

JI-VT-001-001

STATE OF VERMONT
WASHINGTON COUNTY, SS

WASHINGTON COUNTY SUPERIOR COURT
DOCKET NO. S-11-25 John

E.B., E.K., B.M., E.S., and R.T.,)
minors, by their next friend, Pam)
Sweeney; on behalf of themselves,)
and all others similarly situated,)
Plaintiffs)

vs.

WILLIAM B. YOUNG, Commissioner of)
Social and Rehabilitation Services,)
and)

STEPHEN P. COULMAN, Director,)
Juvenile Detention Unit)
Defendants)

SUPERIOR COURT
WASHINGTON COUNTY

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STIPULATION OF FACTS

NOW come the parties, by and through their undersigned counsel, and stipulate and agree to the following facts:

I. INDIVIDUAL PROFILES

E.B.

1. E.B. was born on May 22, 1969, and he is now fifteen years old.
2. On November 11, 1981 custody of E.B. was transferred to the Commissioner of Social and Rehabilitation Services (hereinafter SRS), following an adjudication that E.B. was a child in need of care and supervision. On March 15, 1982 E.B. was placed in the custody of the Commissioner of Corrections* following a delinquency adjudication. On January 28, 1985 E.B. was continued in the custody of the Commissioner of Corrections following two additional delinquency adjudications.
3. On February 3, 1985 agents of defendants involuntarily confined E.B. in the Juvenile Detention Unit (hereinafter JDU).
4. No court proceedings were ever initiated or held concerning E.B.'s actions to determine the appropriateness of his detention in the JDU.
5. E.B. was confined in the JDU from February 3, 1985 until April 4, 1985. On April 4, 1985 E.B. was placed in the Adelphoi Program in Pennsylvania.

*By agreement, the Vermont Commissioner of Corrections has delegated to the Commissioner of SRS the authority to place and conduct programs for delinquent minors.

E.K.

6. E.K. was born on June 29, 1968, and he is now sixteen years old.
7. On May 3, 1983 E.K. was placed in the custody of the Commissioner of Corrections as the result of a delinquency adjudication. On June 23, 1983 E.K. was continued in the custody of the Commissioner of Corrections due to a delinquency adjudication. On March 12, 1984 E.K. was continued in the custody of the Commissioner of Corrections as the result of a delinquency adjudication.
8. On March 13, 1985 agents of defendants involuntarily confined E.K. in the JDU.
9. No court proceedings were ever initiated or held concerning E.K.'s actions or to determine the appropriateness of his detention in the JDU.
10. E.K. was confined in the JDU from March 13, 1985 until April 3, 1985 when he was placed in a foster home in Woodstock, Vermont.

B.M.

11. B.M. was born on December 15, 1969 and is now fifteen years old.
12. On June 25, 1984 B.M. was placed in the custody of the Commissioner of Corrections as the result of a delinquency adjudication.
13. On March 16, 1985 agents of defendants involuntarily confined B.M. in the JDU.
14. No court proceedings were ever initiated or held concerning B.M.'s actions to determine the appropriateness of his detention in the JDU.
15. B.M. was confined in the JDU from March 17, 1985 until March 19, 1985 when he was returned to the Benson Wilderness Camp.

E.S.

16. E.S. was born on February 22, 1973, and he is now twelve years old.
17. On July 26, 1983 E.S. was placed in the custody of the Commissioner of Corrections following a delinquency adjudication.
18. On March 16, 1985 agents of defendants involuntarily confined E.S. in the JDU.
19. No court proceedings were ever initiated or held concerning E.S.'s actions or to determine the appropriateness of his detention in the JDU.
20. E.S. was confined in the JDU from March 16, 1985 until March 20, 1985

R.T.

21. R.T. was born on February 6, 1970, and he is now fifteen years old.
22. On July 8, 1982 R.T. was placed in the custody of the Commissioner of

Corrections following a delinquency adjudication. On October 21, 1983 R.T. was continued in the custody of the Commissioner of Corrections due to a delinquency adjudication.

23. On January 29, 1985 agents of defendants involuntarily confined R.T. in the JDU.

24. No court proceedings were ever initiated or held concerning R.T.'s actions or to determine the appropriateness of his detention in the JDU.

25. R.T. remains confined in the JDU at the present time.

II. THE JUVENILE DETENTION UNIT

1. The JDU is a secure detention unit facility used for short-term placement of Vermont youths. It is the most restrictive placement for youths in the State of Vermont. The stated rationale for confining youths in the JDU is to keep them in a secure and controlled environment so that they will do no damage to people or property. All of the youths placed in the JDU by SRS administrative action need treatment, training, and rehabilitation to enable them to live successfully in society. The JDU cannot and is not intended to provide the long term treatment, training, and rehabilitation to meet those needs. When youths are placed in the JDU, SRS attempts to find appropriate long term placement which will enhance their developmental growth and functional skills.

Security

2. The JDU has six individual rooms, two of which are capable of serving as isolation rooms and three double occupancy rooms. There are two rooms designated for staff quarters, an office, a day room, a dining room, and two bathrooms.

3. All external doors are controlled with heavy duty locks. All internal doors are also locked during the day and evening hours, unless the rooms are supervised. Each window in the unit has a security screen made of stainless steel with a double locking mechanism. Each of the bedrooms and the kitchen have steel in back of the sheetrock. All bedroom doors are steel, with tamper-proof hinges and doorknobs, and each has a plexiglass window.

4. Whenever a youth is transported out of the JDU, the youth is placed in belly and leg restraints and handcuffs.

Admission

5. A youth is given a pat search immediately upon entering the JDU. All personal possessions are taken from the youth. The youth is given a resident

handbook and told a little bit about the Unit including its rules, regulations, daily schedule, etc.

6. The youth is then escorted to a bathroom where a strip search (including anal and genital areas) is conducted.

7. JDU policy and procedure is that every youth is then assigned to an individual room where he or she is kept in isolation for the first twenty-four hours.

8. Every two hours a youth is allowed out of his or her room for a bathroom break if his or her behavior so warrants. Cigarettes are not allowed. An individual takes his or her meals in the room. The youth is allowed one phone call during this period of time. No communication is permitted with other youths during this twenty-four hour isolation period. Youths are allowed a magazine, a book, sheets of paper, and a pencil while in isolation. No other material is allowed.

Personal Possessions

9. Youths residing at the Unit are not permitted to keep on their persons any personal belongings. All items such as and including jewelry, belts, wristwatches, wallets, money and other such items are removed from the youth, inventoried and stored in the Unit. Youth may not keep any items in their rooms except for clothing which they wear, pajamas, sheets of paper, a pencil, and one book or magazine. Any unauthorized items in their room can be construed as contraband, and a youth can be disciplined for possessing such contraband.

Discipline

10. Time-outs are given for inappropriate behaviors. Time-out means that a youth is required to go to his or her room for a period of up to one hour.

11. A youth can also be placed in isolation, which means that the individual is placed in one of the two isolation rooms. The isolation rooms consist of a bare floor and no furnishings except for a mattress. Isolation is normally from four to twenty-four hour periods. If JDU staff make a determination that isolation continue beyond the twenty-four hour period, the person isolated is given a brief written statement of the reasons for the continued isolation.

12. The criteria for placement in isolation are met when one or more of the following conditions are present:

1. Behavior which indicates clear danger to the physical safety of

other persons;

2. Destruction of property;

3. Evidence clearly indicating a severe security risk including, but not limited to, attempting to or smuggling in contraband or participation in planning, attempting or actually escaping.

13. An individual in isolation may receive one hour "out-time" per day for exercise, showers, etc. based on good behavior. The individual may receive a reasonable amount of reading material. The individual is permitted to make one out-going phone call per twenty-four hour period.

14. The use of physical or mechanical restraints is used as a last resort to prevent injury to self or others. Physical or mechanical restraint is described as holding the youth with arms or legs and holding a youth with handcuffs, leg restraints, leather restraints, or other mechanical devices.

15. Youths are entitled to present grievances to the coordinator concerning an incident, policy, or condition which effects the youth, group, or Unit.

Mail

16. Youths in the JDU may receive mail. All mail received by youths must be opened in the presence of a staff member. All packages received by youths are inventoried by staff members. The coordinator may determine that incoming or outgoing mail for or from youths will be read and screened. All mail is logged in the JDU records.

Recreation

17. The youths in the detention unit receive outdoor recreation in a secure bricked-in yard area directly north of the JDU. Indoor recreation is available at the Eldred Gym of the Vermont State Hospital.

18. New admissions are required to spend two twenty-four hour periods in the Unit prior to being eligible for outside recreation (repeat admissions to the Unit are eligible for recreation after one twenty-four hour period.)

19. Recreation and exercise is considered a privilege which may be withheld for disciplinary reasons.

20. Youths not eligible or who do not wish to participate in recreation are confined to their rooms in the Unit during recreation time unless there is more than one staff person on duty.

21. Recreation usually occurs from one and a half to two hours per day.

22. Youths going to recreation are handcuffed to one another with the first and last person also being restrained with belly restraints. A pat search is done upon return to the Unit.

Telephone

23. Youths are allowed to use the telephone between the hours of 9:45 a.m. to 11:45 a.m. Monday through Friday in order to contact caseworkers and other professionals. Youths are permitted to use the telephone between 5:30 to 7:30 p.m. Monday through Friday to call family or friends or relatives approved by the caseworker. Weekend and holiday times for phone calls are at the discretion of the supervisor on duty.

24. The SRS caseworker can restrict phone calls to the extent that the youth may not be permitted to call anyone other than his or her lawyer.

25. Phone calls may be monitored and logged including date, time, content of conversation, and youth reaction.

Daily Tasks

26. Youths are required to perform daily tasks in their rooms including making their beds, sweeping the floor, mopping the floor, buffing the floor, and emptying and washing out the urinals. The youths are also responsible for cleaning the kitchen after each meal.

Weekly Tasks

27. Youths may also be expected to sweep, mop and buff the Unit floors, clean all trash cans, dust all areas in need of attention, and polish the furniture. The youths are also responsible for cleaning the bathroom.

Education

28. The JDU staff includes a program and activities coordinator who has compiled various education materials that are given to the youths in the JDU. These materials are typically educational workbooks.

29. The youths in the JDU work on these educational materials approximately two and one-half hours per day.

30. A tutor comes to the JDU one day every other week to do some testing on youths and to help them with some basic reading, spelling, and mathematic skills. This tutor is a licensed teacher.

31. The JDU staff that supervise the youths in working with the education materials are not licensed or certified teachers.

32. Although many youths are eligible for special education, they do not receive educational programming pursuant to their individual education plan

(IEP) while confined in the JDU.

Counseling

33. If a youth is at the height of a crisis, Washington County Mental Health services are utilized to provide crisis counseling.

34. JDU staff provide some group therapy in the sense that staff go over value clarification and drug and alcohol issues.

35. The JDU staff also talk to the youth about things going on in their lives.

36. A point system is used whereby if the youth behaves appropriately and participates in activities, they earn points. With the points the youths can purchase cigarettes, snack foods, etc.

37. No individual treatment plans are developed or implemented for youths in the JDU.

38. None of the JDU staff have, or are required to have, a graduate degree in counseling, psychiatry, special education, etc.

39. No vocational training is provided for youths in the JDU.

Duration of Confinement

40. There is no limit to the length of time a youth may remain confined in the JDU.

41. In 1984 there was a daily average of 6.2 youths in the JDU. The daily population in the JDU ranged from two to thirteen youths.

42. The average length of stay in 1984 was approximately eleven days. The length of stay ranged from one day to seven months.

43. The total number of youths confined in the JDU in 1984 was 174. Of these 70 were confined pursuant to court order. 104 youths were confined in the JDU by SRS administrative action without judicial review.

III. SRS ADMINISTRATIVE PROCEDURES FOR CONFINING YOUTH IN THE JUVENILE DETENTION UNIT

1. SRS employs review procedures when considering a restrictive placement for youth in SRS custody. Protocols and criteria have been developed for the secure detention of delinquents in the JDU. SRS, Division of Social Services, has developed a manual known as "A Task-Based System of Case Management and Supervision" (hereinafter TBS). That manual describes secure detention procedures at page VII - A - 1:

Secure Detention Procedures

Placement into the Detention Unit represents a major intervention into a youth's life. Because the Juvenile Detention Unit is considered the state's most restrictive placement resource, there are specific criteria limiting referrals regarding age, legal status, behavior, and placement alternatives. Every youth must be either ordered in by the court or meet all of the following criteria:

1. Age 12 or older,
2. Adjudicated delinquent or with delinquency petition filed,
3. No other appropriate short-term placement exists, and
4. At least one of the following:

a. The youth's behavior represents a current risk or danger to others which may be demonstrated by infliction, or attempt to inflict, physical harm to others.

b. The youth is charged with damage to, or theft of, property and shows a pattern of behavior that has resulted in damage to, or loss of, property, and prior control measures have failed.

c. The youth has a court date, a history of failure to appear, and no responsible adult willing to assume responsibility for his/her appearance.

Behavior such as verbal abuse and refusal to return to placement does not itself constitute a reason for admission. A juvenile who is essentially noncompliant but who is not perceived as a real threat, is not out of control and/or is not a danger, should not be referred to the Unit. The crucial determination should reflect the severity of the current offense, as well as the child's history. A plan of restitution should be a central part of the plan at the time of departure, where appropriate.

No youth is to be placed in the Unit as a result of a mental health crisis. Those youth exhibiting behavior and conditions such as suicide attempts, psychosis, self-mutilation, bizarre and dangerous social interactions, and/or severe drug/alcohol overdose, should be referred to the local community mental health or the alcohol crisis team (See SRS/DMH protocol).

2. The manual also describes the admission procedure at page VII - A - 2:

Admission

Admission in the Juvenile Detention Unit is authorized only upon:

1. District Court Order (Juvenile or Adult Court) -- Presentation of appropriate court order e.g. temporary detention order, detention order, mittimus to lockup or correctional facility or failure to give bail, or mittimus to Commissioner of Corrections for sentence.

OR

2. Social and Rehabilitation Services Administrative Authorization by District Director or designee.

a. The Caseworker determines that the youth meets the criteria and contacts the District Director, or designated Casework Supervisor, for approval.

b. The Caseworker then calls the Unit. The youth is directly admitted unless there are currently seven or more residents. In this case, the Unit calls the Casework Consultant.

c. The Casework Consultant returns call to Caseworker and approves or disapproves the admission.

3. The admission procedure does not include any opportunity for the youth to contest the allegations or whether the SRS criteria are met. No notice or opportunity to be heard is given to an independent interested adult, guardian ad litem or counsel for the youth.

4. The casework consultant, an SRS central office staff person is not involved in the decision to confine a youth in the JDU unless there are already seven or more youths confined there.

5. SRS has a policy and practice of periodically holding staff meetings concerning youths in the JDU to determine the need for continued secure detention. Pursuant to the TBS at pages VII - A - 2 and 3, staffings occur as follows:

72-Hour Staffing

1. The Caseworker reviews the status of the youth with District Director.

2. A telephone staffing takes place between Caseworker and Casework Consultant, who notes decision on SRS-203 and submits to District Director.

3. The Director signs SRS-203 thus confirming the need for continued detention and returns it to the Casework Consultant.

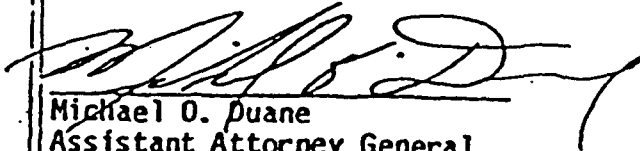
14 Day Staffing

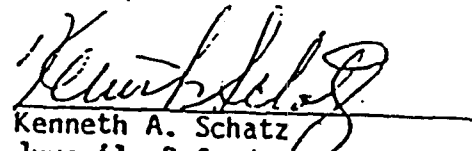
1. Face-to-face staffing between Casework Consultant and Caseworker at Central Office or the Detention Unit.

2. Tasks to facilitate alternative placement are determined and documented on SRS-203. District Director reviews SRS-203 and signs immediately, signifying concurrence, and returns it to the Casework Consultant.

If there is disagreement at the staffing, the Chief of Field Operations' (or designee) decision prevails.

DATED at Montpelier, Vermont this 19th day of April, 1985.


Michael O. Duane
Assistant Attorney General


Kenneth A. Schatz
Juvenile Defender

