



EASTERN DISTRICT of KENTUCKY

FILED

AUG 18 1995

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT COVINGTON
CASE NO. 93-213**

AT COVINGTON
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT.

**M.K., a minor child, by and through
her next friend and all others similarly
situated,**

PLAINTIFFS

VS.

**PEGGY WALLACE, in her official
capacity as Commissioner of the Division
of Social Services, Cabinet for Human Resources,
COMMONWEALTH OF KENTUCKY**

DEFENDANT

CONSENT DECREE

WHEREAS, Plaintiffs M.K., a minor child, by and through her next friend and all others similarly situated, filed a § 1983 civil rights class action suit against Peggy Wallace, as representative of the Commonwealth of Kentucky in her official capacity as Commissioner of the Division of Social Services, Cabinet for Human Resources, on November 22, 1993, and as amended on February 7, 1994; and

WHEREAS, the allegations of Plaintiff's original Complaint sought declaratory, injunctive and other equitable relief related to the Defendants' alleged failure to provide access to courts for juveniles committed as public and youthful offenders and specifically the juveniles in the following facilities operated by the Commonwealth of Kentucky (hereinafter referred to as the Commonwealth): Mayfield Boys Treatment Center, Owensboro Treatment Center, Green River Boys Camp, Lincoln Village Treatment Center, Lake Cumberland Boys Camp, Northern Kentucky Treatment Center, Cardinal Treatment Center, Central Kentucky Treatment Center, Johnson-Breckinridge Treatment Center, KCH Rice-Audubon, Morehead Treatment Center, Woodsbend Boys Camp, and the Blue Grass Treatment Center, and in any other similar facilities in which the Commonwealth may confine committed juveniles in the future. Plaintiffs have alleged that within these facilities, operated throughout the state of Kentucky, residents are

without a means to exercise their constitutional rights to access the courts in violation of Article IV, Section 2, Clause 1, and the First, Fifth and Fourteenth Amendments Due Process and Equal Protection Clauses of the United States Constitution, and applicable state constitutional provisions; and

WHEREAS, Defendants have agreed to certain provisions as described herein regarding the provision of legal services for juveniles committed as public offenders or youthful offenders in the above named facilities, without admitting that they have violated any constitutional or federal privilege, right, or immunity of the Plaintiff class, Plaintiffs and Defendants have agreed to the following:

1. This Court has jurisdiction over this matter.
2. This action is properly maintained as a class action under Rules 23(a) and (b) of the Federal Rules of Civil Procedure. The plaintiff class is hereby narrowed to consist of all juveniles similarly situated who are, have been or will in the future be committed to the Commonwealth, as public or youthful offenders placed or confined in one of the previously described facilities operated by the Commonwealth.
3. This Consent Decree shall permanently and perpetually bind the Defendants, their officers, successors in office, employees, agents, and assigns, unless and until such time as this decree may be modified pursuant to paragraph 7 of this Consent Decree. The directives contained herein and the relief granted shall be fully enforceable as between the parties and any juveniles subject to confinement in the above described facilities operated by the Commonwealth.
4. In the event of a known or suspected breach of this Consent Decree or in the event any provision causes a result unintended by the parties or causes an ambiguous interpretation, the aggrieved party shall, as soon as reasonably possible, notify the other party in writing of the alleged breach, unintended result or ambiguous interpretation. Such written notification shall include a statement of facts sufficient to identify the alleged breach, unintended result or ambiguous interpretation. Upon receipt of such

written notice, the parties shall have thirty (30) days to make a good faith effort to negotiate a settlement to the problem between themselves. If the parties are unable to reach an agreement within those thirty (30) days, the issue may then be submitted to the Court for assistance through a status conference, or other appropriate means to resolve the issue.

5. No action may be brought by either of the parties to enforce this Consent Decree unless and until the provision in paragraph 4 are made. The parties agree to exhaust these aforementioned remedies prior to requesting assistance from the Court and the parties expressly agree that neither shall be entitled to attorney fees or costs if they fail to negotiate and/or exhaust these remedies prior to seeking the Court's assistance in resolving any dispute regarding this Consent Decree.

6. Upon entry of this Consent Decree by the Clerk of this Court, the Defendants agree to the following:

(a) The Commonwealth shall develop and implement a statewide system of legal services for juveniles who are placed or confined in any of the above described residential treatment facilities, and who have legal claims arising from or related to the fact, duration or conditions of their confinement, or any claims cognizable under 42 U.S.C. §1983 which involve violations of federal statutory or constitutional rights to the extent that such claims are related to the juvenile's confinement. Claims which arise solely under state law of a general civil nature are not contained in this Consent Decree. Legal services which are the responsibility of the Department of Public Advocacy pursuant to KRS Chapter 31, as well as legal services which are the responsibility of the Protection and Advocacy Division of the Department of Public Advocacy, pursuant to KRS Chapter 31 and its federal mandate, are not within the scope of services required by this Consent Decree. Such claims, if brought to the attention of the legal service providers made available under this Consent Decree, shall be communicated to the appropriate division or office of the Department of Public Advocacy by such provider.

(b) The Commonwealth shall provide a system of legal services through a public or private entity or entities (hereinafter referred to as "provider(s)", pursuant to a bidding process and/or negotiation process, and subsequent contract or contracts with the Commonwealth. This system of legal services shall offer in-person contact between the legal service providers(s) and the juveniles in the thirteen residential treatment facilities listed herein on a routine basis.

(c) Upon admission of any juvenile to any residential treatment facility, an informational brochure explaining the availability of post disposition legal services and the process used to obtain an appointment with a legal service provider will be provided to the juvenile. Additionally, the Commonwealth will post, in conspicuous areas accessible to residents on every ward and/or unit of the facility, a description of the legal services available to them, the means to access such services, and the days of the legal services provider(s)' scheduled visits to the facility.

(d) The Commonwealth shall establish a bidding or appropriate negotiation process no later than thirty (30) days after the entry of this Consent Decree and shall select an appropriate provider or providers, including a designated Coordinator as described below, no later than sixty (60) days thereafter. Effective date of the contract(s) shall be no later than thirty (30) days after the bidding or negotiation process is completed. The initial contract or contracts shall not be awarded to any provider or providers until such time as Plaintiffs' counsel has reviewed the proposed terms, conditions, and qualifications of provider(s). Such information and shall be submitted to Plaintiffs' counsel thirty (30) days prior to the effective date of the contract(s) with provider(s). Within ten (10) days of receipt of the proposed contracts(s), Plaintiffs' counsel shall raise with counsel for Defendants, any concerns or objections to the terms or scope of the contract(s), or of the qualifications of the providers. Thereafter, but no later than fifteen (15) days after service of the proposed contracts, Plaintiffs may file with this Court any objections to the terms or scope of the contract, or of the qualifications of

the proposed providers, and may seek a status conference to settle the dispute if the issues are not resolved after a good faith effort by both parties.

(e) The Commonwealth shall contract with one or more public or private entities to provide legal services described in paragraph 6(a) to juveniles placed in one of the thirteen residential treatment facilities operated by the Commonwealth as listed above. The contract or contracts shall also include the provision of a Coordinator, the duties of whom are described in 6(f) below. Provider(s) shall specify in which of the thirteen (13) facilities they will provide services, if not all of them, the amount of staffing required, including paraprofessional or support staff, and a budget of anticipated expenses. The Commonwealth agrees to pay the sum of \$340,000 during the first twelve (12) month contract period to a qualified provider or providers to cover the reasonable costs for attorneys' salaries, other appropriate staff, and basic operating expenses directly attributable to the delivery of legal services required by this Consent Decree. The level of staffing and payment of other expenses shall be reviewed annually and adjusted accordingly should significant increases or decreases in the juvenile population in these facilities be experienced, in the event the Commonwealth opens new similar facilities or closes existing facilities, and to reflect significant increases or decreases in amount of work necessary to adequately comply with the provisions of this Consent Decree..

(f) A Coordinator shall be chosen by the Commonwealth through the bidding or negotiation process who shall be responsible for the following tasks: serve as primary liaison with representatives of the Commonwealth regarding development and implementation of legal services, development and implementation of a data collection system of information to track information on client requests for services, number of cases opened and closed by type of action, case outcomes, number of hours spent on the provision of services, and other pertinent information; development of standards for legal service provider(s); provide technical assistance to attorneys and paraprofessional staff, and provide other appropriate means of coordination between the Commonwealth and

provider(s). The Coordinator shall communicate regularly with designated representative(s) of the Commonwealth to provide information on services being provided, to discuss and resolve any problems regarding implementation of the contract(s), and to otherwise facilitate the effective implementation of legal services in the above named facilities.

(g) Legal service provider(s) shall be required to maintain adequate records of all contacts with juveniles in the facilities, including the number of requests for services, number of cases opened and closed by type of action, case outcomes, number of hours on cases, and other information as required for effective service delivery, and shall provide such information routinely to the designated Coordinator. Providers will be required to communicate periodically with the Coordinator and with each other to facilitate more effective delivery of legal services, to maintain appropriate licenses, and to maintain adequate malpractice insurance.

(h) Provider(s) shall work independently and autonomously in the provision of legal services. The Commonwealth and its agents and employees agree that they will not interfere with the discretion, judgment or advocacy of the providers in their handling of cases under the terms of the contract(s). The Commonwealth further acknowledges that the provision of legal services under such contract(s) may involve litigation or other activities in which the Commonwealth may be a party or may have an adverse interest, and that payment of funds under the contract(s) and or renewal of the contract(s) with provider(s) shall in no way be effected by such activities or litigation.

(i) The Commonwealth shall permit provider staff access to the facilities for the purpose of discussing with juvenile residents the need for legal assistance. Such access shall be permitted during reasonable hours (reasonable hours may vary with the nature of the complaint), including regularly scheduled times, in such area of the facility to afford adequate private space for interviewing the residents, and with access to a telephone. Staff and residents at the facilities who have knowledge of potentially relevant facts

regarding complaints made by residents may, if they agree, be interviewed privately by the provider staff. Staff employed by the Commonwealth shall be interviewed at such times, if possible, so as not to interfere with work responsibilities. Residents of the facility shall be interviewed, if possible, at times which do not conflict with scheduled treatment activities. The Commonwealth shall make every effort to allow for the availability of staff if they agree to be interviewed by provider staff. Providers shall also be permitted access to wards, units or living areas of the facility, and shall have access to and copies of all relevant client records, including incident and variance reports, court, medical, facility records, and results of investigations by any internal or external sources regarding the facility concerning abuse, neglect or other maltreatment of the provider's clients, or any other records of the provider's clients, provided, however that the juvenile gives written consent to obtain any such records.

(j) The Commonwealth agrees that the directors of its facilities as named herein shall maintain a system to expeditiously notify the provider(s) when any residents requests legal assistance, has a complaint regarding a civil rights deprivation, and when any client is discharged and/or transferred to another facility, including the administrative reason(s) for the transfer.

(k) The provider(s) shall be required to provide the Commonwealth with a list, updated as necessary, of the personnel authorized to act on behalf of the provider to carry out its responsibilities under the contract(s), and to ensure that such authorized personnel supply appropriate identification to Commonwealth personnel when appearing at the facilities to exercise their duties under their contract(s).

(l) Providers shall, upon request by residents of a facility, interview and provide legal services as appropriate in matters related to the fact, conditions, or duration of their confinement, or which allege a violation of the resident's federal constitutional or statutory rights cognizable pursuant to 42 U.S.C. §1983. Providers shall conduct reasonable investigation and research into the appropriate law and facts relative to the

resident's complaint, and may speak with staff members or other residents of the facility if such staff or residents agree, and shall determine the merits of each claim consistent with the strictures of Rule 11 of the Federal and Kentucky Rules of Civil Procedure. If the provider determines that a juvenile's claim is without merit, or otherwise not covered within the scope of this Consent Decree, that determination shall be explained, in writing, to the juvenile along with other possible remedies available to the juvenile. The provider shall file pleadings regarding meritorious claims consistent with the strictures of Rule 11 of the Federal and Kentucky Civil Rules of Procedure, but shall be encouraged to pursue appropriate non-litigation remedies to resolve complaints or disputes whenever possible and when agreeable with the resident.

7. This Consent Decree is intended by the parties to require the Commonwealth to provide legal services consistent with those ordered in John L. v. Adams, 969 F. 2d 228 (6th Cir. 1992). Defendants expressly reserve the right to seek modification through this court of the Consent Decree should subsequent rulings by the Sixth Circuit Court of Appeals or the United States Supreme Court effect the extent of states' obligation to provide legal services to confined juveniles.

8. Defendants agree to pay the cost of reasonable attorney fees and expenses to counsel for Plaintiffs, made payable to the Northern Kentucky Children's Law Center, Inc., in the amount of \$24,000.

9. This Consent Decree contains the entire agreement between the parties hereto, and all verbal discussions are hereby merged into this agreement.

Dated this 14th day of August, 1995.

William O. Bertelsman
William O. Bertelsman, Judge
United States District Court

AGREED TO AND APPROVED AS TO FORM AND CONTENT BY:

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