiffs to the cruel, unconscionable and illegal conditions of confinement described above. Defendants have similarly confined and detained juveniles in the Kenton County Detention Center under such conditions in previous years and defendants will continue to confine juveniles under such conditions in the future unless plaintiffs are granted the relief requested herein.

46. As a proximate result of the policies, practices, acts and omissions of defendants complained of herein, plaintiffs have suffered and continue to suffer

serious and irreparable physical, psychological, mental, emotional and spiritual injuries. Plaintiffs have no plain, adequate, or complete remedy at law to redress the wrongs described herein. Plaintiffs will continue to be irreparably injured by the policies, practices, act and omissions of the defendants unless this Court grants the injunctive relief which plaintiffs seek.

LEGAL CLAIMS

47. For plaintiffs' claims, each enumerated below, they reallege paragraphs 1 through 46 above, as if fully set forth herein, in each and every statement of claim, and further allege:

FIRST CLAIM (Unconstitutional Conditions of Confinement)

48. Defendants' policies, practices, acts and omissions complained of herein, and specifically defendants' subjection of plaintiffs to the cruel, unconscionable and illegal conditions of confinement in the Kenton County Detention Center deprive plaintiffs of due process of law, in violation of the Fourth, Eighth and Fourteenth Amendments to the United States Constitution and of the Kentucky Constitution; violate plaintiffs' rights to freedom of association guaranteed by the First and Fourteenth Amendments to the United States Constitution and the Kentucky Constitution; violate plaintiffs' right to privacy, guaranteed by the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution; violate plaintiffs' rights under 42 U.S.C. 1983; and violate plaintiffs' rights under the Kentucky law.

SECOND CLAIM
(Sight and Sound Separation)

49. Defendants' policies, practices, acts and omission complained of herein, and specifically defendants' detention and confinement of juveniles in the Kenton County Detention Center without adequate separation from adult offenders, violate plaintiffs' rights under the Juvenile Justice Act, 42 U.S.C. Section 5633(13); subject plaintiffs to denial of due process of law, in violation of the Fourteenth Amendment to the United States Constitution and the Kentucky Constitution; and violate plaintiffs' rights under the Kentucky statutory sections cited herein.

THIRD CLAIM
(Secure Confinement of Status Offenders)

50. Defendants' policies, practices, acts and omission complained of herein, and specifically defendants' secure confinement of status offenders in the Kenton County Detention Center violate plaintiffs' rights under the Juvenile Justice Act, 42 U.S.C. Section 5633(12)(A); subject plaintiffs to denial of due process of law, in violation of the Fourteenth Amendment to the United States Constitution and the Kentucky Constitution; and violate plaintiffs' rights under the Kentucky statutory sections cited herein.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court:

- A. Assume jurisdiction of this action;
- B. Permit this action to proceed in forma pauperis;

- C. Permit plaintiffs to proceed in pseudonym;
- D. Issue an order certifying this action to proceed as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure;
- E. Issue a declaratory judgment pursuant to 28 U.S.C. Sections 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure, that the policies, practices, acts and omissions complained of herein:

- (1) violate plaintiffs' rights under the Juvenile Justice Act, 42 U.S.C. Sections 5601 et seq.;

- (2) subject plaintiffs to denial of due process of law, guaranteed by the Fourteenth Amendment to the United States Constitution;

- (3) violate plaintiffs' right to freedom of association guaranteed by the First and Fourteenth Amendments to the United States Constitution and the Kentucky Constitution;

- (4) violate plaintiffs' statutory rights under Kentucky law;

- (5) violate plaintiffs' rights under the Kentucky Constitution;

- F. Issue preliminary and permanent injunctions prohibiting the defendants from confining plaintiffs in the Kenton County Detention Center, or, in the alternative, issue preliminary and permanent injunctions sufficient to rectify the unconstitutional acts and omissions and statutory violations alleged herein, as follows:

- (1) Restraining and prohibiting the defendants from failing to provide plaintiffs with any of the following during their periods of confinements:

- (a) an adequate classification system;

- (b) adequate supervision of Detention Center personnel;
- (c) complete separation from adult inmates;
- (d) adequate programming and other activities;
- (e) an adequate educational and religious program;
- (f) adequately trained Detention Center personnel;
- (g) adequately qualified Detention Center personnel;
- (h) adequate monitoring;
- (i) adequate rules and regulations for the proper handling and treatment of plaintiffs;
- (j) outdoor activity and appropriate large muscle activity;

G. Issue preliminary and permanent injunctions restraining and prohibiting all defendants from transferring any plaintiff to any other detention center or any other facility where there exist the conditions complained of herein.

H. Order the defendants to develop and implement a comprehensive plan for the correction of the unlawful policies, practices, acts and omissions complained of herein, and to submit this plan to the Court and to the attorneys for plaintiffs for review.

I. Appoint a Special Master to review and insure implementation of the plan to be submitted by defendants and to protect the rights of plaintiffs during the pendency of this action.

J. Retain jurisdiction over the defendants until such time as the Court is satisfied that their unlawful policies, practices, acts and omissions complained of


herein no longer exist and will not recur.

K. Award plaintiffs the cost of this proceeding and attorneys' fees under 42 U.S.C. Section 1988.

L. Issue such other and further relief as to this Court seems just and proper.

Dated: 01/29/92

Respectfully submitted,



James Bell,
Youth Law Center
114 Sansome Street, Suite 950
San Francisco, CA 94104
(415) 543-3379

C. McGehee Isaacs,
Northern Kentucky Children's Law Center
706 Park Avenue
Newport, KY 41071
(606) 491-8303

Attorneys for Plaintiffs

PROOF OF SERVICE

I am employed in the county of San Francisco, State of California. I am over the age of 18 and not a party to this action. My business address is 114 Sansome Street, Suite 950, San Francisco, California 94104.

On the date indicated below, I served the following document:

AMENDED CIVIL RIGHTS COMPLAINT FOR DECLARATORY, INJUNCTIVE,
AND OTHER EQUITABLE RELIEF (CLASS ACTION)

to counsel hereinafter listed U.S. mail, postage prepaid, by placing them in a United States mail mailbox:

C. Thomas Hectus
Williams & Wagoner
One Oxmoor Place
101 Bullitt Lane, Suite 202
Louisville, KY 40222

Hon. Maria T. Geisler
Office of the Counsel
Cabinet for Human Resources
275 East Main Street, 4 West
Frankfort, KY 40621

John R. Elfers
Kenton County Attorney
107 Park Place
Covington, KY 41011

Hon. Suzanne D. Codery
Corrections Cabinet
Office of General Cabinet
200 State Office Building
Frankfort, KY 40501

Hon. Thomas J. Hellmann
Office of the Attorney General
Civil Division
Capitol Building
700 Capitol Avenue
Frankfort, KY 40601-3494

I, Christine Cross, declare under penalty of perjury that the foregoing is true and correct. Served and executed on this 29th day of April, 1992, at San Francisco, California.

Christine Cross