

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY

UNITED STATES OF AMERICA, Plaintiff  
v.  
COMMONWEALTH OF KENTUCKY, et al., Defendants

CONSENT DECREE

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## I. INTRODUCTION

1. The United States enters into this agreement pursuant to its authority under the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997 *et seq.*, and the provisions of Pub. L. No. 103-322, 108 Stat. 2071 (codified at 42 U.S.C. § 14141) concerning the administration of juvenile justice.
2. The overall purpose of the parties in entering into this Consent Decree is to achieve the outcomes delineated below, and the Decree shall be read and interpreted in light of these outcomes:
  - a. Juveniles confined in Kentucky treatment centers have a right to treatment reasonably calculated to improve their condition and promote their personal growth and development. Such treatment involves a continuum of services provided in the community and institutional settings;
  - b. Every juvenile committed to the custody of the Defendants has a right to receive individualized and appropriate care and treatment that is safe and humane and is provided in the least restrictive setting consistent with the juvenile's needs; c. Defendants shall utilize their community based juvenile services to the maximum extent feasible.
3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345.
4. Venue in the Western District of Kentucky is appropriate pursuant to 28 U.S.C. § 1391(b).
5. The United States has met all pre-filing requirements stated in the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 *et seq.*

## II. DEFINITIONS

6. "Plaintiff" shall refer to the United States of America.
7. "Defendants" shall refer to the Commonwealth of Kentucky; Governor Brereton C. Jones, in his official capacity; Masten Childers II, Secretary of the Kentucky Cabinet for Human Resources ("CHR"), in his official capacity; Peggy Wallace, the Commissioner of the Department for Social Services, in her official capacity; Betty Shipp, the Director of Youth Services, in her official capacity; Elizabeth Wachtel, the Commissioner for Mental Health and Mental Retardation, in her official capacity; and the agents and successors in office of the above listed individuals and offices.
8. The terms "juvenile" or "juveniles" shall refer to one or more individuals sentenced to, incarcerated in, detained at, or otherwise confined at any residential treatment facility operated or funded by the Commonwealth of Kentucky, including the Central Kentucky Treatment Center ("CKTC").
9. The term "juvenile treatment facility", "juvenile treatment center" or "residential treatment center" shall refer to any residential facility of more than eight beds presently or in the future during the operation of this Consent Decree, owned, operated, or funded by the Commonwealth of Kentucky that incarcerates, detains, or otherwise confines juveniles for the purpose of providing treatment services, including education and counseling services. At a minimum, this term shall include the following treatment centers: Bluegrass Treatment Center, Cardinal Treatment Center, Central Kentucky Treatment Center, Green River Boys' Camp, Johnson-Breckinridge Treatment Center, Lake Cumberland Boys' Camp, Lincoln Village Treatment Center, Mayfield Boys' Treatment Center, Morehead Treatment Center, Northern Kentucky Treatment Center, Owensboro Treatment Center, KCH Rice-Audubon Treatment Center, and Woodsbend Boys' Camp. This definition does not include short term pre-adjudication detention facilities.
10. The term "special needs juvenile" shall refer to those juveniles who are suicidal, mentally ill, mentally retarded, emotionally disturbed, under the influence of alcohol or other substances, or a danger to themselves or others.
11. The term "isolation" shall mean any placement of a juvenile in a room without normal staff and peer interaction for a period of one hour or more.
12. The term "time-out" is defined as any placement of a juvenile in a room without normal staff and peer interaction for less than one hour.

13. The term "competency-based" training shall mean that staff shall demonstrate to his or her supervisor and/or trainer his or her ability or competency to perform a specified skill through an active hands-on demonstration of such skill.

14. The term Qualified Mental Health Professional ("QMHP") shall be defined by Ky. Rev. Stat. Ann. § 202A.011(12) (Supp. 1994) attached to this Consent Decree as Appendix A. The above definition of QMHP shall govern this term for the duration of this Consent Decree regardless of any statutory amendments to Ky. Rev. Stat. Ann. § 202A.011(12) by the Commonwealth.

### III. BACKGROUND

15. The Defendant Commonwealth of Kentucky owns and funds the operation of the Commonwealth's juvenile residential treatment facilities.

16. In their official capacity, the Defendants Secretary of the Cabinet for Human Resources, the Commissioner of the Department for Social Services, and the Director of Youth Services are responsible for the day-to-day operation of various Kentucky residential treatment facilities. Defendant Elizabeth Wachtel, the Commissioner for Mental Health and Mental Retardation, is responsible for providing mental health services to juveniles in the various Kentucky residential treatment facilities.

17. On February 9, 1995, and May 1, 1995, the United States notified Governor Jones and other Kentucky officials of the United States' intent to investigate various Kentucky juvenile treatment centers for the Commonwealth of Kentucky pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997 *et seq.*, and the provisions of Pub. L. No. 103-322, 108 Stat. 2071 (codified at 42 U.S.C. § 14141) concerning the administration of juvenile justice. The United States toured the Owensboro Treatment Center and Green River Boys Camp with expert consultants on April 26-28, 1995. The United States toured the Johnson-Breckinridge Treatment Center, Rice-Audubon Treatment Center and Central Kentucky Treatment Center with expert consultants on May 9-13, 1995. On July 28, 1995, the United States issued a findings letter based on the tour of its experts and found that conditions in Kentucky juvenile treatment centers violated the constitutional and federal statutory rights of the juveniles.

18. On July 28, 1995, Kentucky responded to the United States' findings in a letter from Secretary Masten Childers to Assistant Attorney General Deval Patrick. In that letter, Kentucky expressed its intent to promptly address the United States' findings. From that date to the present, Kentucky has worked cooperatively with the United States to remedy the conditions detailed in the findings letter. At the date of the signing of this Consent Decree, Kentucky has begun implementing a number of this Consent Decree's requirements.

19. The parties to this Decree recognize the constitutional and federal statutory rights of juveniles confined in Kentucky's juvenile treatment centers. After discussions and in order to avoid litigation concerning the constitutionality of the care and confinement of juveniles and of the actions of officials and employees of Kentucky at its juvenile treatment centers, the parties agree to the provisions set forth in this Consent Decree.

### IV. SUBSTANTIVE PROVISIONS

#### A. Protection From Abuse, Mistreatment, and Injury

20. Defendants shall adequately protect the juveniles within Kentucky residential treatment centers from harm, abuse, neglect, exploitation and/or other mistreatment, including physical, verbal, and/or psychological mistreatment. In order to adequately protect the juveniles, Defendants shall implement the provisions contained in ¶¶ 20-34.

21. Defendants shall institute an adequate uniform special incident reporting system that ensures that all special incidents are promptly and adequately identified, reported, investigated and tracked. Defendants shall ensure that the definition of what constitutes a special incident is clear, objective, unambiguous, and easily understood by juveniles and staff of the juvenile treatment centers. The definition of a special incident shall include all alleged incidents of abuse, neglect, mistreatment, exploitation and/or injury. The special incident reporting system shall consist of the following components:

a. Defendants shall create a factfinding investigative unit outside the Department of Social Services or any department or agency given supervising authority over juvenile treatment facilities and/or staff. The investigative unit shall report to the Juvenile Services Review Board created under ¶ 21(b) and shall be responsible for factfinding only. The investigative unit shall have sufficient staff to adequately perform its duties;

b. Defendants shall create a Juvenile Services Review Board responsible for evaluating investigative reports submitted to them by the factfinding external investigative unit, determining whether the facts substantiate a finding of abuse, neglect, mistreatment and/or exploitation, and suggesting appropriate disciplinary action;

c. Defendants shall create a quality assurance management unit composed of persons outside the Department of Social Services to check the quality, efficacy, and promptness of special incident investigations.

22. The factfinding investigative unit shall have the following specific responsibilities:

a. Investigate in a timely manner all allegations of special incidents and prepare a written report of the investigation and its findings, specifying the occurrences surrounding the special incident and whether or not the perpetrator has been identified;

b. Prepare and provide a report in a timely manner and in writing to the Inspector General of Kentucky, the Juvenile Services Review Board, and place the Department of Social Services on notice of all special incident investigations;

c. Track the time, location, and staff present for all special incidents. The investigator will analyze this information for trends and when trends emerge, report such information to the Juvenile Services Review Board and the Director of Youth Services;

d. Assist in training all staff on reporting allegations of special incidents and on preserving evidence.

23. The members of the factfinding investigative unit shall receive adequate training in conducting investigations in institutions serving juveniles, including classroom and field training.

24. Any member of an investigative unit shall have the authority to immediately investigate any suspected special incidents whether or not a formal complaint has been filed.

25. The Juvenile Services Review Board shall be composed of sufficient numbers of persons to ensure the attendance of at least five members at all meetings, the majority of whom shall not be employed by Kentucky. One of the Board members shall be a member of the Department of Public Advocacy, Protection and Advocacy Division.

26. Defendants shall develop and implement, or ensure that the quality assurance management unit develops and implements, a reliable protocol for checking the quality of all special incident investigations. The quality assurance protocol shall ensure that a reliable sample of special incident investigations are reviewed, including investigations found by the Juvenile Services Review Board to be "unsubstantiated" or "unfounded". The quality assurance management unit shall make periodic and unannounced external monitoring visits of juvenile treatment facilities and programs.

27. The Defendants and any state agency or Department with current and/or future oversight or involvement with juvenile treatment centers and all juvenile treatment centers shall develop and implement adequate policies and procedures that detail how to adequately recognize special incidents, promptly report such incidents to appropriate protective and investigative service agencies, promptly take effective action to protect the juvenile, implement appropriate disciplinary action, and adequately track special incidents in an effective, comprehensive manner. Such policies and procedures shall include the following:

a. Policies and procedures shall detail the specific requirements of each staff and non-staff member in reporting, investigating and tracking special incidents and shall offer step by step instructions that delineate clearly individual staff member responsibility for reporting potential abuse;

b. Reporting of special incidents shall be mandatory on all facility staff and non-staff members such as medical contractors and/or teachers and shall occur at the time the special incident is witnessed or discovered;

c. Defendants shall identify high-risk situations of abuse and mistreatment and train staff and non-staff members in how to recognize and handle such high risk situations of abuse and mistreatment;

d. All staff and juveniles shall have easy and quick access to any investigative agency;

e. Staff shall be adequately trained concerning their responsibilities for preventing, recognizing, reporting and responding to abuse and shall sign a statement to that effect; f. Juveniles shall be adequately informed as to the procedures for reporting

alleged special incidents and shall have access to an investigative agency outside the facility for the purpose of reporting alleged special incidents without facility staff intervention or involvement;

g. Staff at the treatment center shall not be involved in reporting of special incidents by juveniles. Juveniles shall have access to someone outside the facility in a timely fashion without having to contact staff or fill in forms ultimately mailed by staff;

h. Defendants shall institute a priority system that adequately identifies special incidents from other incidents to facilitate the prompt investigation of all special incidents;

i. Defendants shall institute adequate policies and procedures for disciplining staff for abuse and mistreatment of juveniles. Such policies and procedures shall include clear and adequate punishments for demonstrated incidents of abuse, neglect, exploitation and/or mistreatment.

28. Defendants shall ensure that reporters of suspected and known special incidents are protected from retaliation and shall inform staff and juveniles of their right to be free from retaliation.

29. Defendants shall take prompt administrative action in response to allegations of abuse and mistreatment and shall vigorously pursue actions before the Kentucky Personnel Board.

30. To the maximum extent possible as permitted by the Commonwealth's regulations governing personnel practices, Defendants shall institute personnel practices that protect juveniles in the treatment centers from continued contact with alleged perpetrators of abuse and mistreatment, especially during investigation and review of the alleged special incidents.

31. If the Kentucky Personnel Board rejects Defendants' disciplinary action for dismissal arising from abuse allegations against one of its employees, Defendants shall take all possible action to avoid placing such staff member back into any position involving direct contact with juveniles pending any review and/or appeal.

32. Defendants shall refer all alleged or suspected crimes against juveniles by staff to outside authorities for investigation. In doing so, Defendants shall not transfer or diminish its responsibility to promptly investigate and adequately discipline staff for incidents of abuse and mistreatment. Responsibility for prompt and adequate investigation and resolution of special incidents lies with the Defendants and may not be shifted to outside law enforcement agencies.

33. In no event shall Defendants use mace or other chemical agents on the juveniles.

34. Defendants shall abide by Administrative Order HR 95-122 signed by Masten Childers II, the Secretary for Human Resources on October 24, 1995, and incorporated into this Consent Decree as Appendix B, to the extent such order applies to the Commonwealth's juvenile residential treatment centers.

#### B. Treatment Services

35. All juveniles shall have adequate Individual Treatment Plans ("ITPs"). In order to provide the juveniles with adequate ITPs, Defendants shall implement the provisions contained in ¶¶ 35-43.

36. No later than 21 days after admission, a multidisciplinary team of direct care staff and qualified professionals, including the facility based psychologist, shall meet with the juvenile to assess a juvenile's treatment needs. A member of the facility's medical staff shall attend such treatment meeting with appropriate medical information and charts.

37. No later than 30 days after admission, the multidisciplinary treatment team shall develop and implement an initial Individual Treatment Plan ("ITP") for each juvenile housed at the treatment facilities. Qualified and adequately trained professional staff, including the facility based psychologist, shall coordinate and oversee the development and implementation of the ITP plans. A final, complete, and full ITP shall be developed and implemented within 45 days of admission.

38. The ITP shall include meaningful and specific short-term and long-term treatment goals and appropriate periodic reevaluation and follow-up. The ITP shall adequately delineate staff responsibilities for the programs. The ITP shall include any psychiatric/psychological evaluations with recommendations and actions noted and a plan for follow-up by the multidisciplinary treatment team based on the evaluations. If an ITP is ineffective, the multidisciplinary treatment team shall

timely modify the plan, with oversight from the facility based psychologist. ITPs shall be kept in the juvenile's record.

39. Defendants shall provide sufficient services to adequately implement, maintain, and modify each juvenile's ITP.

40. Defendants shall hire sufficient and qualified staff and counselors to implement all ITPs and shall provide adequate access to sufficient outside consultant services necessary to meet the goals identified in the ITPs.

41. Defendants shall indicate in each juvenile's ITP the specific criteria and goals that the juvenile must meet or satisfy in order to gain release from the treatment facility. Defendants shall not arbitrarily withhold release from a juvenile that has satisfied his or her release goals and criteria. The release goals and criteria shall contain clear timelines for release. Defendants shall inform juveniles clearly of the goals and timeliness relevant to his or her release from the facility.

42. Every juvenile's ITP shall address the provision of aftercare services and shall, if such services are required, identify factors necessary to the provision of meaningful aftercare services, such as factors that contribute to the risk that the juvenile will become a repeat offender.

43. Defendants shall establish specific formats and guidelines for therapeutic activity required under juvenile individual treatment plans, including the following:

a. Individual and group counseling shall be conducted only by staff members who have been adequately trained and credentialed/certified under the various training programs offered for such activity through the Department for Social Services for college and/or graduate study credit at the universities within Kentucky;

b. Group activity shall be of manageable size not to exceed eight residents;

c. At least two staff members shall be present to conduct group activities;

d. Defendants shall adequately and regularly document all individual and group counseling.

### C. Education & Vocational Training & Structured Activities

44. All juveniles, including juveniles with disabilities, shall have adequate educational and vocational services that are individualized to meet each juvenile's rehabilitative needs. In order to provide the juveniles with adequate educational and vocational services and adequate structured activities, Defendants shall implement the provisions contained in §§ 44-57.

#### (1) General Population

45. Defendants shall continue to provide all juveniles housed at the treatment facilities with adequate educational and vocational services. Defendants shall ensure that an adequate number of qualified and experienced teachers are available to provide such services. Defendants shall continue to provide adequate instructional material and space for educational services.

46. Within 30 days of admission, Defendants shall assess a juvenile's education needs and develop and implement an individual education plan with meaningful and specific educational and vocational goals to address identified needs.

47. Qualified professionals shall review and revise a juvenile's individual education plan with appropriate frequency.

#### (2) Juveniles with Disabilities

48. Defendants shall abide by all mandatory requirements and timelines set forth under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401 *et seq.*

49. Defendants shall screen a juvenile for physical and learning disabilities. The screening shall include questions about whether the juvenile has been previously identified by the public school system as having an educational disability, previous educational history, and a sufficient medical review to determine whether certain educational disabilities are present, such as hearing impairments, including deafness, speech or language impairments, visual impairments, including blindness, mental

retardation, or serious emotional disturbances adversely affecting educational performance.

50. If a juvenile has been previously identified as having an educational disability, Defendants shall take all lawful steps to immediately obtain a copy of the juvenile's individualized education plan ("IEP") required under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401 *et seq.* Defendants shall assess the adequacy of the juvenile's IEP and either implement it as written if it is an adequate plan or, if the IEP is inadequate, rewrite the plan to make it adequate, and then implement the revised IEP. If Defendants are unable to obtain a juvenile's original IEP in a timely manner, Defendants shall create an IEP for such juvenile.

51. If the juvenile has not been previously identified as having an educational disability, but indications of such a disability exist, an adequate evaluation must be performed within the time limits prescribed by federal law. Kentucky shall use only professionally accepted tests to complete the evaluation. A copy of this educational evaluation shall be kept in the juvenile's record at the facility.

52. If a juvenile referred for an evaluation pursuant to the above paragraph is discharged from the system before the evaluation is complete, Defendants shall forward all information regarding screenings and evaluations completed to date to the juvenile's receiving school district, noting what evaluations are yet to be performed.

53. Qualified professionals shall develop and implement an IEP, including appropriate related services, based upon an adequate evaluation and reasonably calculated to provide educational benefits for every juvenile identified as having a disability. When appropriate, the IEP shall include a vocational component.

54. The IEP shall include meaningful and specific short-term and long-term treatment goals and appropriate periodic reevaluation and follow-up. When an IEP is ineffective, Defendants shall ensure that qualified professionals timely modify the plan. IEPs shall be kept in the juvenile's record.

55. Defendants shall integrate the IEP with the ITP for the juvenile.

### (3) Structured Activities

56. Defendants shall provide a structured recreation program, including outdoor and indoor recreation, with set and specific guidelines for such activity. Defendants shall provide the juveniles with an adequate exercise regimen of activity each day, seven days per week.

57. Defendants shall hire sufficient staff and

maintain adequate exercise equipment and space to meet the above requirements for recreation.

### D. Aftercare Treatment Services

58. All juveniles shall have adequate aftercare treatment services. In order to provide the juveniles with adequate aftercare treatment services, Defendants shall implement the provisions contained in ¶¶ 58-66.

59. Defendants shall develop and implement written policies and procedures for the provision of aftercare treatment services to juveniles. Defendants shall implement and monitor adherence to such policies and procedures.

60. Defendants shall develop and implement an aftercare services screening tool to identify specific problem areas to address during aftercare treatment, including the risk of becoming a repeat offender. This screening tool shall be part of the multidisciplinary ITP process and shall be administered by trained staff members. The juvenile's court records, psychological and social evaluations, family history, and educational records must be considered in this screening process.

61. Defendants shall provide meaningful aftercare treatment services to all juveniles who exhibit a risk of becoming repeat offenders as identified through screening or through the course of the treatment program.

62. Defendants shall immediately assign an aftercare worker to each juvenile in need of aftercare treatment services. The aftercare worker shall participate in formulating the juvenile's ITP and shall attend at least the initial ITP meeting and the last two ITP meetings for the juvenile prior to release, one of which shall be within 45-60 days prior to release.

63. Defendants shall hire or contract to provide sufficient staff to provide meaningful aftercare services. At a minimum, Defendants agree to provide one aftercare worker for every 18 juveniles receiving aftercare services.

64. Each aftercare worker shall be adequately trained and credentialed/certified under the various training programs offered for such activity through the Department for Social Services for college and/or graduate study credit at the universities within Kentucky.

65. Residential treatment services and aftercare services shall be coordinated, supervised, and provided by the same agency and shall not be split among various departments or divisions within CHR.

66. Defendants agree to provide supplemental services as needed to provide meaningful aftercare services.

#### E. Time-Out and Isolation

67. Defendants shall adequately protect juveniles against arbitrary and harmful uses of time-out and isolation. In order to provide the juveniles with adequate protection against arbitrary and harmful uses of time-out and isolation, Defendants shall implement the provisions contained in ¶¶ 67-78.

68. Defendants shall develop specific written criteria for placing juveniles in either isolation or time-out. Such criteria will define the nature of the conduct that may result in the placement and the duration of the placement. These criteria will be standardized among the residential treatment facilities.

69. Defendants shall immediately cease using isolation and time-out for punishment or the convenience of staff.

70. Defendants shall place juveniles in isolation only when such a placement meets specified treatment goals or is necessary for immediate and short term security. The amount of time that juveniles spend in isolation shall be the shortest amount of time necessary to accomplish their treatment goals or to achieve security.

71. Defendants shall document all placements in isolation. This report shall contain, at a minimum, the reason for and duration of the isolation.

72. Defendants shall ensure that no juvenile is placed in isolation without the approval of the Operations Coordinator or the superintendent. This approval will be noted on the form documenting the placement in isolation.

73. For every juvenile placed in isolation, the Defendants will immediately develop a written action plan for that juvenile's release. This action plan shall identify the reasons for the confinement, the criteria for release, and the services or actions of the staff to achieve the release criteria. The juvenile shall be released from isolation upon meeting the release criteria.

74. Defendants shall conduct a formal professional review of each placement in isolation. This review must be conducted within an appropriate period following the initial placement but in no event more than ten hours following the initial placement. The review shall be repeated at appropriate intervals while the juvenile remains in isolation but in no event shall such subsequent reviews be held less often than every four hours while the juvenile remains in isolation during the day and every eight hours at night. This review must consider and evaluate a) whether the initial and continued placement of the juvenile is necessary to meet treatment goals or immediate and short term security, b) what amount of time the juvenile should be isolated to best meet these goals, and c) the action plan developed in ¶ 73. This review must be conducted by an appropriately qualified and competent professional, including a counselor or facility based psychologist. Defendants will document the occurrence and results of this review.

75. The facility nurse or other medically trained staff shall examine the juveniles immediately after the juvenile is placed in isolation, unless it is unsafe to do so, in which case the nurse shall examine the juvenile when safety permits. The nurse or other medically trained staff shall document the date, time, and results of this examination.

76. Defendants will monitor every juvenile in isolation once every fifteen minutes.

77. In addition to monitoring the juveniles every fifteen minutes, Defendants shall ensure that every juvenile in isolation is visited at least once every 24 hours by either a nurse, social worker or counselor. A visit shall mean, at a minimum, that the nurse, social worker, or counselor actually enters the isolation room, unless it is unsafe to do so, and converses with the

juvenile. Defendants shall record the occurrence of all such visits.

78. Defendants will never place a juvenile who is a suicide risk into isolation.

#### F. Staffing, Operational, and Security Procedures

79. Defendants shall ensure that there is adequate staff at each juvenile treatment facility fully sufficient to provide reasonable security to all juveniles, ensure their well-being, meet their individual needs, provide adequate treatment, and permit defendants to fully implement each and every requirement of this Consent Decree in a timely manner. Staff shall be adequate in terms of numbers, kind, and qualifications and training. Such staff shall include, but not be limited to, Juvenile Treatment Assistants ("JTAs"), Juvenile Treatment Assistant Principals ("JTAPs"), juvenile counselors, youth treatment specialists, youth treatment specialist assistants, teachers and any other staff necessary to fully implement this Consent Decree. Only staff present and on duty directly supervising juveniles shall be considered in any evaluation of the adequacy of staff.

80. In order to maintain sufficient and adequate staffing levels, utilizing a relief factor, the Defendants shall also hire and train sufficient extra staff to maintain the required staffing levels, including periods of staff illness, training, vacation or other leave of absence. The staffing levels shall also include enough staff to provide the juveniles adequate supervision during exercise periods.

81. Defendants shall hire and maintain sufficient numbers of juvenile counseling positions to adequately implement juvenile treatment programs, including performing individual and group counseling as required in each resident's individual treatment program.

82. All juvenile counselors shall be adequately trained and credentialed/certified to perform therapeutic counseling.

83. Defendants shall hire and maintain adequate numbers of properly trained (and licensed where applicable) professional staff to oversee, consult, advise and monitor the staff of the residential facilities, especially staff involved in therapeutic treatment.

84. The Defendants shall ensure that current and new treatment center staff members are sufficiently well-trained and competency-based tested. To this end, the Defendants shall institute a comprehensive training program, to include, at a minimum, 80 hours of orientation training to staff (40 hours of which shall be prior to an employee being independently assigned to any particular area or duty), and an additional 40 hours of in-service training each year thereafter. Such program shall entail, at minimum, training and testing in the following areas: appropriate training in how to work specifically with adolescents and adolescent development; crisis intervention, de-escalation of conflict situations, handling anger, and dispute resolution; cultural diversity training to better understand different patterns of development exhibited by juveniles from different ethnic, racial, and geographical backgrounds; training and certification with yearly reviews in standard first aid and CPR (cardiopulmonary resuscitation); training by mental health professionals in how to recognize and deal with mentally ill and/or potentially suicidal juveniles; training by a local medical professional, including training in recognizing the side-effects of medications commonly administered at the treatment centers; security and search procedures, use of force regulations and tactics; supervision of juveniles; report writing; juvenile and staff rules and regulations; rights and responsibilities of juveniles; all emergency procedures; and training in HIV related issues. Defendants shall adequately document all training.

85. Program managers shall be required to have the same level of initial training as front-line staff.

86. Defendants shall require that staff meetings be held at appropriate intervals among personnel within each facility and between facility personnel and central office personnel.

87. Defendants shall evaluate current personnel policies, including entry level salaries, and make any necessary changes or modifications to ensure that competent and qualified staff are available in adequate numbers at all treatment facilities.

#### G. Medical Care

88. Defendants shall ensure that adequate, regular and continuous medical care is provided to juveniles at the treatment centers. In order to provide adequate, regular and continuous medical care, Defendants shall implement the provisions contained in ¶¶ 87-102.

89. Defendants must hire or develop a contractual relationship with a licensed and Board certified physician to serve as the Statewide Medical Authority for all juvenile residential treatment facilities. At a minimum, the Statewide Medical Authority shall approve and supervise a medical quality assurance program to be used in each residential treatment facility, and approve and supervise all medical policies, procedures, and protocols used at the residential treatment facilities.

90. For each facility, Defendants must either hire or develop a contractual relationship with the following medical personnel: (1) a physician to consult with facility medical staff and provide sick call services as needed, provide 24 hours/day, seven days/week on-call medical coverage, arrange for admission, when necessary, to a local hospital, and meet quarterly with the psychologists, psychiatrists, and nursing staff; (2) one full-time registered nurse (RN) and one licensed practical nurse (LPN) on back-up; and (3) major sub-specialty medical care providers to evaluate and provide care for juveniles referred to them by the treatment centers' physician.

91. The RNs and LPNs shall be responsible for all aspects of medication administration including handling, measuring, dispensing, and storing all medications, except that facility staff may assist in the limited role of distributing medications. Such facility staff shall not repackage, measure or dispense medications and shall be fully and adequately trained and supervised by a physician, RN, or LPN. Such training shall include, but shall not be limited to, the nature and side-effects of the distributed medications. The RNs and LPNs shall also be involved in the medical quality assurance system, and shall review Medication Administration Record ("MAR") sheets on a consistent basis.

92. In consultation with the Statewide Medical Authority and in accordance with accepted medical standards, Defendants shall revise and update the intake medical/mental health screening form used to evaluate all juveniles upon their admission to the treatment centers.

93. Defendants must provide inservice training to all appropriate staff in how to complete the screening form.

94. Defendants shall use medically trained treatment center personnel or a medical professional to conduct medical screening.

95. All medical screening forms with positive responses must be reviewed by a nurse or physician and must become part of a juvenile's medical records or charts.

96. In consultation with the Statewide Medical Authority, Defendants shall develop and implement adequate sick call procedures that include (1) review of juvenile requests by qualified personnel on a daily basis to determine urgency of need to be seen, (2) sick call clinic to be held five times per week Monday through Friday; and (3) recording the results of all sick call encounters in juvenile records.

97. Defendants shall ensure that any juvenile transferred among residential treatment facilities or to or from any other facility is delivered safely and with all immunization certificates, medical information including screening forms and records, psychological evaluations (if any), birth verification, commitment order, social history and social needs assessment, a copy of his social security card, and a copy of his education records. Defendants' medical personnel shall contact the medical personnel at the discharging facility to ensure that all medical documentation has been received.

98. Facility staff shall communicate to succeeding shifts medical problems with juveniles through a written shift report and by oral communication between shift staff that shall also be documented in the shift report.

99. Defendants must develop and implement a policy and procedure to specify minimum follow-up frequency and minimum evaluation for juveniles identified with acute and chronic illnesses.

100. In all cases of juveniles confined at the treatment centers for seven days or more, Defendants shall administer a PPD test for Tuberculosis (TB) with the results of the test forwarded immediately to the facility physician. If the test result is positive, the juvenile shall be immediately scheduled for a chest x-ray, with appropriate medical care and attention, including isolation, to be provided thereafter as indicated.

101. Defendants shall implement policies and procedures regarding HIV and AIDS in conjunction with the local public health department and/or a physician.

102. All over-the-counter drugs shall be in unit dosages.

103. No juvenile shall be disciplined for or otherwise discouraged from accessing the health care delivery system.

#### H. Mental Health Care

104. Defendants shall ensure that adequate, regular and continuous mental health care is provided to juveniles at the treatment centers. In order to ensure that adequate, regular and continuous mental health care is provided, Defendants shall implement the following substantive provisions contained in §§ 104-118.

105. Defendants must either hire or develop a contractual relationship with the following mental health personnel: (1) a licensed psychiatrist (or a psychiatric resident in training under supervision of a licensed psychiatrist) present at the facility for four hours per week and available on call, as needed, for providing such services as crises intervention, diagnosing juveniles, medication prescriptions and renewals, and other consultation, as appropriate. The licensed psychiatrist shall be Board certified and where available shall be Board certified in child psychiatry; (2) one facility based clinical psychologist with a minimum of a masters degree in psychology present at the facility for every 45 juveniles. Each facility shall have at least one such facility based psychologist. In rural areas, if after their best efforts, Defendants are unable to hire or contract with a Ph.D or masters level psychologist, Defendants may use a QMHP. The facility based psychologist (or QMHP in rural areas) shall function as the treatment coordinator for the juveniles of each facility. If the facility based psychologist has only a masters degree in psychology or is a QMHP, he/she shall be supervised by a licensed clinical Ph.D. psychologist; (3) sufficient Ph.D. clinical psychologists to comply with the terms of this Decree, including supervising facility based psychologists and QMHPs, providing treatment to juveniles when needed, conducting and reviewing mental health evaluations of juveniles, reviewing and approving policies and procedures concerning the mental health care of juveniles and otherwise overseeing the provision of mental health services to juveniles; and (4) major sub-specialty mental health care providers to evaluate and provide care for juveniles referred to them by the treatment centers' psychologists.

106. Defendants shall write and implement policies and procedures for treatment referrals from the QMHP or masters level psychologist to a Ph.D. psychologist or psychiatrist as appropriate for juveniles' treatment needs. At a minimum, these policies shall provide for immediate and automatic referral for appropriate treatment to a Ph.D. psychologist or psychiatrist whenever: a) a juvenile's mental health poses a risk of physical harm to himself or others (e.g., any suicidal ideation); b) any juvenile exhibiting any mental health problems does not have a current mental health diagnosis from a Ph.D. psychologist or psychiatrist; or c) any juvenile requires a change of medication prescribed as a result of any mental health condition (including initiating and terminating medications).

107. Defendants shall ensure that the facility psychologist(s) oversees the provision of mental health services to juveniles and provides clinical oversight to the juveniles' treatment programs.

108. The Defendants shall screen all juveniles for suicide risk, special needs, and acute mental distress immediately upon their admission to the treatment centers. Defendants shall revise its medical screening form to include sufficient inquiry into such mental health conditions. The mental health and suicide risk portion of the medical screening questionnaire shall be administered by mental health trained staff and reviewed by the facility based psychologist. The reviewing facility based psychologist must sign the screening form to indicate the form has been reviewed and assessed. All such screening forms shall be forwarded to the medical unit.

109. Defendants shall provide mental health evaluations to juveniles who have not had a mental health evaluation within the preceding year if the juvenile is not on psychotropic medication. Defendants will perform this evaluation within 14 days of admission if the juvenile has not had a mental health evaluation in the preceding year or arrives at the facility without such an evaluation. Otherwise, Defendants shall perform this evaluation within 14 days after the expiration of one year after the juvenile's last mental health evaluation. Defendants will provide such mental health evaluations more frequently if such evaluations are necessary to provide adequate treatment.

110. Defendants shall provide mental health evaluations to juveniles taking psychotropic medications and who have not had a mental health evaluation within the preceding six months. Defendants will perform this evaluation within 14 days of admission if the juvenile has not had a mental health evaluation in the preceding six months or arrives at the facility without such an evaluation. Otherwise, Defendants will perform this evaluation within 14 days after the expiration of six months after the juvenile's last mental health evaluation. Defendants will provide such mental health evaluations more frequently if such evaluations are necessary to provide adequate treatment.

111. A mental health evaluation must be performed by either a psychiatrist or Ph.D. psychologist, and must contain at least a complete Mental Status Evaluation (MSE) and additional psychological testing as appropriate for the juvenile's special needs.

112. Defendants shall ensure that the facility based psychologist reviews medical screening forms and the mental health evaluation of each juvenile.

113. A psychiatrist or Ph.D. psychologist shall develop and Defendants shall implement an adequate mental health treatment plan for all juveniles on psychotropic medication and for all juveniles identified as in need of mental health services.

114. Defendants shall ensure that a mental health care provider is available on-call 24 hours a day, seven days per week, for crisis intervention services. Defendants shall arrange for psychiatric beds when needed either at the treatment centers, or at a local hospital.

115. If the appropriate mental health care professional recommends that any juvenile needs further mental health treatment or review, the Defendants shall promptly arrange for such treatment and shall promptly transport the juvenile to obtain such treatment.

116. The Defendants shall develop and implement written policies and procedures on suicide prevention and the treatment of special needs juveniles.

117. Defendants shall ensure that all direct care staff receive adequate training by a licensed mental health professional in the proper response to a suicide or suicide attempt, in identifying and screening juveniles, and in recognizing high-risk groups and periods for suicide and suicide attempts.

118. Immediately upon signing the Consent Decree, Defendants shall renovate all treatment facility isolation rooms to ensure that they contain no exposed conduits, sharp edges, or other hazards that could be utilized in a suicide attempt.

#### I. Classification

119. Defendants shall adequately assess, classify and place juveniles among Kentucky facilities. In order to adequately assess, classify and place juveniles among Kentucky facilities, Defendants shall implement the following substantive provisions contained in §§ 119-124.

120. Defendants shall classify juveniles by using a risk evaluation model that contains, at a minimum, reference to the offense the juvenile committed and an individual assessment of each juvenile's social, medical, and psychological records.

121. Juvenile classification and reclassification shall be performed by a team of trained personnel.

122. Defendants shall ensure that the classification team receives all information necessary to make an adequate juvenile classification. This information shall include the court order and any educational records, social or behavioral assessments, psychological evaluations, or physical evaluations.

123. Defendants shall place juveniles among the treatment facilities in a manner such that each juvenile is placed in the least restrictive environment appropriate to his classification. No juvenile shall be placed in a facility that is incapable of treating his or her special needs.

124. No juvenile will be housed in a treatment facility that does not match the juvenile's general classification. No juvenile shall be transferred to a treatment facility of a different classification level unless that juvenile has been reclassified.

#### J. Fire Safety

125. In order that juvenile treatment centers are made fire safe, the Defendants shall institute the following upgrades and/or renovations:

a. remove or otherwise secure all exposed extension cords and electrical conduits and comply with all state and local electrical codes;

b. remove or cover all dangerous exposed lightbulbs in the facilities and replace fixtures with security grade hardware.

126. Treatment center staff shall continue to be trained in fire prevention and emergency procedures, including evacuation plans. Such training shall be documented.

**K. Bedspace and Overcrowding**

127. No juvenile shall be housed in any area other than properly designated living quarters, and no juveniles shall be made to sleep on the floor, or a closet, or in any place other than a bed raised at least twelve inches off the floor.

128. The population shall not exceed the number of available beds in properly designated living quarters not under construction, renovation, or dedicated to alternative uses. Defendants shall continue to maintain records of daily juvenile population and the number of juveniles in each room.

**L. Maintenance and Sanitation**

129. Defendants shall remove old stains and scale/shower film and eliminate bacteria in the shower and living quarter areas. This cleaning shall be in addition to ongoing daily maintenance and sanitation.

130. Defendants shall develop and implement written policies and procedures to ensure the daily cleaning of all juvenile living quarters. It shall be the responsibility of treatment center staff to inspect all areas regularly to maintain sanitary conditions.

**V. TREATMENT CENTER CONSTRUCTION AND/OR RENOVATION**

131. If the Defendants decide to construct new treatment facilities or to substantially renovate or otherwise replace any existing treatment facility, the Defendants agree to construct any new treatment centers or renovate/replace the existing facility in compliance with: (1) the American Correctional Association's ("ACA") standards in effect at the time of construction; (2) the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.*, and the regulations thereunder; and (3) all Kentucky fire codes and regulations. In addition, once construction or renovation/replacement is completed, the Defendants agree to seek, gain and maintain ACA accreditation.

**VI. CONSTRUCTION, IMPLEMENTATION, AND TIMING OF COMPLIANCE**

132. Except where otherwise specifically indicated, the Defendants shall implement all provisions of this Decree within 180 days after signing this Decree.

133. This Consent Decree shall apply to all juvenile treatment centers operated by or on behalf of the Commonwealth of Kentucky.

134. Within 30 days after the entry of this Decree, Defendants agree to appoint a Monitor who shall on a quarterly basis monitor Defendants' compliance with each provision of this Consent Decree. The Monitor shall be acceptable to both parties. If the parties are unable to agree on a Monitor, both parties shall submit names to the Court and the Court shall select the Monitor. Kentucky shall bear the costs of the Monitor and required monitoring activities.

135. Every ninety (90) days following the signing of this Decree and until this Decree is terminated, Defendants shall file with the Court and the Monitor, and with a copy to the United States, a status report stating whether the Defendants are complying with the terms of this Decree. As part of the status report, Defendants shall include a report listing the daily juvenile population of the treatment centers and the number of juveniles in each sleeping unit.

136. The status reports shall describe the actions that the Defendants have taken up to and including the current reporting period to implement this Consent Decree and shall specifically refer to the provisions of this Consent Decree upon which they report. In addition, every ninety (90) days Defendants shall provide a summary of the frequency and duration of the use of isolation per juvenile at each facility.

137. The Defendants shall maintain sufficient records to document their compliance with all terms of this Decree. Defendants shall also maintain any and all records required by or developed under this Consent Decree.

138. During all times while the Court maintains jurisdiction over this action, the Monitor and the United States shall have

unrestricted access to and, upon request, receive copies of any document relating to the implementation of this Decree. The Monitor and the United States shall have unrestricted access to all staff and facilities as necessary to address issues affected by this Decree.

139. The United States and the Monitor shall treat as confidential records and documents provided by the Commonwealth of Kentucky Cabinet for Human Resources. This agreement does not bar the United States or the Monitor from providing such records and documents to its attorneys, employees and expert consultants for the purposes of any investigation under 42 U.S.C. § 1997 et seq., or the provisions of Pub. L. No. 103-322, 108 Stat. 2071 (codified at 42 U.S.C. § 14141). This agreement does not bar the United States or the Monitor from providing such information to any court that may have jurisdiction over any subsequent action taken pursuant to 42 U.S.C. § 1997 et seq., or the provisions of Pub. L. No. 103-322, 108 Stat. 2071 (codified at 42 U.S.C. § 14141).

140. The Defendants shall immediately explain the terms of this Decree to all persons connected with the treatment centers, including treatment centers staff in order to ensure that they understand the requirements of this Decree and the necessity for its strict compliance. All treatment centers staff members and other individuals providing services required by this Decree shall sign a statement indicating that they have read and understand this Decree and acknowledge receiving an individual copy of the Decree. Such statement shall be retained by the Defendants. The Defendants shall require strict compliance with this Decree by their respective employees, agencies, assigns, or successors.

141. The Court shall retain jurisdiction of this action for all purposes during the lifetime of this Consent Decree and until such time as the Commonwealth has fully and faithfully implemented all requirements of the Consent Decree and such full compliance has been maintained for one year. At such time as the Commonwealth has determined that it is in full and faithful compliance with the Consent Decree and that full compliance has been maintained for no less than one year, the Commonwealth shall advise the United States in writing. Thereafter, the parties shall promptly confer as to the status of compliance. If, after a reasonable period of consultation and the completion of any evaluation the United States may wish to undertake, including tours of the juvenile treatment centers, the parties cannot resolve any compliance issues, the Commonwealth may file a motion to dismiss. If the Commonwealth moves for dismissal of this Consent Decree, the United States will have an adequate time after the receipt of Defendants' motion to object to the motion. If the United States does not object, the Court may grant Defendants' motion. If the United States does make such an objection, the Court shall hold a hearing on the motion and the burden shall be on the Commonwealth to demonstrate that it has fully and faithfully implemented all provisions of this Consent Decree and maintained such compliance for at least one year.

Agreed to by:

COUNSEL FOR UNITED STATES:

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Also for PEGGY WALLACE, Commissioner of the Department for Social Services;  
BETTY SHIPP, Director of Youth Services;  
ELIZABETH WACHTEL, Commissioner for Mental Health and Mental Retardation  
Kentucky Cabinet for Human Resources  
Frankfort, Kentucky 40621-0001  
(502) 564-7900

It is hereby Ordered, this \_\_\_\_\_ day of \_\_\_\_\_, 1995.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

**VII. APPENDICES**