


FILED

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

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CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY  DEPUTY

K.C., on behalf of herself and all others
similarly situated,

F.T., a minor, by and through her next friend
S.W., on behalf of herself and all others
similarly situated,

N.E., a minor, by and through her next friend,
P.D., on behalf of herself and all others
similarly situated,

T.R., a minor, by and through her next friend,
N.B., on behalf of herself and all others
similarly situated,

H.C., a minor, by and through her next friend,
N.B., on behalf of herself and all others
similarly situated,

Plaintiffs,

v.

Richard Nedelkoff, in his official capacity as
Conservator of the Texas Youth Commission,

Cherie Townsend, in her official capacity as
Executive Director of the Texas Youth
Commission,

James Smith, in his official capacity as
Deputy Commissioner for Residential and
Parole Services of the Texas Youth
Commission, and

Teresa Stroud, in her official capacity as
Superintendent of Brownwood State School,

Defendants.

Civil No. 1:08-cv-456

Hon. Sam Sparks

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

PRELIMINARY STATEMENT

1. The Texas Youth Commission (TYC) is the juvenile corrections agency of the State of Texas. Most girls held in TYC custody are confined in a youth prison called Brownwood State School (Brownwood). Brownwood is also known as the Ron Jackson

State Juvenile Correctional Complex. The majority of girls confined in Brownwood have suffered previous, often severe and persistent, physical, sexual, and/or emotional abuse resulting in trauma. Almost all of the girls have been diagnosed with mental illness.

2. Girls incarcerated in Brownwood are frequently subjected to punitive solitary confinement, sometimes for months, in bare and oppressive conditions. Such confinement provokes and exacerbates tendencies to self-harm, to which TYC workers respond in some instances with brutal force, and in other instances with complete indifference. Girls in Brownwood are also frequently subjected to unjustified and invasive strip searches and pat searches conducted by TYC workers. Girls resisting such sexual exposure are subjected to excessive physical force.

3. Punitive solitary confinement and routine and invasive searches inflict severe psychological damage and concomitant physical injury on incarcerated girls, especially in light of the girls' youth, their histories of abuse, and their mental health diagnoses. Such treatment is degrading and humiliating; as a consequence, girls leave TYC custody more physically and emotionally damaged than when they entered.

4. This civil rights action is brought by currently incarcerated girls on behalf of all girls and young women who are now or in the future will be held in Brownwood. This action challenges TYC policies and practices permitting the punitive imposition of solitary confinement on girls in the absence of an immediate threat of physical injury. This action also challenges the routine and unwarranted strip- and/or pat-searching of incarcerated girls. By maintaining such policies and practices, TYC violates the girls' rights under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution. Such policies and practices also violate customary international law,

including laws extending special protections to children, and prohibiting torture and other forms of cruel, inhuman, and degrading treatment or punishment.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1343(3) and (4); 28 U.S.C. §1331; 28 U.S.C. §§2201 and 2202; 20 U.S.C. §§1401 *et seq.* and regulations promulgated thereunder; and customary international law, incorporated under federal common law. Plaintiffs' claims for relief are authorized by 42 U.S.C. §1983 which provides for redress of deprivations under color of state law of rights guaranteed by the Constitution and laws of the United States, including, *inter alia*, customary international law.

6. Venue is proper in this district pursuant to 28 U.S.C. §1391 because one or more defendants reside in the Western District of Texas, and a substantial part of the events or omissions giving rise to the claims herein asserted occurred in the Western District of Texas.

PARTIES

A. Plaintiffs

7. Each minor plaintiff brings this action by and through her next friend. Each plaintiff and each next friend is a resident of the State of Texas. Each plaintiff is currently confined in Brownwood and is subject to the policies and practices of defendants. Each plaintiff has suffered and will continue to suffer actual injury as a result of defendants' policies and practices and the conditions of confinement in Brownwood.

8. Plaintiff K.C. is eighteen years old. K.C. was committed to TYC custody in March 2005, when she was fourteen years old. She is currently incarcerated in

Brownwood. Defendants are aware that K.C. suffered severe and persistent physical and sexual abuse throughout her childhood. Defendants are also aware that K.C. has been diagnosed with bipolar disorder, mood disorders, and other psychological conditions. Nevertheless, defendants have subjected K.C. to punitive solitary confinement over one-hundred times for periods of up to three months. K.C. has been subjected to solitary confinement for self-cutting, talking back, refusing to talk, standing in the doorway of her cell, and her inability to run the number of laps required by a TYC worker. K.C. has been strip-searched or pat-searched on numerous occasions, including upon entering and leaving solitary confinement.

9. In one instance when K.C. resisted being taken to the solitary confinement unit, TYC workers handcuffed her, threw her to the ground, and pepper sprayed her three times in the face, including her eyes. While held in solitary confinement, K.C. has been tied in leather straps by workers, pulled up by her arms causing extreme pain and injury to her shoulders, and left face-down in the middle of the concrete cell floor for long periods of time. On one occasion while in solitary confinement, K.C. banged repeatedly on the door of the isolation cell and swore. In response, TYC workers opened the door of the cell, sprayed pepper spray into the cell, and closed the door, leaving K.C. trapped in a cloud of pepper spray. K.C. suffered burning pain on the skin of her entire body and had difficulty breathing.

10. While held in solitary confinement, K.C. has on several occasions banged her head against the cinderblock wall, leaving blood stains on the wall of the cell, and has also bitten herself multiple times, to the point of drawing blood, with resulting scars. On one such occasion, TYC workers pepper sprayed K.C. in response to her self-harm. On a

separate occasion, three or four workers in riot gear wielding large shields rushed into the isolation cell. They forced K.C. to the ground, subjected her to leather restraints, and left her face down on the floor. On yet other occasions when K.C. has attempted self-harm while in solitary confinement, TYC workers have failed to intervene at all, merely observing while K.C. harmed herself. On one such occasion, K.C. tied a ligature around her neck. TYC workers did nothing until after K.C. lost consciousness.

11. As a result of the solitary confinement to which K.C. has been subjected, K.C. has suffered fear, anger, and decreased self-esteem. K.C. has difficulty sleeping while in solitary confinement because of the constant light and loud noises in the isolation unit. When K.C. is thrown to the ground and restrained by male TYC workers, she suffers flashbacks to childhood rapes. When K.C. is strip-searched or pat-searched, she feels degraded and humiliated. K.C. has attempted suicide multiple times while in TYC custody.

12. Plaintiff F.T. is fifteen years old. F.T. brings this action by and through her next friend, S.W. F.T. was committed to TYC custody in May 2007, when she was fourteen years old. She is currently incarcerated in Brownwood. Defendants are aware that F.T. was sexually assaulted by her father and that she has a history of psychiatric illness, including depression, but they have nevertheless subjected F.T. to dozens of instances of punitive solitary confinement for periods of up to two months, as well as unwarranted and degrading searches. F.T. has been subjected to solitary confinement for suicidal gestures and self-harm.

13. The psychological stress of solitary confinement subjects F.T. to feelings of depression, frustration, and isolation so intense that on one occasion she attempted

suicide in the isolation cell. F.T. was pepper sprayed by TYC workers for attempting suicide. On other occasions, the stress of solitary confinement has caused F.T. to bang her head and hands repeatedly on the walls and the doors of the cell. On yet other occasions, F.T. has banged on her cell demanding a drink of water, or to be allowed use of a bathroom. At such times, TYC workers have pepper sprayed F.T. in her face, including her eyes, causing her extreme pain and difficulty breathing.

14. F.T. has been strip-searched or pat-searched on numerous occasions, including upon entering and leaving solitary confinement. On several occasions, F.T. has refused to be strip-searched when being taken into solitary confinement. At such times, TYC workers have bound F.T. in leather straps and forced her to lie face down or on her side on the dirty concrete floor of an isolation cell known as “400 pod” until F.T. submits to strip-searching. On one occasion, F.T. attempted to resist the application of leather restraints, and was subjected to physical force by three TYC workers. F.T. felt violated during this incident, as she did on other occasions when she was strip-searched.

15. Plaintiff N.E. is fifteen years old. N.E. brings this action by and through her next friend, P.D. N.E. was committed to TYC custody in November 2006, when she was fourteen years old. She is currently incarcerated in Brownwood. Defendants are aware that N.E. was abused by her father and stepfather, witnessed the abuse of her mother, and has been diagnosed with bipolar disorder, trichotillomania (the repetitive pulling out of one’s own hair), and other mental disorders. Nevertheless, N.E. has been subjected to dozens of instances of punitive solitary confinement for periods of up to three months, and unwarranted and degrading strip searches and pat searches. N.E. has been subjected to solitary confinement for minor misbehavior such as refusing to stand

with her hands behind her back. When held in solitary confinement, N.E. has difficulty sleeping because the lights in the isolation cells are never turned off.

16. Plaintiff T.R. is thirteen years old. T.R. brings this action by and through her next friend, N.B. T.R. was committed to TYC custody in May 2007, when she was twelve years old. She is currently incarcerated in Brownwood. Prior to her confinement in TYC, T.R. attempted suicide by drinking bleach and by stabbing herself, and was diagnosed with bipolar disorder and prescribed psychiatric medication. T.R. has been subjected to punitive solitary confinement and unwarranted and degrading strip searches and pat searches. On one occasion while in solitary confinement, T.R. kicked the door of her cell. In response, five male TYC workers dressed in riot gear and wielding shields and pepper spray rushed into the cell. They pressed T.R. into a corner using the shields, and pepper sprayed T.R. in her face, including her eyes, causing her to cough up blood.

17. Plaintiff H.C. is thirteen years old. H.C. brings this action by and through her next friend, N.B. H.C. was committed to TYC custody in October 2007. She is currently incarcerated in Brownwood. H.C. has been subjected to punitive solitary confinement and unwarranted and degrading strip searches and pat searches. H.C. has been subjected to solitary confinement for minor misbehavior and self-harm including banging her head against a wall. In one instance, H.C. was threatened with solitary confinement for having her shirt untucked. When she verbally refused to be placed in solitary confinement, she was assaulted by several TYC workers, and suffered swelling in her shoulder as a consequence. On one occasion while held in solitary confinement, H.C. scraped her arm with a toothbrush. In response, three TYC workers rushed into her cell and pepper sprayed H.C.'s face, including her eyes. H.C. could not breathe and banged

on the door while pleading for help. Only later was the pepper spray washed off her face. On another occasion, H.C. was ordered to remove her clothing, including her undergarments. When H.C. verbally refused, male TYC workers attempted to take H.C. to “400 pod.” H.C. resisted being taken to 400 pod, and was forcibly restrained by TYC workers. During this incident a male worker put his body weight on H.C.’s back, cutting off her breath and causing her to vomit.

B. Defendants

18. Defendant Richard Nedelkoff is the Conservator of TYC. He is responsible for ensuring that children and youth in TYC custody are provided appropriate supervision and treatment, and are protected from abuse. Defendant Nedelkoff is responsible for formulating, implementing, and approving policies and decisions affecting children and youth confined in Brownwood.

19. Defendant Cherie Townsend is the Executive Director of t TYC. She is responsible for ensuring that children and youth in TYC custody are provided appropriate supervision and treatment, and are protected from abuse. Defendant Townsend is responsible for formulating, implementing, and approving policies and decisions affecting children and youth confined in Brownwood.

20. Defendant James Smith is the Deputy Commissioner for Residential and Parole Services of TYC. He is responsible for directing and overseeing the operation of TYC residential facilities, including the provision of appropriate supervision and treatment to children and youth incarcerated in such facilities, and their protection from abuse. Defendant Smith is responsible for formulating, implementing, and approving

policies and decisions affecting children and youth confined in Brownwood, and for training, directing, and supervising staff at Brownwood and other TYC youth prisons.

21. Defendant Teresa Stroud is the superintendent of Brownwood State School. She is responsible for formulating, implementing, and approving policies and decisions affecting children and youth confined in Brownwood, and for training, directing, and supervising staff at Brownwood. Defendant Stroud is also responsible for the day-to-day administration of Brownwood.

22. The policies, practices, and conditions described herein result from specific decisions, official policies, or customs of defendants. Each defendant has actual or constructive knowledge of the policies, practices, and conditions alleged here. Each defendant has acted, and continues to act, under color of state law with respect to all matters alleged here. All defendants are sued in their official capacities.

STATEMENT OF FACTS

23. Brownwood State School, also known as the Ron Jackson State Juvenile Correctional Complex, is a “high security” youth prison located in central Texas. Brownwood serves as the intake or reception site for all girls committed to TYC custody, and is also the permanent placement for nearly all girls held in custody. Approximately 150 girls are currently confined in Brownwood. TYC has alternated between confining only girls in Brownwood, and confining boys and girls in separate sections of the facility.

24. Girls between the ages of ten and sixteen who are adjudicated delinquent for acts ranging from minor property offenses to serious person offenses can be ordered into confinement in Brownwood. Girls confined in Brownwood fit the national profile of incarcerated girls in that the majority of them have childhood histories of often prolonged

and severe physical, sexual, and/or emotional abuse. The vast majority of girls confined in Brownwood have diagnosed psychiatric conditions, and often multiple diagnoses.

25. Nevertheless, defendants routinely subject girls confined in Brownwood to profoundly injurious policies, practices, and conditions. As a proximate result of defendants' policies, practices, acts, and omissions, plaintiffs have suffered, do suffer, and will continue to suffer immediate and irreparable injury. Plaintiffs have no adequate or complete remedy at law to redress the wrongs described here, and they will continue to be irreparably injured by the policies, practices, acts, and omissions of defendants unless this Court grants the injunctive relief that plaintiffs seek.

A. Punitive Solitary Confinement of Girls

26. Defendants punish plaintiffs by subjecting them to solitary confinement in one or more isolation units euphemistically termed the "Security Program" or "security." Defendants do not limit the use of solitary confinement to those instances in which plaintiffs pose an immediate threat of physical injury, and every other possible intervention has been tried but has failed. Defendants also fail to release girls from isolation even when the girls are in control of their actions. Instead, defendants regularly impose punitive solitary confinement on girls for major and minor misbehavior. Solitary confinement is also imposed on girls who attempt suicide, commit self-harm, or merely state the desire to commit suicide or self-harm. In such instances, solitary confinement is imposed in lieu of all or part of the counseling and other therapeutic programming that girls in danger of self-harm should receive.

27. Terms of solitary confinement vary from brief periods to terms of months, and girls are often subjected to multiple successive periods of isolation. Depending on

the purported reason for imposition of solitary confinement and other factors, the degree of isolation imposed on girls is total or less than total.

28. Conditions in solitary confinement are stressful, degrading, and debilitating. Girls are confined alone in oppressively cold concrete and cinderblock cells. The cells contain nothing other than a metal slab intended for use as a bed, and in some cases a metal toilet. At night, thin mattresses are placed over the metal slabs. Mattresses are often confiscated during the day, leaving girls with no place to sit or lie except on the concrete floor or the metal slab. Solitary confinement cells are lit twenty-four hours a day. The lights are dimmed at night, but not shut off. Girls held in solitary confinement are denied any personal possessions and suffer enforced idleness. Often, girls lie curled in the fetal position on the floor of the cell or the metal slab. At other times, they beat their heads, hands, or feet against the cell walls.

29. Girls in solitary confinement are targeted for the excessive use of force for self-harm or behavior such as crying out or striking the cell walls or doors. In response to such behavior TYC workers, including male workers, dressed in riot gear and wielding shields, charge into the girls' cells. Girls are pressed into one section of the cells using the shields, or pepper sprayed in their faces, including their eyes, or bound by their hands and feet with metal handcuffs and/or leather restraints. Often, TYC workers employ a combination of these abusive practices. At other times, TYC workers simply observe girls committing self-harm and do nothing to intervene.

30. Girls subjected to solitary confinement for actual or potential self-harm are forced to remove all of their clothing, including their undergarments, and to wear a

“suicide gown” made of a stiff material that does not provide adequate coverage or warmth.

31. The solitary confinement of plaintiffs is cruel, inhuman, and degrading, and causes severe psychological injury. Girls held in solitary confinement experience extreme feelings of abandonment, loneliness, anxiety, rage, worthlessness, and despair. Such experiences frequently trigger or exacerbate potentially debilitating emotional and psychological problems. Solitary confinement does not prevent girls from harming themselves; instead, isolation reinforces their impulse to self-harm. Girls in solitary confinement frequently attempt suicide or commit self-mutilation, most often by cutting or biting their own arms or legs or by banging their heads or other body parts against the cinderblock walls or concrete floors of the isolation cells. Solitary confinement also worsens girls’ behavior, thereby triggering a cycle of additional punitive confinement.

32. Since the filing of this action in June 2008, TYC workers and administrators have sometimes failed entirely to respond to suicidal behavior and other self-harm by girls. In some instances, girls who attempt to hang themselves have been simply observed passively by TYC workers, and no therapeutic intervention of any kind is attempted until after the girls lose consciousness. This TYC practice poses an imminent danger of death or serious bodily harm.

33. As a result of defendants’ continuing policies and practices of subjecting girls to punitive solitary confinement, girls suffer physical injuries, including injuries inflicted while being forced to enter solitary confinement; injuries inflicted while their clothing is being forcibly removed by TYC workers; injuries inflicted during the application of physical, mechanical, or chemical force; and self-inflicted injuries. These

practices also impose an excessive risk of substantive harm, including the possibility of death.

B. Excessive and Unwarranted Strip-Searching and Pat-Searching of Girls

34. Girls confined in Brownwood have been subjected to routine, and at times frequent, strip searches. Before this action was filed on June 12, 2008, girls were strip-searched every time they were brought to solitary confinement and sometimes when they were taken out of solitary confinement. This practice was applied to all girls, including girls subjected to solitary confinement for attempting suicide, committing self-harm, or expressing a desire to commit suicide or self-harm. Girls were also strip-searched when leaving work assignments located within Brownwood, when returning from family visits, and at other times when there was no individualized suspicion that they were carrying dangerous contraband. When girls refused strip searches or refused to take off their clothes and put on a “suicide gown,” they were threatened with force or otherwise coercively subjected to searches.

35. After this action was filed, strip searches were replaced by invasive and unnecessary pat searches. TYC workers now pat-search girls when girls are taken into and out of solitary confinement, and at other times when there is no individualized justification for a search. Pat searches, as conducted by TYC workers, require the girl being searched to turn her back to a worker and lean forward against a wall or door. The worker then runs her hands over the girl’s body, including the skin on the girl’s stomach and under the girl’s breasts. TYC’s substitution of pat searches for strip searches is not an adequate response to the problem of unnecessary and invasive searches; moreover, the use of pat searches is not codified in statute or regulation, permitting reversion at any

time to the use of strip searches. Girls who refuse to take off their clothes and put on a “suicide gown,” are still threatened with force or otherwise coercively subjected to the removal of their clothing.

36. Strip-searching and pat-searching girls, especially those who are known to have a history of sexual, physical, and/or emotional abuse, is degrading and humiliating, and causes profound emotional damage. Defendants know, or reasonably should know, that the majority of girls confined in Brownwood have histories of sexual, physical, and/or emotional abuse. Defendants are further aware that such abuse often begin early in the girls’ childhoods, is severe and sustained, and results in trauma causally related to the delinquent behavior for which girls’ are incarcerated. Defendants know, or reasonably should know, that exacerbating girls’ trauma will hinder or render impossible girls’ effective rehabilitation, and that it is likely to cause emotional damage. Nevertheless, invasive searches are routinely conducted even when there is no reasonable basis to suspect that a girl is carrying any dangerous contraband.

CLASS ACTION ALLEGATIONS

37. Plaintiffs bring this action on their own behalf and on behalf of all similarly situated persons pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The class that plaintiffs seek to represent consists of all girls and young women who are now, or in the future will be, confined in Brownwood State School.

38. This case is appropriate for certification as a class action because the class is so numerous and fluid that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the representative parties are typical of the claims of the class; and the representative parties and their counsel will fairly and

adequately protect the interests of the class. In addition, defendants have acted on grounds generally applicable to the class, such that final injunctive relief and/or declaratory relief is appropriate with respect to the class as a whole.

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

CAUSES OF ACTION

Count 1

(Due Process)

40. Defendants' policies, practices, acts, and omissions, and the conditions of confinement maintained in Brownwood State School, specifically those concerning the imposition of solitary confinement and strip searches and/or pat searches, constitute a substantial departure from accepted professional judgment and standards, and deny incarcerated girls their right to receive treatment in the least restrictive setting. These policies, practices, acts, and omissions, and conditions of confinement subject plaintiffs to denial of due process of law, in violation of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

Count 2

(Cruel and Unusual Punishment)

41. Defendants, through the policies, practices, acts, and omissions, and the conditions of confinement maintained in Brownwood State School, specifically those concerning the imposition of solitary confinement and strip searches and/or pat searches, knowingly subject plaintiffs to a substantial risk of serious mental, emotional, and physical harm, thereby subjecting plaintiffs to cruel and unusual punishment in violation

of the Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

42. Defendants' policies, practices, acts, and omissions, and the conditions of confinement maintained in Brownwood State School constitute and evidence deliberate indifference to the plaintiffs' constitutional rights.

Count 3
(Bodily Integrity/Privacy)

43. The routine conduct of strip searches and pat searches, including forcible searches and searching of girls who attempt suicide, commit self-harm, or express a desire to commit suicide or self-harm, is unreasonable, and excessively and unjustifiably invades the bodily privacy of incarcerated girls. Such practice thereby violates plaintiffs' rights under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

Count 4
(Customary International Law)

44. In light of incarcerated girls' special status as children; the frequent presence of sexual, physical, and/or emotional abuse or other trauma in their childhood histories, of which defendants have knowledge; and their existing psychiatric conditions, of which defendants also have knowledge, defendants' practices and policies of subjecting girls to punitive solitary confinement under harsh conditions, accompanied by unjustified strip searches and/or pat searches as described above, violate customary international law as reflected in numerous human rights treaties and other instruments, including *inter alia*, Articles 3, 19, 23, 34, 37 and 39 of the Convention on the Rights of the Child and Articles 7 and 10 of the International Covenant on Civil and Political

Rights, which afford special measures of protection to children and prohibit all forms of torture and other forms of cruel, inhuman, or degrading treatment or punishment.

45. Defendants' violations of customary international law are actionable in this Court pursuant to 42 U.S.C. § 1983 in that customary international law has been held, since the Constitution's adoption, to be a part of the laws of the United States.

PRAYER FOR RELIEF

Wherefore, plaintiffs respectfully request that this Court grant the following relief:

- a. Permit the named plaintiffs to proceed using pseudonyms;
- b. Certify this case as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure;
- c. Declare that defendants have violated rights guaranteed plaintiffs by the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution and customary international law by subjecting plaintiffs to the policies, practices, and conditions of confinement described here;
- d. Permanently enjoin defendants, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from engaging in the unlawful acts described here;
- e. Retain jurisdiction over defendants until such time as the Court is satisfied that the unlawful policies, practices, acts, and omissions complained of here no longer exist and will not recur;
- f. Award plaintiffs reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 1988;

- g. Grant such other and further relief as this Court deems just and proper under the circumstances.

Respectfully submitted,

BY: _____

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