

are subject to this punishment for minor infractions such as “talking too much” or failing to sit in the “back of their cells.” Staff frequently spray all of the youth on a living unit with this substance when only one resident has disobeyed an order.

2. On behalf of themselves and all similarly situated children, the named Plaintiffs seek declaratory, preliminary and permanent injunctive relief requiring that the Defendant cease its unconstitutional policies and practices at the Juvenile Detention Center and to provide class members with constitutionally required care and living conditions.

3. The children are joined in this action by Disability Rights Mississippi (“DRMS”), a non-profit agency with a federal mandate to protect the rights of children with disabilities who are confined in the Juvenile Detention Center. DRMS asserts its right to meet with children who are confined in the Juvenile Detention Center and to conduct regular monitoring and investigations in the Juvenile Detention Center. Plaintiff DRMS seeks declaratory and preliminary and permanent injunctive relief to prevent Defendant from denying DRMS, as authorized by its federal enabling statutes, full, complete, timely and unaccompanied access to the Juvenile Detention Center, its staff, and youthful residents, as well as full, complete, and timely access to records.



4. E.W. is a sixteen-year-old girl with learning disabilities and serious mental illnesses who is currently imprisoned in the Juvenile Detention Center. On behalf of herself and all similarly situated children, she brings this action by and through her next friend and mother, Kendra Watts. She has not been adjudicated delinquent by the youth court, and is detained while she awaits her court date. For the past two weeks, E.W. has been confined to her cell for 23 hours a

day

children, all of whom are entitled to reasonably safe and sanitary conditions of confinement, freedom from unreasonable bodily restraint, and protection from harm.

8. Plaintiff Disability Rights Mississippi (“DRMS”) is a nonprofit organization with a federal mandate to protect and advocate for the rights of persons with disabilities in Mississippi. Federal law extends this mandate to children with disabilities who are confined to juvenile detention centers. Through a contracted agent, DRMS devotes significant resources to investigating conditions of confinement and advocating on behalf of youth housed in juvenile facilities across the state of Mississippi. DRMS and its contracted agent, the Mississippi Youth Justice Project, have made considerable efforts to gain access to the children with disabilities who are confined in

the work of the youth court.” Miss. Code Ann. § 43-21-19. Lauderdale County is the entity with ultimate responsibility to secure and protect the rights of children held in the Juvenile Detention Center.

10. The Defendant ignores well-established law and acts with deliberate indifference by subjecting the named Plaintiffs and all similarly situated children to shockingly inhumane conditions of confinement, physical abuse, and inadequate mental health care.

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programming, services, or interventions that could be reasonably related to their treatment or rehabilitation. Youth are not given adequate individualized counseling services to assess and meet their rehabilitative goals and needs. Youth do not receive adequate transitional services to assist their reintegration into the community and to help reduce potential recidivism.

30. Youth imprisoned in the Juvenile Detention Center spend the majority of their time locked-down in their cells. Recreation is inadequate and often nonexistent. Many youth sit or lie idle in rooms for extended periods of time. Youth confined in this manner suffer deteriorating physical and mental health.

31. Upon information and belief, and based on interviews with youth who were recently held in the Juvenile Detention Center, other putative class members are regularly denied adequate mental health care and rehabilitative services.

Recreation and Sanitary and Living Conditions

32. The Defendant has a custom and/or practice of failing to provide sanitary facilities for the children in its care. Staff do not clean the living facilities regularly. Toilets and walls are stained with mold, rust and human excrement. The Plaintiffs are frequently bit by various insects. Dust commonly covers the living areas. The children, including the Plaintiffs, have to sleep on mats that often smell of urine and use stained, torn sheets. Youth often have to eat in their cells, and due to the small size of the cells, this means that they are forced to eat in close proximity to their filthy toilet facilities.

33. The Defendant has a custom and/or practice of failing to provide adequate living quarters for the children in its care. Youth are forced to live in extremely small, dark cells that contain only a toilet, sink and bunk bed. Girls, including Plaintiff J.A., who have not displayed any suicidal tendencies and have not voiced any suicidal thoughts or inclination are made to sleep in

37. Defendant has a custom and/or policy of failing to provide children with access to regular physical exercise, recreation or any other rehabilitative programming. Youth are occasionally permitted to exercise for thirty minutes, but generally youth are denied the opportunity to engage in any large muscle exercise for weeks at a time. Female youth are given even fewer opportunities for recreation than male youth.

~~Recreation opportunities in detention and supervision~~

38. The Defendant has a custom and/or practice of failing to ensure the proper training and supervision of Juvenile Detention Center staff. Consequently, the safety and security of youth at the Juvenile Detention Center is constantly threatened by the extreme incompetence of staff and the lack of adequate supervision and oversight. Staff frequently resort to physical violence and respond to youths' requests for help or assistance with taunts, profanity, and indifference.

~~Proper supervision and discipline~~

39. The Defendant has a custom and/or practice of subjecting youth to arbitrary and excessive discipline that is designed to punish and cause discomfort rather than maintain and restore discipline. Defendant has an unlawful pattern and practice of spraying children—including children with disabilities who may have challenges moderating their behavior—with mace for minor infractions like talking too loudly or failing to sit in the “back of their cells.” Staff do not inform youth of the facility’s rules upon intake, and as a result, children often unknowingly violate rules, resulting in the use of mace. Staff spray mace directly inside the children’s cells and sometimes directly on their skin—causing an excruciating burning sensation. Youth who have been maced are frequently not allowed to bathe until the following morning, forcing them to remain in discomfort for an extended period of time.

40. The use of mace is purely punitive and arbitrary. Staff frequently spray all the youth on a living unit with mace when only one resident disobeys an order. As a result of this practice, youth live constantly with the threat of being sprayed with mace—even when they themselves comply with all directives. The use of mace is not tailored to respond to the alleged rule violation or threat, if there is one, and is not limited to situations where it is necessary to restore or maintain order.

41. During the first week in November in 2009, Plaintiff C.M. was sprayed with mace by a guard while he was in his cell, after another youth threw a tissue out of his cell. Because the guard could not determine which child had thrown the tissue, the guard sprayed all of the boys at the Juvenile Detention Center at the time with mace as a punishment while the boys were secured in their cells.

42. Guards frequently threaten youth with mace for minor rule infractions or for behavior that is not prohibited. Guards have these

communicate with the children through a door, while a guard stands next to the youth, monitoring what the youth says. This surveillance often prevents youth from reporting any institutional or treatment deficiencies to their parent or guardian.

45. Youth are not allowed to use the telephone to communicate with their family. Access to the telephone is especially important for children with limited reading and writing skills in maintaining contact with family, as well as for children whose families are unable to visit during in-person visitation hours due to work or other conflicts.

Procedure on Use of Force

46. The Defendant and its agents have subjected the Plaintiffs to unlawful harassment, taunting, and threats as a result of the Plaintiffs' participation in DRMS's investigation. The

Defendant and its agents have threatened youth with mace, longer stays in deten43S) Td (s)Tj 4.68896 0 Td ()Tj

Mental Illness Act of 1986 (“PAIMI Act”) provides for the protection of rights of individuals with mental illness, 42 U.S.C. §§ 10801 *et seq.*; and the Protection and Advocacy of Individual Rights Program (“PAIR Act”) was created to protect the rights of all other individuals with disabilities who are not covered under the PADD and PAIMI Acts. 29 U.S.C. §§ 794e *et seq.*

53. Pursuant to federal law, DRMS has rights to:

- a. reasonable unaccompanied access, for monitoring and investigato¹⁵

physical access to the facilities housing these individuals. 42 U.S.C. § 15043(a)(2)(H)-(J); 42 U.S.C. § 10805(a)(3)-(4); 45 C.F.R. § 1386.22; 42 C.F.R. § 51.42(a)-(c). This access includes the right “to meet and communicate privately” with residents “both formally and informally, by telephone, mail and in person.” 45 C.F.R. § 1386.22(h); 42 C.F.R. § 51.42(d).

56. Under the PAIMI Act, “any public or private residential setting that provides overnight care accompanied by treatment services” is a facility that a P & A is authorized to access and monitor. These “[f]acilities include... juvenile detention facilities.” 42 C.F.R. § 51.2. *See also* 45 C.F.R. § 1386.19 (specifying that facilities covered under the PADD Act include juvenile detention facilities).

57. The detention center at the Lauderdale County Juvenile Detention Center is a covered “facility” as defined under the PAIMI Act and the PADD Act. 42 U.S.C. § 10802(3); 42 C.F.R. 51.2; 45 C.F.R. § 1386.19.

58. A significant number of the youths who are detained at the Lauderdale County Juvenile Detention Center live with disabilities—including various forms of mental illness and learning disabilities. The Director of the Juvenile Detention Center has previously estimated that 60% of the youth held at the facility require mental health services. *See* Angela A. Robertson & R. Gregory Dunaway, *Juvenile Detention Monitoring in Mississippi: Report on Facility Compliance with Section 5 of the*

%20Illness.PDF (finding that 66% to 85% of incarcerated juveniles in Mississippi suffer from at least one diagnosable mental disorder, compared to only 14% to 20% of youth in the state's general population); Thomas Grisso, *Adolescent Offenders with Mental Disorders*, 18 THE FUTURE OF CHILDREN 143, 150 (2008), http://futureofchildren.org/futureofchildren/publications/docs/18_02_07.pdf (estimating that about one-half to two-thirds of youth in various juvenile justice settings meet criteria for one or more mental disorders, compared to about 15 to 25 percent of youth in the U.S. general population).

59. Under the P & A Acts, Congress designated two distinct bases for access to facilities and residents: (1) access for the purpose of investigating allegations of abuse and/or neglect, 42 U.S.C. § 15043(a)(2)(B), 42 U.S.C. § 10805(a)(1)(A), 45 C.F.R. § 1386.22(f), 42 C.F.R. § 51.42(b); and (2) access for the purpose of monitoring the facility and the treatment of its residents, 42 U.S.C. § 15043(a)(2)(H), 42 U.S.C. § 10805(a)(3), 45 C.F.R. § 1386.22(g), 42 C.F.R. § 51.42(c).

60. To carry out its mandate to investigate incidents of abuse and neglect, DRMS is entitled to “reasonable unaccompanied access . . . to all areas of the facility which are used by residents or are accessible to residents . . . [and] shall have reasonable unaccompanied access to residents at all times necessary to conduct a full investigation of an incident of abuse or neglect.” 42 C.F.R. § 51.42(b). *See also* 45 C.F.R. § 1386.22(f).

61. To carry out its monitoring duties, DRMS is entitled to reasonable unaccompanied access to all residents of a facility at reasonable times to provide P & A services and contact information, rights information, monitor compliance with respect to the rights and safety of service recipients, and to view and photograph all areas of the facility which are used by residents or are accessible to residents. 42 C.F.R. § 51.42(c); 45 C.F.R. § 1386.22(g).

62. The PAIMI Act states that DRMS has the right of access to all residents of a facility “despite the existence of any State or local laws or regulations that restrict informal access to minors and adults with legal guardians or conservators.” 42 C.F.R. § 51.42(e).

63. The PAIMI and PADD Acts provide DRMS with access to records of individuals who are in the custody of the state and with respect to whom a complaint has been received by DRMS or with respect to whom there is probable cause to believe that such individual has been subjected to abuse or neglect. 42 C.F.R. § 51.41(b)(2)(ii)-(iii); 45 C.F.R. § 1386.22(a)(2)(ii)-(iii).

64. The PAIMI regulations also require the Defendant to provide DRMS:

Reports prepared by an agency charged with investigating abuse, neglect, or inju

these access rights. Defendant and its agents have repeatedly rejected or ignored DRMS's requests for access.

67. Between September 11, 2008 and the present, DRMS exchanged letters and telephone calls with Defendant regarding P & A access to the Juvenile Detention Center. *See* Exhibit 1 (Correspondence between DRMS and County Officials). On several occasions, DRMS provided Defendant with a detailed research memorandum explaining the legal basis and scope of DRMS's P & A authority. DRMS also made multiple offers to meet with County officials to explain DRMS's P & A rights, and to provide information about DRMS's P & A activities in juvenile justice facilities throughout Mississippi.

68. Despite DRMS's numerous efforts to assert its P & A access rights through informal, collaborative means, County officials consistently barred DRMS from accessing the Juvenile Detention Center and expressed serious misreading of the applicab

70. As detailed above, Defendant has repeatedly precluded DRMS from exercising its Congressionally-mandated duties of protecting and advocating for the youth held at the Juvenile Detention Center, and has deprived these children of their rights to DRMS's services.

Defendant at Ce

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79. C

e. Award to the Plaintiff reasonable costs and attorney's fees; and

C e o S e c e

I hereby certify that on November 12, 2009, a true and correct copy of the foregoing document was filed electronically. N