

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

JOHN DOE, *a minor, by and through his*)
Mother and next friend, SHARIEKA)
FRAZIER,)

On behalf of himself and all others)
similarly situated,)

Plaintiff,)

v.)

No. 3-16-cv-00799

BONNIE HOMMRICH, *in her official*)
capacity as the Commissioner of the)
Tennessee Department of Children’s)
Services, THE TENNESSEE)

DEPARTMENT OF CHILDREN’S)
SERVICES, RUTHERFORD COUNTY,)

TENNESSEE, LYNN DUKE, *in her*)
individual and official capacity as Director)
of the Rutherford County Detention Facility)
and **LIEUTENANT ANGELA**)

ISTVANDITSCH, *in her individual and*)
official capacity as an officer of the)
Rutherford County Juvenile Detention)
Facility,)

Defendants.)

FIRST AMENDED COMPLAINT – CLASS ACTION COMPLAINT

Pursuant to Fed. R. Civ. P. 15(a)(1), as a matter of course, Plaintiff John Doe¹, by and through his mother and next friend Sharieka Frazier and his undersigned counsel, sues Defendants, The Tennessee Department of Children’s Services (“DCS”), Rutherford County, Tennessee (“the

¹ John Doe is a minor, so his name has been redacted pursuant to Local Rules. Similarly, counsel has redacted his name and other identifying information from exhibits and other documents submitted herewith.

County”), Lynn Duke (“Duke”), and Lieutenant Angela Istvanditsch, in their individual and official capacities as director and officer of the Facility, showing as follows:

NATURE OF THE ACTION

1. This class action lawsuit challenges the unconstitutional and inhumane treatment of juveniles placed into lengthy periods of solitary confinement under Tennessee’s juvenile justice system.

2. Named Plaintiff John Doe is a child who was charged with and later adjudicated of offenses that render him delinquent under the laws of Tennessee. John Doe was incarcerated as a pretrial detainee at the Rutherford County Juvenile Detention Facility. He is currently in the custody of the Tennessee Department of Children’s Services (“DCS”) and is placed at the Middle Tennessee Juvenile Detention Facility in Maury County, Tennessee. DCS plans to transfer John Doe to one of its Youth Development Centers (“YDCs”) as soon as a bed becomes available. At each of the facilities, John Doe has been, is or will be subject to lengthy periods of solitary confinement for disciplinary or punitive reasons, specifically for breaking even minor rules of behavior such as touching the television. John Doe is uniquely situated to represent the interests of other juveniles housed in detention throughout Tennessee, because he has been, is or will be subject to the inhumane rules of every level of secure detention in Tennessee, and has already personally suffered from solitary confinement under this system.

3. At issue in this case is whether the government may lawfully place any child in solitary confinement for long periods of time for punitive or disciplinary reasons.

4. Although the statutory scheme for juvenile justice in Tennessee requires licensure and supervision of all detention facilities by the Tennessee Department of Children’s Services, DCS has almost no standards, rules, policies or regulations for pretrial detainees. Instead, DCS

allows local detention facilities, like the facility in Rutherford County, to promulgate their own policies and procedures for juvenile detention. Enabled by DCS's neglect, local facilities, and Rutherford County in particular, have promulgated and currently follow policies that explicitly allow *or require* lengthy periods of solitary confinement of juveniles for punitive or disciplinary reasons.

5. The statutory scheme for juvenile justice in Tennessee further requires that DCS provide for the care and welfare of children adjudicated delinquent and placed into DCS custody under the state's juvenile justice tract. To that end, DCS maintains three Youth Development Centers ("YDCs") to house children in its custody who have been adjudicated delinquent of certain serious crimes and who meet certain conditions. DCS maintains administrative policies for the YDCs that explicitly allow lengthy solitary confinement, up to five (5) days, for punitive reasons when children violate the rules of those facilities.

6. Although mentioned nowhere in the statutory scheme or the administrative policies of DCS, DCS also places children in facilities referred to as "interim" detention facilities after a juvenile has been adjudicated delinquent based on certain serious charges, but before a bed/cell opens up at a YDC. There are no published policies or procedures for these facilities.

7. Prior to his adjudication as delinquent, Rutherford County subjected John Doe to lengthy periods of solitary confinement on multiple occasions for punitive or disciplinary reasons.

8. The policies and procedures of the Rutherford County Juvenile Detention Center require solitary confinement of juveniles who violate facility rules, beginning at isolation for periods of twelve (12) hours and continuing up to indefinite solitary confinement. John Doe spent several days in solitary confinement at the Rutherford County Detention Center between March and May, 2016 based on these policies.

9. Other juveniles housed at the Rutherford County Juvenile Detention Facility are subject to the same “Standard Operating Procedures” that require lengthy periods of solitary confinement for any rules violations. Rutherford County routinely places children into solitary confinement under these “Standard Operating Procedures”.

10. Upon information and belief, the “Standard Operating Procedures” of the Rutherford County Juvenile Detention Facility are representative of the inhumane policies related to the solitary confinement of juveniles that are currently in place and that are currently followed by juvenile detention personnel throughout the State of Tennessee.

11. DCS has now placed John Doe at the Middle Tennessee Juvenile Detention Center in Columbia, Tennessee. Upon information and belief, that facility, operating under the supervision of DCS, also allows lengthy solitary confinement for disciplinary reasons.

12. DCS has stated that it will place John Doe at a YDC as soon as bed becomes available. Once he is placed at a YDC, John Doe will again be subject to lengthy periods of solitary confinement for punitive/disciplinary reasons if he violates certain rules.

13. The practice of placing juveniles in solitary confinement for disciplinary reasons is subject to repetition, and likely happens every day in Tennessee. John Doe has personally experienced the harmful effects of solitary confinement on multiple occasions.

14. Imposition of solitary confinement on juveniles for punitive or disciplinary reasons violates John Doe’s and other juveniles’ rights to be free of cruel and unusual punishment under the Eighth Amendment to the United States Constitution, as applied to the states under the Fourteenth Amendment, and their rights to substantive due process under the Fourteenth Amendment.

JURISDICTION AND VENUE

15. Plaintiff brings this action pursuant to 42 U.S.C. § 1983 for Defendants' violations of his civil rights under the Eighth and Fourteenth Amendments to the United States Constitution, and to obtain injunctive and declaratory relief for himself and similarly situated juveniles that the policies and procedures allowing lengthy solitary confinement of juveniles for disciplinary or punitive reasons are unconstitutional and cannot be enforced against him or others.

16. This court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343(a)(3) (civil rights).

17. Venue is proper under 28 U.S.C. §§ 1391(b)(1) and (2) because the defendants reside in this district and the events and omissions giving rise to the claims occurred and/or will occur in this district.

PARTIES

18. Plaintiff John Doe is a child currently in DCS custody and residing at the Middle Tennessee Juvenile Detention Center in Columbia, Tennessee. He was previously detained as a juvenile pretrial detainee at the Rutherford County Juvenile Detention Facility in solitary confinement. Sharieka Frazier is his mother. They are citizens and residents of Rutherford County, Tennessee in this judicial district.

19. Plaintiff is subject to the authority and directives of Defendants DCS, the Facility, Duke and Istvanditsch.

20. John Doe has standing to pursue this lawsuit.

21. Defendant Hommrich is the Commissioner of the Tennessee Department of Children's Services. Tennessee Department of Children's Services ("DCS") is an agency of the State of Tennessee statutorily required to provide services, treatment and protection for vulnerable

children throughout the State of Tennessee. DCS is specifically mandated to protect children deemed delinquent, and to license and supervise facilities that hold juveniles under charges of delinquency. DCS has placed children at the Rutherford County Juvenile Detention Facility and subjected those children to the rules of that facility, including rules that mandate lengthy solitary confinement as punishment for minor rules violations. DCS can be served with process through the Office of the Attorney General and Reporter for the State of Tennessee.

22. The Defendant Rutherford County, Tennessee operates the only detention facility for juveniles in Rutherford County, Tennessee, and specifically oversaw the confinement of John Doe. It continues to supervise the detention of other juveniles like John Doe, some of whom are from Rutherford County, and others of whom are placed at the Rutherford County Facility by contract with other counties or DCS. The County can be served with process through Director Lynn Duke, at 1710 S Church St #4, Murfreesboro, TN 37130.

23. The Defendant Lynn Duke is the director of the Facility, and is responsible for the day to day operations thereof, including provision and enforcement of solitary confinement. She can be served with process at 1710 S Church St #4, Murfreesboro, TN 37130.

24. The Defendant Lieutenant Angela Istvanditsch is an officer employed at the Facility, and is responsible for the supervision and protection of children housed there, including Q.F. She can be served with process at 1710 S Church St #4, Murfreesboro, TN 37130.

25. At all times material to this lawsuit Defendants Duke and Istvanditsch were employed by the County. They are sued in their individual and official capacities.

26. Defendants DCS, Hommrich, Rutherford County, Tennessee, Duke and Istvanditsch, at all times relevant hereto, were acting under color of law.

ALLEGATIONS SPECIFIC TO JOHN DOE

27. The Juvenile Court for Rutherford County, Tennessee (“the Juvenile Court”) ordered John Doe detained while awaiting adjudication in the Facility on March 18, 2016. John Doe That Court adjudicated John Doe delinquent and placed him into Defendant DCS’s custody on May 10, 2016. In the interim, John Doe was housed at the Rutherford County Juvenile Detention Facility.

28. The Juvenile Court further ordered that DCS provide the child with a mental evaluation by April 18, 2016, because “there is reason to believe the child has a mental illness and/or mental retardation”.

29. Immediately upon his admission into the Facility, and for a period of several days, John Doe was placed into solitary confinement by Rutherford County for punitive and/or disciplinary reasons.

30. A mental health provider attempted to conduct the evaluation Ordered by the Court on April 6, 2016, but was turned away from the facility because the Facility refused to allow face to face contact between the evaluator and the child due to an “incident” at the facility. Accordingly, the evaluation was not conducted until April 25, 2016.

31. On April 19, 2016, before any mental evaluation, County employees at the Facility, including Duke and Istvanditsch, requested the Rutherford County District Attorney’s Office file a Motion to Review Detention, seeking again to place John Doe in seclusion/isolation for 23 hours a day with no books or other materials, and with the window to his cell covered with a board, for an indefinite amount of time.

32. On April 19, 2016, County employees from the Facility, including Istvanditsch under the direction of Duke, prosecuted the motion to place John Doe in solitary confinement.

Agents of the Department of Children's Services were present at the hearing, but made no objections to Defendant Istvanditsch's request that the court grant permission to punish John Doe by placing him in isolation for an indefinite period of time.

33. The Court recorded the hearing wherein County officials requested approval of their plan to isolate John Doe indefinitely. County officials admitted at the hearing that John Doe had not harmed or threatened to harm anyone, and that no emergency condition existed.

34. Defendants urged placement of John Doe into indeterminate solitary confinement because he was disobedient and he had allegedly disrupted the Facility's classroom, "hollered," "rapped," and had "flashed gang symbols." Defendants did not allege that John Doe was a physical danger to himself or others, that an emergency existed or that he had made threats to other inmates or officers at the Facility. Defendants sought solitary confinement for the purposes of punishment and/or discipline.

35. At the solitary confinement hearing, Lieutenant Istvanditsch acknowledged that John Doe likely suffered from some sort of mental illness and that he had been "acting crazy."

36. Defendants proceeded to place John Doe in solitary confinement again on April 19, 2016, and he remained there until a Temporary Restraining Order compelled his release.

37. John Doe's solitary confinement typically included isolation in a concrete cell for 23 out of 24 hours a day, with no access to books, magazines, music or other educational or recreational materials. On occasion, the only window to his cell has been covered with a board.

38. Throughout his solitary confinement, John Doe was excluded from the Facility's educational program, and no alternative was provided. John Doe was further excluded from all recreational activities and was not been allowed meaningful opportunities to exercise his body.

39. John Doe was not allowed access to a counselor or other mental health professional throughout most of his detention, and certainly not before or during his periods of solitary confinement.

40. John Doe suffered and is currently suffering adverse consequences from his continued solitary confinement, including further withdrawal, depression, listlessness and lethargy. The total extent of harm visited upon him is unknown.

41. Defendants' actions to place John Doe in solitary confinement were not motivated by safety and were, instead, motivated by a desire to punish/discipline John Doe.

42. Defendants routinely place juveniles into solitary confinement for lengthy periods of time based upon a determination to punish or discipline youth.

43. Upon his adjudication as a delinquent, John Doe was placed into DCS custody for an indeterminate amount of time.

44. The Juvenile Court of Rutherford County Tennessee retained exclusive continuing jurisdiction over John Doe, up to his nineteenth birthday. As such, John Doe will be subject to periodic review of his DCS custody by the Rutherford County Juvenile Court, and will return to Rutherford County Juvenile Detention Facility for each of several required reviews.

45. DCS has currently placed John Doe at the Middle Tennessee Juvenile Detention Facility in Columbia, Tennessee. That facility is also licensed and supervised by DCS by statute. Upon information and belief, that facility also follows policies that allow placement of juveniles into solitary confinement for lengthy periods of time.

46. DCS plans to place John Doe into one of its three Youth Development Centers. DCS policy explicitly allows for the solitary confinement of juveniles at YDCs for punitive or disciplinary reasons for up to five (5) days at a time.

POLICIES OF RUTHERFORD COUNTY

47. Officials at the Rutherford County Juvenile Detention Center follow Standard Operating Procedures.

48. The Standard Operating Procedures for Rutherford County's Juvenile Detention Facility not only allow for solitary confinement: *they require solitary confinement of juveniles for punitive or disciplinary reasons.*

49. Under the "Behavior Management" section of the Procedures, the County describes its "confinement" procedure as follows: "Confinement consists of placing a detainee in a designated room by him or herself for a period of time. Confinement may be used to gain immediate control of a situation, to ensure safety and security, *and/or discipline a detainee for violations of facility rules*"

50. The policy further prescribes the following additional restrictions or mandates for "confinement" of juveniles:

- a. "detainees are not allowed contact with the general population";
- b. "a window board shall be placed over the detainee's window when they are on confinement";
- c. "Detainees on confinement will not be eligible to receive recreation time or leisure time";
- d. "Educational services may be taken from the detainee";
- e. "While in confinement detainees will not be allowed to have any reading material" (except the Bible).

51. The SOP further sets forth a list of rules for detainees. These rules prohibit a large range of conduct from "must make your bed" to "no cursing" to no fighting.

52. The SOP then sets forth a “behavioral continuum” that mandates consequences for rules violations. The only consequence available is “confinement”. For some rules violations, mandatory confinement begins at twelve hours, but it may begin at or jump to “indefinite”.

53. Rutherford County uses several terms to describe its policy that mandates isolation and deprivation of sensory stimuli for juveniles, such as “loss of privileges”, “confinement”, “lock down”, “seclusion” and others. Each of these words are interchangeable and mean the same thing—the child is separated from all meaningful human contact and is allowed no stimuli for brain or body for up to indefinite amounts of time, except for one hour per day.

54. Upon information and belief, Rutherford County’s SOPs are representative of the policies followed by other local detention facilities throughout the state.

DCS AND JUVENILE SOLITARY CONFINEMENT IN TENNESSEE

54. In Tennessee, juveniles in all forms of custody fall under the purview of DCS. DCS provides care and oversight for juveniles upon adjudication as dependent and neglected minors, or upon adjudication as delinquency for commission of offenses that would be criminal if committed by adults.

55. DCS licenses and supervises facilities that house juveniles awaiting adjudication.

56. The overall goals of DCS are set forth by statute at Tenn. Code Ann. § 37-5-102 (2016) as follows:

- (1) Protect children from abuse, mistreatment or neglect;
- (2) Provide prevention, early intervention, rehabilitative and educational services;
- (3) Pursue appropriate and effective behavioral and mental health treatment;
- (4) Ensure that health care needs, both preventive and practical, are met; and
- (5) Keep children safe.

57. DCS is responsible for the licensing and supervision of detention centers for juveniles, and is specifically responsible for licensing and supervision of the Rutherford County Juvenile Detention Facility, Middle Tennessee Juvenile Detention Center and the Youth Development Centers, pursuant to Tenn. Code Ann. § 37-5-109(1) (2016).

58. Despite its obligations related to all juvenile detention centers in Tennessee, DCS maintains detailed policies and procedures only for its YDCs.

59. DCS has very limited policies and procedures for the treatment of pretrial detainees who are not housed at YDCs, relying largely on individual providers/facilities to create and maintain their own policies.

60. DCS is required by state and federal law to place children in the least restrictive environment possible.

60. DCS Policy explicitly allows solitary confinement for disciplinary purposes at YDCs.

61. DCS Administrative Policies and Procedures: 25.5 DOE governs confinement at YDCs. Under that policy, children may be isolated for up to five days, if approved by an administrator, as a sanction for rules violations. The child must be released from confinement after five days, but if the YDC waits two days, the YDC may return the child to isolation for another five days in a potentially never-ending cycle.

62. DCS's disciplinary confinement policy requires that the youth be observed by staff at least every fifteen minutes, and that a child in confinement for three days receive consultation from a medical consultant. These controls are an implicit admission that such confinement is damaging to the mental well-being of juveniles.

SOLITARY CONFINEMENT OF JUVENILES IS EXCEPTIONALLY HARMFUL

63. While isolated in solitary confinement, children are deprived of the services and programming they need for healthy growth and development.

64. Solitary confinement can cause serious psychological, physical, and developmental harm – or, worse, can lead to persistent mental health problems and suicide. These risks are magnified for young people with disabilities or histories of trauma and abuse.

65. Normal human contact and a range of age-appropriate services and programming are essential for the development and rehabilitation of young offenders.

66. There can be no doubt that the solitary confinement of juveniles is objectively harmful, as authorities from state, federal, international and scientific communities agree that such confinement is extremely damaging to youth.

67. An overwhelming number of youth in juvenile detention are victims of psychological, physical or sexual abuse.

68. An overwhelming number of youth in juvenile detention suffer from diagnosed and undiagnosed mental illness.

69. The mind and psyche of juveniles remains in a developmental stage, and is particularly vulnerable to the adverse effects of solitary confinement.

State Acknowledgement of Harm

70. At the state level, DCS has conflicting policies regarding solitary confinement. These conflicting policies allow the practice of solitary confinement as punishment to continue throughout the system.

71. In DCS's Administrative Policies and Procedures: 27.2 DOE, DCS, refers to solitary confinement as "seclusion", and declares that "[t]he use of seclusion is seen as a restrictive intervention and one that poses a risk to the psychological well-being of a child/youth."

72. The policy authorizes seclusion of youth only in emergency situation where the child is a risk of harm to himself or others. Seclusion can only be used upon the order of a doctor, psychologist or other professional.

73. Orders for seclusion are limited to one (1) hour, and no more than two (2) hours in a twenty-four (24) hour period. Seclusion must end when the danger of the child to himself or others has ended.

74. For children in YDCs, 19.12 DCS absolutely prohibits the use of seclusion "as a punishment or consequence".

75. It is clear that the State of Tennessee, acting through DCS, has acknowledged the objective harm of seclusion, and is subjectively aware of the harm.

76. Despite its awareness of the brutal harm caused by solitary confinement, DCS continues to allow its use at the local level, at detention centers like the Rutherford County Juvenile Detention Center, and at its YDCs. DCS allows this inhumane practice to continue because it is deliberately indifferent to the harm the practice causes the youth DCS claims to serve.

Federal Authorities Further Acknowledge the Harm of Solitary Confinement of Juveniles

77. President Obama recently took executive action prohibiting the solitary confinement of juveniles in the federal system, acknowledging the severe harmful effects on children.

78. The US Attorney General's *National Task Force on Children Exposed to Violence* said, "nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement."

79. Nearly every court to consider the solitary confinement of adults with serious mental disabilities has found the practice to be unconstitutional.²

80. The US Department of Justice, when it has investigated the isolation and segregation of adolescents in adult facilities, has suggested that there are constitutional limits related to the physical and social isolation of youth with regard to conditions, duration, and process.

81. In 2003, the United States Congress enacted the Prison Rape Elimination Act, and Tennessee has agreed to be bound by its terms. Although in a different context, the law makes clear that solitary confinement of youth is inappropriate. The law bans isolation except as a last resort to keep the juvenile or others safe, and then only until an alternative can be arranged. It bans the practice for both rape victims and perpetrators of rape.

International Law Recognizes the Harm and Cruelty of Juvenile Solitary Confinement

82. With regard to solitary confinement, the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) describe punitive solitary confinement of young people under age 18 as cruel, inhuman, or degrading treatment.

² For example, *Ruiz v. Johnson*, Southern Federal District Court of Texas, 1999 (37 F. Supp. 2d. 855, 915 (S.D. Tex. 1999)), rev'd on other grounds, *Ruiz v. Johnson*, Fifth Circuit Federal Court of Appeals, 2001 (243 F.3d 941 (5th Cir. 2001)), adhered to on remand, *Ruiz v. Johnson*, Southern Federal District Court of Texas, 2001 (154 F. Supp. 2d 975 (S.D. Tex. 2001)) ("Conditions in TDCJ-ID's administrative segregation units clearly violate constitutional standards when imposed on the subgroup of the plaintiff's class made up of mentally-ill prisoners); *Coleman v. Wilson*, Eastern Federal District Court of California, 1995 (912 F.Supp. 1282, 1320-21 (E.D. Cal. 1995)); *Madrid v. Gomez*, Northern Federal District Court of California, 1995 (889 F. Supp. 1146, 1265-66 (N.D. Cal. 1995)); *Casey v. Lewis*, Federal District Court of Arizona, 1993 (834 F. Supp. 1477, 1549-50 (D. Ariz. 1993)); *Langley v. Coughlin*, Southern Federal District Court of New York, 1988 (715 F. Supp. 522, 540 (S.D.N.Y. 1988)) (holding that evidence of prison officials' failure to screen out from SHU 'those individuals who, by virtue of their mental condition, are likely to be severely and adversely affected by placement there' states an Eighth amendment claim).

83. The Committee on the Rights of the Child, which interprets the CRC, has also suggested that the punitive solitary confinement of young people under age 18 is cruel, inhuman, or degrading treatment.

84. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty reiterates this conclusion.

85. A number of treaty and regional bodies have suggested that the prolonged solitary confinement of both adults and children can constitute cruel, inhuman, or degrading treatment.

86. The special rapporteur on torture, in his report to the General Assembly, called for an absolute ban on solitary confinement for young people under age 18: “The Special Rapporteur holds the view that the imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading treatment and violates article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture.”

87. The special rapporteur also called for an absolute ban on solitary confinement of those with mental disabilities because the adverse effects are especially significant for persons with serious mental health problems.

88. Although most research on solitary confinement has focused on adults, the findings of this research reasonably can be applied to youth.

89. Research shows that adults who are subject to solitary confinement generally exhibit a variety of negative physiological and psychological reactions, including: hypersensitivity to external stimuli; perceptual distortions and hallucinations; increased anxiety and nervousness; revenge fantasies, rage, and irrational anger; fears of persecution; lack of impulse control; severe and chronic depression; appetite loss and weight loss; heart palpitations; withdrawal; blunting of

affect and apathy; talking to oneself; headaches; problems sleeping; confusing thought processes; nightmares; dizziness; self-mutilation; and lower levels of brain function, including a decline in EEG activity after only a few days in solitary confinement.

90. Young people are even less psychologically able than adults to handle solitary confinement. Youth are also psychologically different than adults. They experience time differently (a day for a child feels longer than a day to an adult) and have a greater need for social stimulation.

91. Experts, such as the American Academy of Child and Adolescent Psychiatry, believe that, due to their “developmental vulnerability,” adolescents are particularly at risk of adverse reactions.

92. Research published by the Department of Justice found that more than 50% of the suicides of children detained in juvenile facilities occurred while youth were confined alone in their room (a form of solitary confinement) – and that more than 60% of young people who committed suicide had a history of being held in isolation.

93. Additionally, the literature recognizes that children held in isolation are far less likely to receive appropriate education or access to physical development.

94. All Defendants, who have received training and reviewed literature related to the special needs of children, were either aware or recklessly unaware of the extremely adverse consequences of solitary confinement on children, and especially on children with mental health needs.

**Count One:
Violation of the Eighth and Fourteenth Amendments
(42 U.S.C. §1983)**

95. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this Complaint.

96. Defendants, individually and in concert, deprived, and are continuing to deprive, John Doe and similarly situated juveniles of rights secured by the United States Constitution.

97. By subjecting John Doe and similarly situated juveniles to lengthy solitary confinement as a means of punishment, Defendants have violated, are continuing to violate, and likely will violate John Doe's and other juveniles' right to be free of cruel and unusual punishment, the right to due process, and the right to be kept in humane conditions, as guaranteed by the Eighth Amendment and the Fourteenth Amendment to the U.S. Constitution.

98. Subjecting John Doe and other juveniles to solitary confinement for punitive or disciplinary reasons is objectively harmful and inhumane.

99. All Defendants were subjectively aware, or should have been aware but for their reckless disregard of the facts and information available to them, that solitary confinement of juveniles in general and John Doe in particular was unreasonably harmful and inhumane.

100. The solitary confinement of John Doe and other juveniles for punitive or disciplinary reasons is unnecessary, serves no legitimate interest and violates public policy and law in other regards.

101. Defendants all acted with deliberate indifference and/or intent when they deprived John Doe of his constitutionally protected rights.

102. Defendants all acted with deliberate indifference when they enacted, or allowed to be enacted, policies that allow or require the solitary confinement of juveniles for punitive or disciplinary reasons.

103. In depriving John Doe and other juveniles of these rights, Defendants acted under color of state law. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983.

**Count Two:
Violation of the Eighth and Fourteenth Amendments
(Declaratory Judgment)**

104. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this Complaint.

105. Plaintiff, individually or as representative of a class, is entitled to a declaration that Defendants' actions, whether authorized by policy, statute, rule, custom or practice, have and will violate his rights and the rights of other juveniles, now and in the future, as guaranteed by the Eighth Amendment and the Fourteenth Amendment to the U.S. Constitution.

**Count Three
Permanent Injunctive Relief
42 U.S.C. § 1983**

106. Based on the allegations contained in previous paragraphs, which are re-alleged here by reference, Plaintiff claims that he is entitled to a Permanent injunction.

107. The rights of John Doe and other juveniles under the Eighth Amendment have been violated under color of state law.

108. The policies of Rutherford County and DCS make it a near certainty that the rights of John Doe and other juveniles will continue to be violated in the future, as these policies explicitly allow or require lengthy solitary confinement for disciplinary or punitive purposes.

109. To end an ongoing violation of John Doe's and other juveniles' rights, Defendants must be restrained from placing John Doe or other juveniles in solitary confinement as a punishment or discipline.

110. Under both DCS and Rutherford County policy, no meaningful review is available to John Doe or similarly situated juveniles to protect themselves from the harms of solitary confinement. Defendants' paper grievance procedures only allow review *after* the solitary confinement has continued for a lengthy period of time, and the damage of the confinement has already been caused. Accordingly, John Doe has no adequate remedy at law and only injunctive relief can restore John Doe's constitutionally protected rights and ensure the protection of his rights in the future.

CLASS ALLEGATIONS

111. Plaintiff Doe brings this action for declaratory and injunctive relief on his own behalf, and pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(2), on behalf of all others similarly situated.

112. Plaintiff Doe seeks to represent a class consisting of all current and future juveniles held in detention at secure facilities in the State of Tennessee.

113. All members of the Class are being harmed, or absent injunctive relief will be harmed, by Defendants' policies, custom and practice of placing juveniles in solitary confinement for disciplinary or punitive reasons.

114. There are questions of law and fact common to the class, namely whether Defendants engage in the challenged policies/customs/practices, and whether those policies/customs/practices violate class members' rights under the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

115. The proposed class representative's claims are typical of the claims of the Class because all inmates are subjected to the same unconstitutional conditions throughout Tennessee's juvenile justice system, all as challenged in this Complaint.

116. A class action is a superior means, and the only practicable means, by which Plaintiff and unknown Class members can challenge the Defendants' unlawful actions and policies regarding solitary confinement of juveniles. This action satisfies the numerosity, commonality, typicality, and adequacy requirements of those provisions.

A. Numerosity. Fed. R. Civ. P. 23(a)(1)

117. Over the past several years, the Defendants have maintained a policy explicitly enforcing solitary confinement of juvenile detainees for disciplinary purposes. Pursuant to all Defendants' policies, practices, and customs, each prospective Class member either has, is, or will be in jeopardy of solitary confinement at the hands of the Defendants.

118. The names, case numbers, dates of confinement, and all other relevant records are in possession of the Defendants and are easily ascertainable.

119. The Defendants have followed and continue to follow materially the same policies, practices, and procedures with respect to all of the Class members.

120. Those who are still detained or who will in the future be detained by the Defendants will be subjected to the same ongoing policies and practices absent the relief sought in this Complaint.

B. Commonality. Fed. R. Civ. P. 23(a)(2).

121. The relief sought is common to all members of the Class, and common questions of law and fact exist as to all members of the Class. The Plaintiff seeks relief concerning whether the Defendants' policies, practices, and procedures violated their rights and relief requiring that those policies, practices and procedures be changed to protect their rights in the future.

122. Among the most important, but not the only, common questions of fact are:

- Factual determinations concerning whether the County and DCS permit and practice solitary confinement;
- All of the facts surrounding how the County and DCS promulgate policies regarding disciplinary or punitive solitary confinement, and what DCS policies and practices are in place for the oversight of the County's use of solitary confinement

123. Among the most important common question of law are:

- Whether the use of solitary confinement against juveniles for punitive or disciplinary reasons violates federal law

124. These common legal and factual questions arise from one central scheme and set of policies and practices. The Defendants' written policies and procedures expressly provide for and even require the use of disciplinary or punitive solitary confinement of juveniles. The Defendants operate openly under these policies and procedures openly and in materially the same manner every day.

C. Typicality. Fed. R. Civ. P. 23(a)(3)

125. The named Plaintiff's claims are typical of the claims of the members of the Class, and he has the same interests in this case as all other members of the Class that he represents. Each

of them suffered injuries from the failure of the Defendants to comply with constitutional and statutory duties detailed above. The answer to whether the Defendant's policies and practices is unlawful in the ways alleged will determine the claims of the named Plaintiff and every other Class member.

126. If the named Plaintiff succeeds in his claims that the Defendants' policies and practices concerning solitary confinement violate the law in the ways alleged in each claim of the Complaint, then that ruling will likewise benefit every other member of the Class.

D. Adequacy. Fed. R. Civ. P. 23(a)(4).

127. The named Plaintiff is an adequate representative of the Class because he is a member of the Class and because his interests coincide with, and are not antagonistic to, those of the Class. There are no known conflicts of interest among Class members, all of whom have a similar interest in vindicating the constitutional rights to which they are entitled.

128. The Plaintiff is represented by attorneys from Downton Clark, PLLC, and the American Civil Liberties Union Foundation of Tennessee who have experience in litigating complex civil rights matters in federal court and extensive knowledge of both the details of the Defendant's policies and the relevant constitutional and statutory law.

129. Due to the emergent nature of the situation in which the named Plaintiff found himself on April 25, 2016, counsel's efforts commenced immediately and since that day counsel have interviewed witnesses, community members, and medical experts on the issues surrounding the solitary confinement of juveniles.

130. As a result, counsel have devoted considerable time and resources to becoming intimately familiar with the Defendant's policies and procedures, as well as the relevant state and federal laws and procedures that should govern them.

131. Counsel for the Plaintiff possesses the resources to prosecute this case zealously.

132. The interests of the members of the Class will be fairly and adequately protected by the Plaintiff and their attorneys.

E. Rule 23(b)(2)

133. Class action status is appropriate because the Defendants, through the policies, practices, and procedures above described, have acted and/or refused to act on grounds generally applicable to the Class. Thus, a declaration that people in the Class are entitled, as a matter of federal law, to be free from disciplinary or punitive solitary confinement would benefit every member of the proposed Class. The same applies to legal rulings on other claims.

134. Injunctive relief compelling the Defendants to comply with these constitutional requirements will similarly protect each member of the Class from being subjected to the Defendants' unlawful policies and practices with respect to the use of punitive or disciplinary solitary confinement. Furthermore, such relief will protect future detainees from the same unconstitutional conduct. Therefore, declaratory and injunctive relief with respect to the Class as a whole is appropriate.

F. Rule 23(b)(3)

135. Class treatment under Rule 23(b)(3) is also appropriate because the common questions of law and fact overwhelmingly predominate in this case. This case turns, for the named Plaintiff, as well as for the members of the Class, on what the Defendants' policies and practices are and on whether those policies are lawful.

136. The common questions of law and fact listed above are dispositive questions in the case of every member of the Class. The question of liability can therefore be determined on a class-wide basis. Class-wide treatment of liability is a far superior method of determining the

content and legality of the Defendants' policies and practices than individual suits by hundreds or thousands of Tennessee residents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

- A. That the Court certify a class as defined and requested hereinabove;
- B. That the Court enter an order declaring that the Defendants have violated or will violate the Plaintiff's and the class's rights protected under the Eighth and Fourteenth Amendments to the United States Constitution;
- C. That the Court enter an order permanently enjoining Defendants and their officers, agents, affiliates, subsidiaries, servants, employees and all other persons or entities in active concert or privity or participation with them, from placing John Doe or other juveniles in the class in solitary confinement for punitive or disciplinary reasons;
- D. That the Court enter an order permanently enjoining the enforcement of Defendants' policies that allow or require solitary confinement of juveniles for disciplinary or punitive reasons;
- E. An order directing Defendants to take such affirmative steps necessary to remediate the past use of solitary confinement for punitive or disciplinary reasons on juveniles;
- F. An order enjoining Defendants and their officers, agents, affiliates, subsidiaries, servants, employees and all other persons or entities in active concert or privity or participation with them, from taking retaliatory action against Plaintiff for bringing this lawsuit, or against any juvenile detainees for their past or future expressions of support Plaintiff or opposition to Defendants' use of solitary confinement on juveniles for punitive or disciplinary reason;

G. An entry of judgment for Plaintiff and the class against only the County Defendants for nominal damages;

H. An award of Attorneys' fees and costs associated with this action, pursuant to 28 U.S.C. § 1988, *et seq.* or under any other relevant authority;

I. That this Court retain jurisdiction of this matter to enforce the terms of the Court's orders' and appoint a neutral monitor to ensure compliance with injunctive relief; and

J. Such further and different relief as this Court may deem just and proper or that is necessary to make the Plaintiff and the class whole.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2016, a true and correct copy of the foregoing document has been served via ECF to:

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