

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

J.B., a minor, by and through his)
 next friend, Chanda Hughes;)
 F.J.P., a minor, by and through his next)
 friend, Violene Jean-Pierre; and)
 J.D., a minor, by and through his)
 next friend, Brenda Sheffield; on behalf)
 of themselves and all others similarly)
 situated,)
)
 Plaintiffs,)
)
 v.)
)
 Polk County Sheriff, in his official)
 capacity,)
)
 Defendant.)
 _____)

Civil Case No. _____

COMPLAINT – CLASS ACTION

1. This is a civil class action filed pursuant to 42 U.S.C. § 1983 to vindicate the rights of individuals who are under the jurisdiction of the juvenile court and who are detained in the Central County Jail in Polk County, Florida (“Polk County Jail”), under the Eighth and Fourteenth Amendments to the United States Constitution. Plaintiff minors J.B., F.J.P. and J.D. are children presently incarcerated at the Polk County Jail. They seek injunctive and declaratory relief on behalf of themselves and all others similarly situated.

JURISDICTION

2. This action arises under the Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

VENUE

3. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because “a substantial part of the events or omissions giving rise to the claim[s] occurred” in this district. This Court is authorized to grant declaratory relief under 28 U.S.C. §§ 2201 and 2202, and injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

PARTIES

4. Plaintiffs are children who are currently incarcerated at the Polk County Jail and who are subject to conditions of confinement that violate their rights under the U.S. Constitution.

5. Plaintiff J.B. is 15 years old. He is incarcerated at the Polk County Jail, where he has been ordered detained for 21 days on an allegation that he has violated probation.

6. Plaintiff F.J.P. is 17 years old. He is incarcerated at the Polk County Jail, where he is serving a sentence for a juvenile probation violation.

7. Plaintiff J.D. is 17 years old. He is incarcerated at the Polk County Jail on a charge of juvenile delinquency.

8. Defendant Polk County Sheriff is the duly elected Sheriff of Polk County, Florida. As Sheriff, Defendant oversees law enforcement in the county. Defendant is responsible for ensuring that the Polk County Jail operates in compliance with the laws of the State of Florida and the United States Constitution. He is the final decision maker for the Polk County Jail. Defendant is sued in his official capacity.

CLASS ACTION ALLEGATIONS

9. The named Plaintiffs bring this suit on their own behalf and on behalf of all children who are, or will in the future be, incarcerated at the Polk County Jail.

10. The class is defined as: All individuals under the sole jurisdiction of the juvenile court who are or who will in the future be incarcerated at the Polk County Jail.

11. This suit is properly maintainable as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(2).

12. The class is so numerous that joinder of all members is impractical. Upon information and belief, Polk County Jail currently houses approximately 70 to 80 children. Children charged as juveniles are incarcerated at the jail for varying lengths of time, typically 21 days or less pending disposition of the charges against them, and the population changes on a daily basis.

13. The class also includes future members whose names are not known, as the facility regularly admits new children who are members of the class.

14. There are questions of law and fact common to all class members, including but not limited to whether conditions of confinement of children incarcerated at the Polk County Jail violate their rights under the Eighth and Fourteenth Amendments to the U.S. Constitution.

15. Because the policies, practices and customs challenged in this complaint apply with equal force to the named Plaintiffs and the other members of the class, the claims of the named Plaintiffs are typical of the class in general.

16. The named Plaintiffs will fairly and adequately represent the interests of the class. They possess a strong personal interest in the subject matter of the lawsuit and are represented by experienced counsel with expertise in class action prison conditions litigation in federal court. Counsel have the legal knowledge and resources to fairly and adequately represent the interests of all class members in this action.

17. The Defendants have acted or refused to act on grounds generally applicable to the class: their policies, practices, acts and omissions have affected all class members. Accordingly, final injunctive and declaratory relief is appropriate to the class as a whole.

STATEMENT OF FACTS

18. In 2011, the Florida legislature passed a law for the first time authorizing Counties to house children facing juvenile charges in county jails rather than in the custody of the Florida Department of Juvenile Justice. Polk County is the only county to have taken over the detention of pre-adjudicated juveniles under jail standards based on an adult correctional model rather than the protective DJJ standards developed by professionals with expertise working with children.

19. Since October 2011, Polk County has incarcerated children as young as 8 at the Polk County Jail pending resolution of juvenile charges against them.

20. Defendant Polk County Sheriff has boasted that his objective in incarcerating these children at the jail is to save the county large sums of money previously paid to the Florida Department of Juvenile Justice for their care.

21. Although the Florida juvenile justice system is premised on providing rehabilitation to children charged with delinquency, Defendant describes these children as “incorrigible” – which means incapable of correction – and treats them punitively in accordance with that attitude.

22. Florida’s juvenile justice system is charged with administering a system of “prevention, early intervention, control, and rehabilitative treatment of delinquent behavior.” Fla. Stat. § 985.601(1) (2011). The express purpose of Florida’s juvenile justice system is rehabilitation, not punishment. For this reason, the State of Florida is not required to afford

children with the full panoply of due process safeguards that are provided in adult criminal proceedings. For example, there is no right to a jury trial for children in the juvenile justice system, nor do children have a right to bail. Where, as in Florida, the purpose of detaining and imprisoning children is treatment and rehabilitation, due process requires that the conditions and programs in facilities that house children must be reasonably related to that purpose.

23. This is in stark contrast to Florida's adult criminal justice system, which is intended to exact punishment, not provide rehabilitation.

24. Like Florida Department of Corrections facilities, the Polk County Jail was built to house adults. Although youth are kept in separate units, they are housed in a building that also houses adults.

25. Defendant subjects children to adult correctional conditions that are in violation of the U.S. Constitution, harming and placing children at unnecessary and unacceptable risk of physical and emotional harm.

26. At the Polk County Jail, children are housed in cells without an adult presence to supervise them, leaving them unattended. Rather than provide adequate staffing and training, the Defendant fails to supervise and protect children. Instead, the Polk County Jail unlawfully uses isolation of children in cages, "lockdown" and chemical agents to punish children. Further, the Defendant fails to provide children in its custody with acceptable standards of care and treatment for detained children and denies them the right to individualized care and treatment.

27. The Defendant fails to adequately protect the youth from harm by refusing to provide appropriate levels of supervision. As a result, children predictably fight among themselves – at times causing each other serious injury. The Defendant allows these fights to occur and does nothing to prevent the conflict that is inevitable when multiple teenagers are

confined in close quarters. In the aftermath of these fights, staff respond with excessive force – punishing youth with the use of dangerous chemical agents that cause burning, choking, difficulty breathing and vomiting.

28. Defendant and his agents use these chemical agents without employing common safeguards, such as storage in a locked box, and deploy the chemicals punitively and without regard for children's age, size and health conditions that may make such use of force particularly harmful or even lethal.

29. Defendant does not provide children with the developmentally appropriate interventions and rehabilitative services that the juvenile justice system is intended to provide. Instead, Polk County Jail staff routinely treat children punitively – using violence, taunts, threats and extraordinarily foul language.

30. Despite state and federal requirements to provide education, children are offered inadequate educational services. Rather than provide an appropriate education, Defendant lumps children of different ages and grades together in a makeshift classroom at the jail, without any regard to a child's individual learning needs. When children are not in the makeshift classroom, the Defendant sometimes locks them in cells or forces them to spend hours or sometimes days in a "cage." The cage is a box-like enclosure made with metal grates on all sides. It is empty, except for a narrow hard bench against one side.

31. Children are often forced to eat in their cells, where their toilets are located. These toilets are rarely cleaned; to clean the toilet, the children must use the shower soap they receive for their personal hygiene.

32. The children are permitted outdoors only sporadically, and never for more than an hour a day.

33. Despite the rehabilitative purpose for which these children are detained, Defendant does not provide them with any rehabilitative services, such as counseling, treatment, and developmentally appropriate activities that are reasonably related to the purpose of their detention.

PLAINTIFFS' FACTS

34. Plaintiff J.B. is 15 years old. He is in the eighth grade. Plaintiff J.B. is not receiving, and has not received, the rehabilitative services his detention is supposed to provide as a child in the Florida juvenile justice system. Additionally, J.B.'s education has been interrupted by his detention in the Polk County Jail, where he does not receive appropriate educational services. Staff have taunted J.B. with foul language and gestures and used hurtful and demeaning terms, including calling J.B. a "fat head." They have placed him on lockdown in his cell for no apparent reason and have repeatedly threatened to do so on other occasions.

35. Plaintiff F.J.P. is 17 years old. He is a senior in high school. He intends to pursue a college education. Despite the fact that he is serving a juvenile sentence at the jail for a probation violation, he is not receiving, and has not received, the rehabilitative services to which he is entitled under federal law. Instead, he spends his days enduring a punitive environment where he has witnessed staff mace youth and been threatened with lockdown or isolation. Staff have used degrading language towards F.J.P. and foul language around him and other children. Additionally, Plaintiff F.J.P.'s education has been interrupted by his detention in the Polk County Jail, where he does not receive appropriate educational services.

36. Plaintiff J.D. is 17 years old. He is a junior in high school. Plaintiff J.D. is not receiving, and has not received, the rehabilitative services to which he is entitled under federal law. Instead, he spends his days enduring a punitive environment

37. On March 5, 2012, guards sprayed Plaintiff J.D. in the face with a chemical agent after they ordered him to get dressed for school more quickly. After making him, the guards forced him to the ground. One of the guards twisted his arm behind him; another had his knee in J.D.'s back. One guard stated, "We're going to break it [your arm], b**ch." This occurred in view of most of the children on the unit, who were watching from either directly outside J.D.'s cell door or downstairs, where they had a clear view of the room.

38. Plaintiff J.D. experienced burning in his eyes, in his mouth and on his skin as a result of being sprayed with the chemical agents.

39. The guards forced J.D. down the stairs. Once outside of the dorm area, they forced him to the ground again. J.D. was crying. J.D. was put in the cage for approximately 90 minutes. He was not allowed to wash his face or shower during that time. As a result, during this time he experienced extreme discomfort and pain.

40. J.D. continues to feel unsafe and in fear that this will reoccur. Following the incident, a guard warned the other children to behave, implying that if they failed to do so, they would suffer J.D.'s fate.

41. J.D. was placed on lockdown for the rest of the day. His lunch tray was put in front of his door, and a guard told him that he could eat it if he could access it through the locked door. This was of course impossible, so J.D. went without lunch. He was similarly denied access to his dinner tray. During the entire day on lockdown, J.D. was only able to eat a snack that he was able to slide through the crack between the locked door and the floor. He did not eat again until breakfast the next day.

EXHAUSTION

42. Plaintiffs have exhausted all available administrative remedies.

CAUSES OF ACTION

Count 1

**Eighth and Fourteenth Amendment Violation:
Failure to Provide Rehabilitative Services**

43. Defendant's policies and practices of failing to provide Plaintiffs, and all those similarly situated, with rehabilitative services violate the Eighth and Fourteenth Amendments.

Count 2

**Eighth and Fourteenth Amendment Violation:
Dangerously Violent Conditions of Confinement**

44. Defendant's policies and practices of failing to protect Plaintiffs, and all those similarly situated, from harm, and treating children with unlawful force and subjecting them to unreasonable restraints, create dangerously violent conditions of confinement in violation of the Eighth and Fourteenth Amendments.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Honorable Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Certify this matter as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(2) consisting of a class of all individuals under the jurisdiction of the juvenile court who are or who will be incarcerated at the Polk County Jail;
- c. Declare that the acts and omissions of Defendant violate the U.S. Constitution;
- d. Enter a preliminary and permanent injunction requiring the Defendant, his agents, employees and all persons acting in concert with Defendant to cease their unconstitutional and unlawful practices;
- e. Award Plaintiffs reasonable costs and attorney's fees under 42 U.S.C. § 1988; and

f. Grant Plaintiffs such other relief as this Court deems just.

Dated: March 15, 2012

Respectfully submitted,

/s/ Miriam Haskell
Miriam Haskell
Fla. Bar. No. 69033
Southern Poverty Law Center
P.O. Box 370037
Miami, FL 33137
Tel: (786) 347-2056
Fax: (786) 237-2949
miriam.haskell@splcenter.org

Tania Galloni
Fla. Bar. No. 619221
Southern Poverty Law Center
P.O. Box 370037
Miami, FL 33137
Tel: (786) 347-2056
Fax: (786) 237-2949
tania.galloni@splcenter.org