

Meeting Date: NOV 19 1991

Agenda No.: #1

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: Executive Session

AGENDA REVIEW/
BOARD BRIEFING 11/19/91 REGULAR MEETING
(date) (date)

DEPARTMENT Nondepartmental DIVISION County Counsel's Office

CONTACT H. H. Lazenby TELEPHONE X-3138

PERSON(S) MAKING PRESENTATION

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA:

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN:

BRIEF SUMMARY (include statement of rationale for action requested,
as well as personnel and fiscal/budgetary impacts, if applicable):

Executive Session pursuant to ORS 192.660(1)(h) to discuss pending litigation

9am TIME CERTAIN

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL *Madip McCoy*

Or

DEPARTMENT MANAGER

(All accompanying documents must have required signatures)

BOARD OF
COUNTY COMMISSIONERS
1991 NOV 12 PM 3:48
MULTNOMAH COUNTY
OREGON

Executive Session
11-19-91
Handout #1

MULTNOMAH COUNTY

LEGAL AID SERVICE

900 BOARD OF TRADE BUILDING
310 S.W. FOURTH AVENUE
PORTLAND, OREGON 97204

Terry Ann Rogers, Executive Director
Richard C. Baldwin, Director of Litigation

(503) 224-4086 (Main Office; TDD)
(503) 295-9496 (FAX)

November 4, 1991

J. Michael Doyle
H.H. Lazenby
Office of Multnomah County Counsel
1120 S.W. Fifth Avenue #1530
Portland, OR 97207
HAND DELIVERED

Dear Mike and Chip:

This letter is in response to your invitation to submit a partial settlement proposal in the Robyn A. v. McCoy litigation.

Plaintiffs will agree to a temporary abatement of the litigation in order for defendants to pursue funding for a new facility if defendants will agree to the following plan designed to achieve a humane interim facility. The premise of the plan is that the County should not and may not detain children if it cannot provide them a safe, secure, and humane environment. At a minimum this means that there should be no more children at the DELH than there are beds in cells with toilet and water and schoolroom seats.

Given the choice between increasing capacity and decreasing population, plaintiffs' interim plan opts for the latter, as a matter of both social and fiscal policy. The plan incorporates the following elements: population reduction, development of alternatives, enhanced programming, physical plant and safety improvements, food, exercise, and health care. Because the plan is designed for the short term, plaintiffs address only the most critical improvements.

The proposed plan is based in large part on the observations and recommendations of Harold Ogburn, Rich Gable, and Paul DeMuro.

POPULATION REDUCTION

Eliminate Girls from the Facility

- * Contract with Rosemont or other residential facility for secure shelter beds.
- * Issue an RFP for a staff secure shelter care facility for girls.

Decrease the Number of Hispanic Youth, Homeless Youth and Out-of-State Runaways

- * Issue an RFP for a shelter care facility(ies) to serve this population.

Decrease the Number of Probation Violators

- * Temporarily suspend the use of weekend detention for minor probation violations.
- * Issue an RFP for alternative programs to address minor probation violations.
- * Implement a series of graduated sanctions for probation violations.

Decrease the Number of Children Held Pre-Adjudication

- * Increase staff and support services to the Close Supervision Program, including staff who are fluent in Spanish, in order to increase the number of youth who can be served and to provide more intensive supervision for youth who require it.

Decrease the Number of Children Held Post-Adjudication

- * Move the AITP program into a community-based facility.

ALTERNATIVES TO DETENTION

- * Contract with the Center for Juvenile and Criminal Justice to assist the County in planning for and implementing the Gable and DeMuro recommendations on intake and alternatives to detention which are found at pages 15-21 of their report.

PROGRAMMING

- * Ensure that all children detained at the Donald E. Long Home are able to attend school.

November 4, 1991

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- * Implement the Gable and DeMuro recommendations on lockdown and discipline found at pages 10 and 11 of their report.

HEALTH CARE

- * Increase on-site medical coverage to 24 hours per day.
- * Upgrade medical coverage to include on-site mental health diagnosis and treatment, at least three times per week.
- * Require pre-admission and intake health screening to be conducted by a member of the medical staff.
- * Institute a system of daily "sick call" in which a nurse asks each child whether he or she needs to see medical staff for any physical, mental or dental health problem.

EXERCISE AND FOOD

- * Implement daily outdoor exercise and recreation.
- * Implement the Gable and DeMuro recommendations on food service found at page 10 of their report (for the immediate future, order a sufficient number of extra meals so that all children who desire them may have second helpings, keep a supply of nutritious snacks on site so that children may request them between meals, document that each child receives the food allotted to him or her, post the menus, and forbid the staff practice of eating take-out or other food in front of the children).

PHYSICAL PLANT

Configuration

- * Immediately after necessary repairs are done, move one of the two existing Boys Units to the JCAC wing where there are toilets in each cell. Close the vacated wing.
- * Close the Girls Unit as soon as alternative placements are found.
- * After AITP vacates its wing, move the remaining Boys Unit there and close the vacated wing.

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Repair and Remodel

- * Make necessary repairs and conduct ongoing maintenance to ensure that temperatures and humidity remain in the comfortable range at all times. Provide plaintiffs documentation of the temperatures.
- * Install a system of electronic locks.
- * Install call buttons in the cells
- * Convert existing space to a medical isolation unit.


Fire Safety

- * Ensure that the facility meets applicable fire safety standards.
- * Arrange for monthly fire inspections and follow all recommendations.
- * Conduct regular fire drills.
- * Provide both written and oral fire and emergency instructions to all children and all staff.

Plaintiffs believe that defendants may have already implemented some of the elements of this plan and are confident that almost all the remaining can be implemented within a relatively short time.

Please let me know your initial reaction to this proposal as soon as possible so that we may have sufficient time to either reach an agreement or halt negotiations before the pretrial order is due to the court. The first step in our negotiations will obviously be to agree on a specific timeframe for implementation of this plan.

Sincerely,



ANGELA SHERBO
Attorney at Law

AS:elh

MULTNOMAH COUNTY

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November 18, 1991

J. Michael Doyle
H.H. Lazenby
Office of Multnomah County Counsel
1120 S.W. 5th, #1530
Portland, OR 97207
HAND DELIVERED

Re: Robyn A. v. McCoy

Dear Mike and Chip:

In your November 4, 1991 letter you suggest that plaintiffs might like to address the Board of County Commissioners about the pending Robyn A. v. McCoy litigation. We would like to do so, and do so prior to any decision by the Board concerning expansion of the number of detention wings in operation or the use of any detention wings as "shelter care." At the meeting we would attempt to deter your clients from authorizing expansion because it would be inconsistent with our efforts to settle this litigation. In fact, plaintiffs would view such a decision as a rejection of our settlement proposal of November 4th, 1991 -- a proposal you solicited.

To expend over \$300,000 to expand the use of a facility characterized by your clients as "grossly inadequate" would hardly demonstrate the good faith necessary for us to continue negotiations toward a mutually-acceptable solution to this litigation. Nor would plaintiffs look favorably on the use of yet another wing of the Donald E. Long Home to house non-delinquent children in a "shelter care facility."

In addition to adversely affecting the litigation, authorizing expansion based upon the information provided to the commissioners at the November 5, 1991 meeting, would do a disservice to the public. We suggest that before any decision is made to increase the

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number of children exposed to the deplorable conditions at the Donald E. Long Home the commissioners satisfy themselves about the number of secure beds needed for Multnomah County. They might begin this process by seeking answers to the following questions:

1. What percentage of children in detention are probation violators?

The materials accompanying the November 5, 1991 policy direction request regarding detention overcrowding options put the number at 21%. MULTNOMAH COUNTY JUVENILE DETENTION ENHANCEMENT PROPOSAL (Proposal), page 3. The survey conducted by Chuck Tracy for the Children's Justice Task Force concludes that the number is approximately 50%. Minutes of the October 28, 1991 Children's Justice Task Force Steering Committee, page 2.

2. Where, if at all, is the above figure reflected in Chart C of the Proposal?

3. In Chart C and the accompanying text (Proposal, p. 2), what does "have felony referrals" mean? Does it mean that 80% of the children in detention are there prior to an adjudication hearing on a felony charge? (In light of the information on probation violators this seems unlikely.) Does it mean that 80% of children in detention have had a felony referral in the past? How far in the past? Did each of these felony referrals result in a felony adjudication? What percent of them did?

4. Whatever "felony referral" means, what is the percentage when the following felonies are excluded? (a) Unauthorized Use of a Motor Vehicle; (b) Burglary II (which includes instances where the child is charged with burglary rather than shoplifting or trespass because he or she was previously "trespassed" from a store or other establishment; (c) Criminal Mischief I; (d) drug offenses.

5. How often are all twelve of the Clackamas and Washington County beds full of Clackamas and Washington County children?

6. What percentage of children who are held at the Donald E. Long Home preadjudication are ultimately sentenced to secure custody?

7. How do these statistics differ between weekdays and weekends?

8. If 60% of all children at the Donald E. Long Home are incarcerated there for less than 72 hours, why is it necessary to hold them at all, especially in light of the present conditions in the Donald E. Long Home?

Plaintiffs believe the answers to these questions will demonstrate a far different picture of the public safety concerns than did the sensational message presented to the

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Board that 80% of the children in the Donald E. Long Home are dangerous felons.

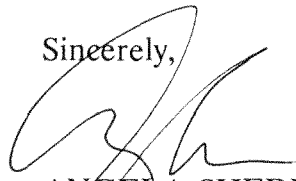
A meeting with your clients prior to any decision on expansion would be a first step in a good faith negotiation process. In addition to plaintiffs' attorneys, we propose that Susan Mandiberg, the guardian ad litem for the plaintiffs, and Dan Macallair of the Center for Juvenile and Criminal Justice be present. Any of the following dates would be acceptable: November 25, the morning of November 26, December 2, 3, 4 and 6. At our meeting we would hope that your clients would be prepared to discuss the results of their inquiry into the questions posed in this letter, as well as the course of the litigation in general.

As further indication of your clients' good faith plaintiffs believe there should be an immediate and professional study of the number of secure beds needed by Multnomah County now and in the foreseeable future. Furthermore there must be identification of and planning for alternatives to detention. Unfortunately, while all parties appear to agree that alternatives to detention are needed and desirable, there has been no aggressive action toward implementing them. We asked your clients as early as March of 1991 to contract with a reputable agency to help them in this regard. Had they done so then, we might not now be facing this problem.

We would appreciate a response to this and our November 4th proposal at your earliest possible convenience. To be frank, we are quite discouraged about the possibility of settling this litigation, although if any case merits settlement it is this one. Instead, plaintiffs anticipate a long and costly trial which will disrupt the operations of the DELH. Included among the costs will be substantial attorney fees. (At your request I am forwarding to you, under separate cover, a decision of U.S. District Judge Richard M. Bilby awarding over one million dollars in interim attorney fees in a case involving the conditions under which juveniles in Arizona are incarcerated.)

Plaintiffs responded to both your requests for settlement proposals quickly, thoroughly, and in good faith. We did so because we believe your clients genuinely desire to make the necessary improvements in the condition under which the County's children are held. It would be unconscionable for them to choose instead to spend the County's limited dollars on litigation costs.

Sincerely,



ANGELA SHERBO
Attorney at Law

AS:elh

Executive Session
11-19-91
Stendant #2

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add H.H. Lazenby Jr.

Of Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

ROBYN A., et al,)	
)	
Plaintiffs,)	Civil No. 90-1151-FR
vs.)	
)	PROPOSED PRETRIAL ORDER
GLADYS MCCOY, et al,)	
)	
Defendants.)	

The following pretrial order is lodged with the court pursuant to LR 235-2.

1. NATURE OF THE ACTION

This is a civil rights action challenging the conditions at the Donald E. Long Home, the juvenile detention facility operated

by Multnomah County. Plaintiffs and the class they represent have been and are being confined by defendants under conditions which violate the Fourteenth Amendment to the United States Constitution. Plaintiffs seek declaratory and injunctive relief.

2. SUBJECT MATTER JURISDICTION

This court has jurisdiction of this action under 28 USC §§1331, 1343(3) and (4)

3. AGREED FACTS

1. The Donald E. Long Home (DELH) is located at 1401 N.E. 68th Avenue, Portland, Oregon.

2. The DELH was built in 1949 as a courthouse and detention facility.

3. The detention portion of the original building had four residential units in addition to common areas. 5

4. In 1964 the building was remodeled and two residential units were added.

5. The DELH is in the last 10-15% of its normal life cycle for a building of its type and use.

6. For the purpose of this lawsuit, the DELH consists of four residential units called the Girls Unit, Boys II, Boys III and Assessment Intervention Transition Program (AITP) and all of the common detention area.

7. The common areas of the DELH include, inter alia, an admissions area with three holding cells and the control room, medical offices, class and craft rooms and a gymnasium.

8. The DELH is laid out in the "telegraph pole" design [typical of correctional facilities built in the 1940s,] with the residential units branching off a main corridor like the arms of a telegraph pole.

9. Each residential unit is accessed through a locked door from the common hallway.

10. Each residential unit has an exit door at the end of the wing.

11. Each residential unit is a long narrow hallway with a number of locked cells on either side of the hallway. The cells are used as individual and dormitory style sleeping cells and for isolation cells. The hallway terminates in common areas including bathroom, day room, dining room, kitchen, laundry facility and a staff office. plus a recreation room

12. The cells in the Girls, Boys II and Boys III units are furnished with only a metal bed frame and mattress.

13. The cells in the AITP unit are furnished with a bed, a small storage space, desk, chair, toilet and lavatory.

14. The DELH is steam heated.

15. There is no mechanical ventilation or air conditioning in the DELH. this is incorrect and to be rewritten

16. Each cell has a window. Most of the cells' windows [cannot] can be opened. Those that can do so open [only a few] six inches.

[17. The DELH does not meet the standards promulgated for juvenile detention facilities by the American Correctional Association.]

[18. The DELH does not meet the standards promulgated for juvenile detention facilities by the American Bar Association.]

/ / / / /

[19. The DELH does not meet the standards promulgated for juvenile detention facilities by the American Public Health Association.]

20. The DELH does not meet the standards promulgated for juvenile detention facilities by Oregon statutes. add "all"

21. The DELH does not meet the standards of the State of Oregon Structural Specialty Code and Fire and Life Safety Code.

add "all"

22. Robyn A. was 15 years old at the time the complaint was filed.

23. Robyn A. was first confined at the DELH in August 12, 1990. Between August 12, 1990 and November 16, 1990 she spent a total of 44 days in detention, 22 in the regular program and 22 in AITP.

24. To date in 1991, Robyn A. has spent 69 days confined at the DELH.

25. Robyn A. is the mother of a small child.

26. During at least some of her confinements at the DELH, Robyn A. was a cocaine addict.

[27. Robyn A. has never been provided drug treatment at the DELH.]

28. Ricky H. was 13 years old at the time the complaint was filed.

29. Ricky H. has stated, while confined at the DELH, that he is an alcoholic. check this

30. Ricky H. is in the custody of the state Children's Services Division and has been since he was 12 years old.

[31. Ricky H. was first confined at the DELH on January 18, 1990. He was twelve years old. Ricky had run away from his mother's home and was caught shoplifting at the Food 4 Less. He admitted stealing pepperoni sticks valued at \$.72 and beef jerky valued at \$.50. According to the store's report, he told the security officer that he was a runaway and that he wished to get caught shoplifting so that he could get off the street. Ricky H. was confined in detention until the following day and was then released to Children's Services Division. Ricky H. entered a guilty plea to the theft and was placed on formal probation.]

32. Thereafter, during 1990, Ricky H. was re-confined at the DELH eight times. Most of the admissions were as a result of Ricky's running away from home or CSD placements. At no time during this period was he ever alleged to have committed a crime more serious than Theft III.

33. Ricky H. spent a total of 57 days in detention in 1990.

[34. Ricky has never received any individual counseling, family counseling, mental health treatment or alcohol treatment while at the DELH.]

35. Justin H. was 13 years old at the time the complaint was filed.

36. Justin H. was first confined at the DELH on June 22, 1990, when he was 12 years old. [He had run away from home in violation of the terms of his conditional release on an earlier charge that he had broken into a garage and stolen some African art objects.]

37. Between June 22, 1990 and December 9, 1990, Justin was confined at the DELH for a total of 77 days, 46 in the regular program and 31 in AITP.

38. To date in 1991, Justin has spent 46 days confined at the DELH.

39. In 1988, 2,477 children were admitted to the DELH.

40. In 1989, 2,843 children were admitted to the DELH.

41. In 1990, 3,402 children were admitted to the DELH.

42. During the first six months of 1991, 1,927 children were admitted to the DELH.

43. During November 1990, the month the complaint was filed, almost 25% of the children admitted to the DELH were 14 years of age or under. confirm figures and correct

44. Children as young as 11 years of age are admitted to the DELH. add "on rare occasions with court authorization"

45. From 10/1/89-9/30/90, almost 30% of the children incarcerated at the DELH were there for under 24 hours. less than 30%

46. During the same period, 31.5% of the children incarcerated at the DELH were there for between 24 and 72 hours.

47. For the same period, the average length of stay at the DELH was 5.5 days. 48. For the same period, the average length of stay, omitting children who stayed less than 72 hours, is slightly more than 12 days.

[49. No fire drill has been conducted at the DELH in over ten years.]

50. Children receive no written instructions on what to do when the fire alarm sounds, in the event of a fire, or in other emergency circumstances.

51. Children receive no oral instructions on what to do when the fire alarm sounds, in the event of fire, or in the event of other emergencies. 50 & 51 inprocess of change

[52. There are no written policies governing fire drills at the DELH.

53. There are no written policies governing evacuation of the DELH.

54. There are no posted orders governing fire drills at the DELH.

55. There are no posted orders governing evacuation of the DELH.

56. Some staff are not aware of how to evacuate the DELH.

57. The DELH is not regularly inspected for fire hazards by the fire department.

58. The most recent inspection of the DELH by the fire department was held on April 18, 1986.

59. On April 20, 1990, the fire department, in response to a call about a faulty alarm system, required a documented hourly fire patrol.

60. There is no documentation that such a fire patrol ever took place.

61. There are combustible materials stored in the DELH in the storage room in the Girls Unit and the unused main kitchen.

62. Egress from the facility is blocked in Boys II by stored materials including tools, fans, floor scrubbers and buckets.]

63. There are flammable ceiling tiles in some detention areas and corridors. check with Bob Nilsen

64. There is exposed electrical wiring in the electrical panel box in AITP. was but not now

[65. The pump in the room for the building's heating and water circulating equipment leaks onto exposed electrical wiring.

66. There are not fire extinguishers in all of the receptacles for fire extinguishers in the DELH.]

67. There are no assisted breathing devices at the DELH. check with Bob Nilsen

68. There are no fire hoses at the DELH.

[69. The smoke detection system in the Admissions area is inadequate.

70. Lack of mechanical ventilation increases the risk of harm from smoke inhalation in the event of a fire.]

71. There is a fire alarm system at the DELH.

72. When the alarm system is activated the following occurs:
(a) An alarm sounds and is audible throughout the DELH; (b) the central control panel located in Admissions lights up to show the location of the alarm; (c) the agency which monitors the alarm is notified automatically; (d) that agency notifies the fire department; (e) that agency keeps a log of the fire alarms. add some facts?

73. The fire alarm sounds at the DELH [frequently].

[74. Staff and children at the DELH have been observed to pay no attention to the fire alarm.]

75. The cells at the DELH must be unlocked manually.

76. There are no electric locks or other gang release locks for the sleeping cells in the Girls Unit, Boys II [and Boys III]. Each door has to be opened individually with one key that opens every door.

77. The isolation rooms in all the units are controlled by an electrically released lock.

[78. Some staff members are not certain how to get a key if electrically released lock in the isolation room doesn't work.]

79. The doors to the sleeping cells in the AITP are equipped with electrically released locks controlled [by both Central Control and] by switches in the unit. However the control panel is usually kept locked, so staff ordinarily used a key to open and close the doors.

80. Each residential unit's locked door to the common hallway can be unlocked electronically by staff from the unit office or manually with a key. change this

81. Each residential unit has a second door at the other end of the wing which opens onto a secure out-of-door area.

[82. Each unit's door to the outside is kept locked and can be unlocked only manually, with a key.]

83. The key to each unit's outside door is not kept on the unit.

84. The key to each unit's outside door is kept in Admissions.

85. In order for staff to open the outside door they must get the key from Admissions.

[86. There are problems with the automatic locking system.]

87. In one recent incident, six youth were locked in an individual dorm room in excess of two and a half hours, waiting for the maintenance man to show up and fix a lock that had been jammed with paper.

88. None of the cells at the DELH is equipped with a "call button" or any other mechanical means to contact staff.

89. In order to get staff attention children in their cells
[must] add "may" yell or bang on the door.

90. In the Girls Unit there is only one group worker on duty
at any one time.

91. In Boys II and Boys III there are two groupworkers on
duty at all times except between 11 p.m. and 4 a.m. when there is
only one.

[92. Staff spend most of their time in their glass enclosed
office or in the day room watching T.V.]

[93. Staff tend to congregate in their office.] add that
they work there with the children

[94. At times there are no staff on the units. This occurs
in, inter alia, the following circumstances: (a) Staff from a
unit has gone to respond to an emergency elsewhere in the facility;
(b) staff from a unit has gone to admissions or elsewhere in the
facility for a business purpose, i.e., to get the outside key; (c)
staff from a unit has taken children outside or to the gym and left
those children on room lock behind; (d) staff from a unit is
socializing elsewhere in the facility (usually at night).]
delete unless it is agreed to add "rare" to occasions at the
beginning

[95. There is no emergency generator at the DELH.]

[96. Without an emergency generator, during a power outage
there is no electricity to operate the lights, locks, and lighted
directional markers.]

97. There have been power outages at the DELH in the past.

98. The Boys units are roughly divided by age, but other factors such as population size influence [classification] add placement of children.

99. There are no written policies governing the assignment of boys to one of the two units.

100. Older, larger and more violent boys are sometimes housed on Boys II where the smaller, younger children are generally housed.

[101. Smaller, younger boys who are perceived by staff as behavior problems are sometimes assigned to Boys III.]

102. Staff encourages or fails to discourage child-on-child assault in the following ways: (a) Punishing all children except the child who misbehaved and telling the punished children that it is the fault of the misbehaving child. (b) Suggesting to the punished children that the misbehaving child might "slip in the shower". (c) Failing to respond quickly to incipient or ongoing altercations when staff believes that the victim "deserves it."]

103. In November 1989 a gun was smuggled into the DELH through a window.

[104. Defendants have no policy regarding the admission of children who are at risk of suicide to the DELH.]

105. Defendants admit to the DELH children who are at risk of suicide.

106. Defendants have not denied admission to the DELH to any child in the last three years for the reason that the child was at risk of suicide.

[107. Children at risk of suicide are not provided treatment at the DELH.]

108. The DELH has no suicide reporting or watch policy.

109. There is no documentation or log of suicide watches.

[110. Children known or thought to be suicide risks are placed in isolation cells.]

111. Children known or thought to be suicide risks are placed on mattresses on the floor in a room with another child in order that the non-suicidal child can monitor the suicidal child.

[112. Each cell has overhead pipes, sprinkler heads and light fixtures which can and have been used by children attempting to hang themselves.

113. According to Harold Ogburn, when children try to hang themselves the pipes "usually break."

114. Floor and ceiling tiles are loose throughout the facility and have sharp edges.

115. Many of the windows are broken and the glass pieces are not removed from the windows or floors of the cells.

116. There is insufficient staff to adequately monitor children who are suicide risks.]

Kathy Page's comments are needed for 117 & 118

117. Nursing staff are required by Corrections Health policy to document suicide attempts on a form entitled Suicide Attempt/Reporting Form.

118. During the period between March 1989 and August 1991 the following suicide attempts were documented on Suicide Attempt/Reporting Forms:

D. O'R.	3/2/89	J.G.	8/13/90	J.E.	8/4/91
S.P.	3/10/89	J.L.	3/13/91		
E.C.	3/22 & 3/27/89	J.O.	6/20/91		
A.B.	5/3/90				

/ / / / /

[119. There have been suicide attempts which are not recorded on the Suicide Attempt/Reporting Forms.

120. The DELH is dirty.

121. Prior to May 3, 1991, there was no professional janitorial service at the DELH.]

122. Since May 3, 1991, a professional janitorial service cleans and polishes the floors once per month and cleans the unit showers once per week.

123. Children and staff are responsible for keeping the residential units clean, including washing the unit floors, kitchens and bathrooms.

124. Mattresses are not washed and disinfected between users.

125. Mattresses are stored on the floor.

[126. The cells are not free of human waste including urine, feces, blood, mucous and semen.]

127. The cells in the Girls Unit, Boys II and Boys III have no toilets. except in 4 and 5

128. The cells in the Girls Unit, Boys II and Boys III have no running water.

129. Children must yell for staff in order to be released to use the bathroom.

[130. It is humiliating to yell for staff to use the bathroom.]

131. There is sometimes a delay between the child's request and being released by staff to use the bathroom.

[132. Staff require children to do pushups in order to use the bathroom.]

133. Children, particularly boys, urinate on the floor, walls, radiators, and windows in the cells.

[134. There are vermin in the facility.

135. The showers are covered with soap scum and mold.

136. Children's street clothing is stored without being laundered.

137. Children's street clothing is stored in the same room as clean clothing.

138. Children's street clothing is often infested with lice and crabs.]

139. Laundry for the DELH is done both on and off site.

[140. The laundry bins used to transport laundry to the off-site facility are not cleaned and sanitized between being used to carry dirty and clean clothing and bedding.]

141. The water temperature at the DELH is not hot enough to sanitize clothing and bedding without sanitizing agents. ?????

142. Sanitizing agents are not routinely used in the on-site laundry.

143. Clothing of more than one child is washed in the same load.

144. Defendants' policy permits children to exchange dirty for clean clothing on the following schedule:

Underwear and socks daily
Outer clothing twice a week

[145. Children do not receive clean clothing as often as defendants' policy permits.]

146. Children are not able to receive the same clothing after laundering.

[147. Children are sometimes required to work or do pushups in order to receive clean clothing.

148. Children are required to share soap, deodorant and toothpaste.

149. Children are not given individual supplies of shampoo and petroleum jelly.

150. Defendants provide children with disposable razors that are used by more / / / / /
than one child before being disposed.

151. The children's toothbrushes are stored together and not individually labeled.

152. Girls are not provided sufficient supply of sanitary napkins and must ask staff each time they need one.

153. Toilet paper is stored in the staff office and children must ask for it before using the toilet.

154. Boys at the DELH are not provided pajamas.

155. There is an inadequate supply of clothing and an inadequate range of sizes.

156. Children are required to wear clothing that is torn, ill fitting, uncomfortable and dirty.]

157. Food for the children at the DELH is prepared off-site and transported to the DELH two times each day.

158. The food delivered to the DELH is refrigerated in a central location and then reheated on the individual housing units.

[159. Staff and children handling food do not routinely use gloves.

160. Staff and children handling food do not routinely wash their hands.

161. Some food is placed directly on the dining room table.

162. Tables are not sanitized before and after use.]

163. The light in the kitchens in the Girls Unit and in all of the Boys III kitchen except next to the window is less than 20 candle feet. check with Bob Nilsen

[164. The light everywhere in the restrooms on the Girls and Boys II units is less than 20 candle feet.]

/ / / / /

165. The light in parts of the restrooms in Boys III and AIT is less than 20 candle feet.

[166. Children experience extremely hot and extremely cold conditions at the DELH.

167. During both summer and winter the facility is often uncomfortably hot during the day and uncomfortably cold at night.]

168. Temperatures in the DELH in the summer sometimes exceed 84 degrees.

169. During a week in the summer of 1987 temperatures in the mid-80s were recorded at the DELH by the Multnomah County Auditor.

170. Temperatures recorded on hot days during the summer and fall of 1991 were in the mid-80s.

171. During some days during the winter of 1989 the temperatures in the DELH could not be raised above 60°F.

[172. It is impossible to maintain temperatures in the 64°F - 85°F in the DELH when the temperature outside is below 32°F.

173. At other times during the winters, the facility is overheated and extremely hot.

174. In a recent winter the temperature in one classroom remained over 90°F during the day for over one month.

175. Many of the windows at the DELH are either broken or do not seal completely.

176. In addition to physical plant problems which result in uncomfortable temperatures, the following practices exacerbate the physical plant limitations: (a) Failing to provide children sufficient blankets when they complain of cold, whether in the summer or winter; (b) failing to provide children clothing appropriate to the temperature in the facility (which is not necessarily seasonal); (c) enhancing the uncomfortable conditions as a form of punishment, e.g., withholding short-sleeved shirts, removing blankets hung over windows as sunblocks, locking down the children, conducting outside exercise and inside exercise in the gymnasium, which has very little ventilation, during the hottest part of the day, refusing or delaying showers.]

177. At the time the complaint was filed, defendants provided plaintiffs with three meals and an evening snack for a total of [3200] now 4000 calories a day.

178. According to defendants' policy, meals are served at the following times on weekdays: breakfast 8 a.m., lunch 11:30 a.m.-12:30 p.m., supper 5 p.m.-6 p.m.

179. On weekends, defendants' policy is to serve breakfast between 8 a.m. and 10 a.m.

180. On weekends breakfast is sometimes served later than 10 a.m.

[181. Many children at the DELH experience hunger on this regime]

182. Children are denied second helpings of food even when it is available.

183. There is no commissary or other means for the children to supplement this diet.

184. Children who earn the most points during the day are rewarded by being placed on "kitchen crew."

185. Kitchen crew cleans the kitchen and is permitted to stay up later than the other children, usually watching television with staff.

186. Kitchen crew is also rewarded by being permitted to eat all of the leftover meals.

187. All children at the DELH are aware that the kitchen crew gets more food.

[188. Staff at the DELH bring food into the facility and cook and eat this food in front of the children.

189. Staff at the DELH orders pizza and other takeout food and eat it in front of the children.

190. Children are not permitted to keep any personal items in their cells.

191. Children are not permitted to decorate the walls in their cells.]

192. Excluding the beds in the isolation cells, each unit has the following number of beds: Girls ____; Boys II ____; Boys III ____; AITP ____.

193. There are ____ cells in Boys II. ____ are individual cells and ____ are dormitories with ____ beds.

194. There are ____ cells in Boys III. ____ are individual cells and ____ are dormitories with ____ beds.

195. There are ____ cells in the Girls unit. ____ are individual cells and ____ are dormitories with ____ beds.

196. There are ____ cells in AITP. ____ are individual cells and ____ are dormitories with ____ beds.

197. The individual cells are ____ feet by ____ feet.

198. The dormitory cells are ____ feet by ____ feet.

[199. American Public Health Association standards require 60 square feet of floor space per bed in single and dormitory juvenile detention cells.

200. The American Corrections Association's standards for juvenile detention facilities require: standard 2-8138- 70 square feet of floor space for single cells. Standard 2-8140 - 35 square feet dayroom floor space per juvenile. Standard 2-8143 - 100

square feet activity space per juvenile, not including dayroom, dining room, classroom, or outdoor space.]

check with Bob Nilsen on 201 and 202

201. On January 23, 1991, the following floor space square footage per juvenile was available in the designated areas:

- Girls Dayroom - 27 square feet/per juvenile
- Girls dorm cell - 57 square feet/per juvenile
- AITP dorm cell 9 - 48 square feet/per juvenile
- Boys II dorm cell - 56 square feet/per juvenile
- Boys II cells 514 - 45 square feet/per juvenile
- Boys III dayroom - 20 square feet/per juvenile
- Boys III dorm cell - 52 square feet/per juvenile
- Boys III cells 5 - 45 square feet/per juvenile

202. On January 23, 1991 the following activity space per juvenile was available:

- Girls - Ping Pong Room - 31 square feet/per juvenile
- AITP - Small Group Room - 8 square feet/per juvenile
- Boys II - 0 square feet/per juvenile
- Boys III - Ping Pong Room - 12 square feet/per juvenile
- Boys III - Crafts Room - 6 square feet/per juvenile

203. When there are more children incarcerated at the DELH than there are beds, children are required to sleep on mattresses on the floor.

[204. Even when there are enough beds, children are sometimes required to sleep on mattresses on the floor.]

205. The attached table, Labeled Exhibit A, accurately reflects a) the number of children in the DELH at 5 a.m. on the dates shown, and b) the DELH's average daily population for the periods shown.

206. The average weekend day population at the DELH was:

November 1990	66.15
December 1990	63.80
January 1991	69.50
February 1991	81.50
March 1991	83.88
April 1991	82.63
May 1991	72.38
June 1991	72.10
July 1991	72.13
August 1991	70.78

[207. There is inadequate staff and space at the DELH to provide supervision and programs for the number of children incarcerated there now.

208. The staff/child ratio contributes to increased use of roomlock].

209. The staff/child ratio contributes to an increased risk that a child will hurt him or herself or be hurt by another child.

210. Increasing population at the DELH has caused physical plant deterioration.

211. Prior to 1980 there was a regular program of outdoor exercise and recreation at the DELH.

/ / / / /

212. Between 1980 and January 1991 the opportunity for outdoor exercise and recreation was extremely limited. add "on occaision"

[213. In each of the years 1980-1990 there were no more than five opportunities for outdoor exercise and recreation per year.

214. The vast majority of children incarcerated at the DELH during the years 1980-1990 never went outside for exercise or recreation.

215. During 1990 Robyn A. spent 44 days at the DELH. She never went outside during that time.

216. During 1990 Ricky H. spent 57 days at the DELH. He never went outside during that time.

217. During 1990 Justin H. spent 77 days at the DELH. He went outside only once or twice and only on weekends.

218. In response to the Report on Detention Conditions sent to defendants by plaintiffs attorneys in 1989, defendants stated that outdoor exercise would be increased to six times per week.]

219. Shortly after stating that outdoor exercise would be increased to six times per week, defendants stated it would be increased to three times per week, weather permitting, beginning on July 1, 1989.

[220. Between July 1, 1989 and November 9, 1990 defendants did not provide outdoor exercise as frequently as three times per week, if at all.]

221. Defendants kept no records of outdoor exercise until January 1991.

222. Children are denied the opportunity to go to school when they are on roomlock and when they have a court appearance.

223. When there are more than twelve boys on Boys II, the balance of the unit stays back on the unit and misses school.

224. On the weekends and during school holidays and during the summer months there is no school at the DELH.

[225. Children at the DELH on weekends, during school holidays and during the summer months spend as many as 24 hours per day locked in their cells.

226. Children are admitted to the DELH without an adequate medical screening.]

227. Defendants' policy forbids admission to the DELH of children who are injured, ill or intoxicated.

[228. Children are not screened for illness, injury or intoxication by medical personnel. give an alternative

229. The laypersons who screen children for illness, injury, and intoxication and make admissions decisions are not qualified to diagnose illness, injury and intoxication.]

230. The preadmission screening for illness, injury and intoxication is based on observation and self-reported history.

check with Kathy Page

231. No medical procedures are performed during the preadmission screening.

232. Children who are ill, injured or intoxicated are admitted to the DELH.

233. Defendants' expert[s Richard Gable and] Paul DeMuro observed one boy who was admitted in a drugged stupor with open sores on his feet and legs.

check 234-241 with Kathy Page

234. Once children are admitted to the DELH an intake health screening is done. check with Kathy Page for this and 235-241

235. The intake health screening is not performed by medical personnel.

236. The intake health screening is conducted by laypersons.

/ / / / /

237. The laypersons conducting the intake health screening are not qualified to diagnose physical and mental illness.

238. The intake health screening consists of observation and the child's self-report.

239. No medical procedures are performed as part of the intake health screening.

240. There is a higher prevalence of contagious conditions among children than adults.

241. Members of plaintiffs' class are intravenous drug users and at high risk for hepatitis and AIDS.

242. There is no medical isolation room at the DELH.

243. All children admitted to the DELH are admitted to the general population.

244. Children are not treated for contagious conditions on admission to the DELH.

245. There is inadequate fresh air at the DELH.

246. There are inadequate procedures for dealing with serious contagious conditions at the DELH.

247. Defendants' policies require that all children be seen by a nurse within 24 hours of admission.

248. At the 24 hour contact, the nurse completes an Entry Progress Form (EPF).

249. The EPF requires information based on observation and the child's self-report.

250. No medical procedures are required by the EPF.

251. The 24 hour screening is conducted by a nurse.

252. The 24 hour screening takes place on the residential unit within sight and sound of other children and staff.

253. Many children at the DELH have serious, chronic health problems.

254. Many children confined at the DELH are addicted to drugs and/or alcohol.

255. Many children confined at the DELH are sexually active.

256. Pregnant girls are confined at the DELH.

257. There are no physicians on site at the DELH.

258. The medical staff on site at the DELH at the time the complaint was filed consisted of nurses and nurse practitioners.

259. A nurse is available daily for 8 hours and a part-time nurse works a three hour shift 5 days out of every fourteen. There are two 5-hour nurse practitioner clinics each week.

260. In order for a child to see a nurse he or she must fill out a Medical Request Form (MRF).

261. None of the nurses or nurse practitioners at the DELH is qualified to diagnose or treat mental illness, including substance abuse.

[262. There was at the time the complaint was filed no one on-site at the DELH who is qualified to diagnose and treat mental illness.]

263. There have been and are children confined at the DELH with undiagnosed mental illnesses.

264. There have been and are children confined at the DELH who are in need of mental health treatment.

265. Children at the DELH are not provided mental health treatment.

266. Children at the DELH are not provided dental treatment.
/ / / / /

267. The nursing staff at the DELH are required to perform medical functions which are beyond their competency, training, and licensed authority.

268. EPFs which do not indicate a need for immediate treatment are deemed "negative" and are placed in a box in the medical office.

269. No chart is generated for a child with a "negative" EPF.

270. No master list of children with "negative" EPF is made or kept.

271. EPFs which indicate a need for immediate treatment do generate a chart.

272. Charts are also made when a child receives treatment as a result of some event other than a positive EPF, e.g., an emergency, MRF, etc.

273. No master list of charts exists.

check 274&275 with Katy Page

274. Each year the box of negative EPFs is removed to archives.

275. When a chart is made for a child who has previous negative EPFs these documents are not included in the chart.

276. Once a chart is made for a child, subsequent negative EPFs are supposed to be included in it.

277. Medical staff may order special diets for incarcerated children when medically indicated.

278. Prior to January 1991 medical staff rarely, if ever, ordered special diets.

279. The DELH is not accredited by the National Commission on Correctional Health Care.

280. The DELH does not meet the standards promulgated by the National Commission on Correctional Health Care.

/ / / / /

281. The medical services available at the DELH are inadequate to meet the medical needs of the population.

282. Gladys McCoy, Pauline Anderson, Rick Bauman, Gary Hanson and Sharon Kelley are, respectively, the chairperson and members of the Board of County Commissioners of Multnomah County.

283. The commissioners are responsible for funding, equipping, maintaining and operating the DELH. They are also responsible for appointing or designating the director of the juvenile department.

284. Harold Ogburn is the director of the Multnomah County juvenile department. The juvenile department is an agency of Multnomah County.

285. As director of the Juvenile Department, Harold Ogburn is charged with the administration of the DELH and supervision of its staff, subject to the direction of the Board of County Commissioners.

286. The defendant commissioners are responsible for funding, equipping, maintaining and operating facilities for the incarceration of adults convicted of crimes, including the Multnomah County Detention Center (MCDC).

List these as facts for which relevance is disputed
(287-294)

287. Defendants have acted under color of state law at all times pertinent to this lawsuit.

288. Adults incarcerated at the MCDC have toilets in their cells.

289. Adults incarcerated at the MCDC are able to purchase food from a commissary.

290. Adults incarcerated at the MCDC have access to outdoor recreation at least three times per week.

291. The temperature at the MCDC is kept in a comfortable range at all times.

292. Adults at the MCDC are provided instruction about emergency procedures.

293. Adults at the MCDC are provided a bed, a desk, a toilet and a mirror in each cell.

294. The MCDC conforms to the American Correctional Association's accreditation standards.

295. The commissioners tour the DELH at least once a year.

296. Harold Ogburn is in the DELH at least once every week.

297. The Commissioners held a two day retreat in 1989 to study the problems at the DELH.

298. Defendants have available to them the 1983 Report of the Special Grand Jury, which makes observations and recommendations about the DELH.

299. Defendants have available to them the 1984 Report of the Special Grand Jury, which makes observations and recommendations about the DELH.

300. Defendants have available to them the 1985 Report of the Special Grand Jury, which makes observations and recommendations about the DELH.

301. Defendants have available to them the 1986 Report of the Special Grand Jury, which makes observations and recommendations about the DELH.

302. Defendants have available to them the 1987 Report of the Special Grand Jury, which makes observations and recommendations about the DELH.

303. Defendants have available to them the December 1987 Capital Improvement Request for DELH, which makes observations and recommendations about the DELH.

/ / / / /

304. Defendants have available to them the February 1988 Internal Audit Report, which makes observations and recommendations about the DELH.

305. Defendants have available to them the February 1988 Report to Management, which makes observations and recommendations about the DELH.

306. Defendants have available to them the November 1988 Facilities Requirement Study, which makes observations and recommendations about the DELH.

307. Defendants have available to them the December 1988 Report of Special Grand Jury, which makes observations and recommendations about the DELH.

308. Defendants have available to them the January 1989 Report on Detention Conditions, which makes observations and recommendations about the DELH.

309. Defendants have available to them the January 1989 Five Year Space Study, which makes observations and recommendations about the DELH, which makes observations and recommendations about the DELH.

310. Defendants have available to them the July and August 1989 Architects Conceptual Design and Preliminary Report, which makes observations and recommendations about the DELH.

311. Defendants have available to them the August 1989 Juvenile Facility Design report by Patrick Sullivan Associates, which makes observations and recommendations about the DELH.

312. Defendants have available to them the November 1989 Report of Special Grand Jury, which makes observations and recommendations about the DELH.

313. Defendants have available to them the February 1990 Capital Improvement Request for Detention, which makes observations and recommendations about the DELH.

314. Defendants have available to them the March 1990 Report on Safety and Security at DELH, which makes observations and recommendations about the DELH.

315. Defendants have available to them the April 24, 1990 memorandum from Kathy Page to Jim Anderson, which makes observations and recommendations about the DELH.

316. Defendants have available to them the May 31, 1990 letter from Tom Sincic to Gladys McCoy, which makes observations and recommendations about the DELH.

317. Defendants have available to them the July 3, 1990 letter from Charles Kidwell to Bob Nilsen, which makes observations and recommendations about the DELH.

318. Defendants have available to them the October 30, 1990 memorandum from Harold Ogburn to Hank Miggins, which makes observations and recommendations about the DELH.

319. Defendants have available to them the November 8, 1990 letter from the Fire Protection Engineer to Charles Kidwell, which makes observations and recommendations about the DELH.

320. Defendants have available to them the November 1990 DELH Codes and Statutes Evaluation Report, which makes observations and recommendations about the DELH.

321. Defendants have available to them the 1990 Report of Special Grand Jury, which makes observations and recommendations about the DELH.

322. Defendants have available to them the February 1, 1991 Report of the Children and Youth Work Group, which makes observations and recommendations about the DELH.

323. Defendants have available to them the April 25, 1991 Semi-Annual Licensed Facility Inspection Report, which makes observations and recommendations about the DELH.

324. Defendants have available to them the June 11, 1991 Semi-Annual Licensed Facility Inspection Report, which makes observations and recommendations about the DELH.

325. Defendants have available to them the June 1991 Children's Justice Task Force Report, which makes observations and recommendations about the DELH.

326. Defendants have available to them the September 1991 Gable and DeMuro Report, which makes observations and recommendations about the DELH.

[327. Defendants have made or adopted the following descriptions of the DELH:

- a. antiquated
- b. overcrowded
- c. generally unsatisfactory
- d. outmoded
- e. worn out
- f. a security risk
- g. unsafe

- h. deteriorated
- i. unsanitary
- j. inadequately ventilated
- k. decaying
- l. inadequately heated
- m. seriously deficient
- n. poorly designed
- o. grossly inadequate
- p. dingy
- q. depressing
- r. generally drab conditions
- s. inadequately plumbed
- t. a fire hazard
- u. minimally maintained
- v. inadequately maintained
- w. shoddily maintained
- x. understaffed
- y. outdated furnishings
- z. inadequately furnished

328. Defendants have also said or adopted the following about the DELH, that:

- a. the heating system is held together with spit and gum
- b. it is inadequately heated
- c. the faulty heating system is the tip of the iceberg

- d. it is inadequately ventilated
- e. it is unsanitary
- f. in the summertime it is unbearably warm
- g. it should have a single locking system
- h. the bathrooms and sleeping cells smell of urine
- i. it needs new windows
- j. the mechanical system is substandard
- k. there is a substantial disparity between the County's correctional facilities for adults and the DELH
- l. the Commissioners are lucky not to be under mandate to improve the facility
- m. funding is the only reason there are not major repairs at DELH
- n. there are an unconscionable number of minority youth confined at the DELH
- o. it needs building improvements
- p. it needs replacement
- q. it needs extensive work which could take three years before the facility could meet the American Correctional Standards
- r. there are questionable detention practices
- s. there is no outdoor recreation program.
- t. there are no formal counseling services for special problems

u. the existing building conditions and current usage do not comply with minimum applicable building code, correction standards or zoning regulations

v. it does not meet State of Oregon and ACA standards in that juveniles must be unlocked at night in order to use restroom facilities

w. the decaying condition of facility has contributed to concerns about health and safety of staff and juveniles

x. it is wearing out in terms of plumbing

y. there are serious pipe leaks and steam comes out of the floor

z. the entire building is full of asbestos

aa. the heating system tunnels and piping insulated with asbestos

ab. except in the main access areas, everything is covered with asbestos

ac. asbestos is a major concern

ad. dated heating system and lack of cooling result in uncomfortable room temperatures

ae. some detention rooms were inadequately heated during the winter months

af. window frames are rusted, due to lack of maintenance, which permits air to seep in

ag. the individual room radiators were not able to heat the cold air, and some youths had to wear sweatshirts and coats to stay warm

ah. the impact of inadequate heating and cooling is compounded by poor air circulation

ai. children did not have an opportunity to engage in outdoor recreation

aj. major renovation is necessary to achieve program goals

ak. heating, cooling, electrical and plumbing systems are in many instances beyond the point of effective maintenance or repair

329. Defendant Gladys McCoy admits that to be brought up to applicable codes and standards the DELH needs: new HVAC system; replace existing exterior windows; reroof and repair flashings; install thermal insulation at exterior walls and roof; provide toilets in each detention room and repair floor and walls; new doors and windows in detention area; upgrade electrical service; provide emergency power generator; replace electrical wiring in most areas; provide security ceilings throughout detention areas to conceal pipes and wiring; convert fire protection system to security type in detention areas; upgrade interior windows to security type units.

330. Defendant Gladys McCoy admits that the physical condition of the DELH and of its mechanical, electrical, plumbing, heating

and ventilation systems is inadequate, unsanitary and hazardous to the children confined there

331. Defendant Gladys McCoy admits that heating and ventilation at the DELH is inadequate.

332. Defendant Gladys McCoy admits that asbestos covering the steam pipes prevents needed maintenance and repairs.

333. Defendant Gladys McCoy admits that the temperature in the facility is erratic.

334. Defendant Gladys McCoy admits that it is too cold in the winter and too hot in the summer.

335. Defendant Gladys McCoy admits that the majority of cells in the DELH do not have running water or toilet facilities and children in those cells must gain the attention of staff whenever they need a drink or to use the toilet and that this causes both physical discomfort and humiliation and has resulted in children urinating in the cells.

336. It has been defendants' policy since 1988 to do only the most necessary and minor repairs at the DELH.

337. It remains defendants' policy to do only the most necessary and minor repairs at the DELH.

/ / / / /

338. The conditions and practices at the DELH harm children physically in the following ways:

- a. physical injury
- b. disease

- c. suicide and self-mutilation
- d. contagious conditions
- e. sexual molestation
- f. hunger

339. The conditions and practices at the DELH harm children emotionally in the following ways:

- a. fear of abuse
- b. feelings of isolation
- c. negative self-image
- d. heightened hostility and mistrust
- e. stigma/negative labelling
- f. depression
- g. anxiety
- h. depersonalization
- i. psychological trauma
- j. encouragement of deviancy
- k. boredom
- l. promotion of sense of injustice
- m. sensory deprivation
- n. humiliation
- o. degradation
- p. disassociation from reality
- q. suicide attempts and self-mutilation
- r. disorientation
- s. upset and uncertainty

- t. fear of sexual molestation
- u. self-stigmatization
- v. retardation of normalization
- w. isolation from family and community
- x. feelings of loneliness
- y. suicidal feelings
- z. feelings of being punished]

4. CLAIMS AND DEFENSES

CLAIM ONE

Violation of Fourteenth Amendment

A. Plaintiff contends:

1. Defendants fail and refuse to provide plaintiffs with a safe, sanitary and humane environment and program.
2. Defendants fail and refuse to provide plaintiffs with an adequate diet.
3. Defendants fail and refuse to provide plaintiffs with adequate physical and mental health care;
4. Defendants fail and refuse to provide plaintiffs with adequate opportunities for exercise and recreation;
5. Defendants confine plaintiffs in conditions significantly worse than defendants confine convicted adult prisoners;

6. Defendants' actions and omissions deprive plaintiffs of the special solicitude to which they are entitled as children and violate plaintiffs' right to fundamental fairness.

7. Defendants' actions and omissions deprive plaintiffs of their right to a reasonably acceptable standard of general care and safety, reasonably non-restrictive conditions of confinement and such treatment as may be required by these interests.

8. Defendants' actions and omissions are arbitrary and intentional and without legitimate state purpose.

9. Defendants' actions and omissions are intentional, punitive, unnecessary and are made with deliberate indifference to plaintiffs' needs.

10. Plaintiffs seek a final judgment declaring that the acts and omissions of defendants complained of herein violate plaintiffs' rights under the due process clause of the Fourteenth Amendment to the United States Constitution.

11. Plaintiffs seek a permanent injunction:

- (a) preventing defendants from confining any member of plaintiffs' class in the DELH until such time as this court finds that the facility and defendants' program meets constitutional standards; and
- (b) requiring defendants, within 30 days of the date of such order, to develop and submit to this court a plan, including a timetable for implementation, to bring the DELH up to constitutional standards or to provide

alternatives to the use of the DELH, including the use of an array of less restrictive placements for plaintiffs.

12. Plaintiffs seek an order that this court retain jurisdiction of this action for the purpose of supervising the implementation of and compliance with the above plan.

13. Plaintiffs seek attorney fees and costs.

14. Plaintiffs seek an award of any other relief this court deems just and proper.

Defense

B. Defendants contend:

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By _____
ANGELA SHERBO
Attorney for Plaintiff
OSB #82447

By _____
J. MICHAEL DOYLE
Attorney for Defendants
OSB #80207

IT IS ORDERED the foregoing Pretrial Order is:

_____ Approved as lodged.

_____ Approved as amended by interlineation and the pleadings are amended accordingly.

DATED this _____ day of _____, 19____.

U.S. DISTRICT JUDGE

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