


(Cite as: 432 F.Supp. 1130)

issue is jurisdictional, it is incumbent on district court to raise the question sua sponte.


[91 Federal Courts](#)  **997**
[170Bk997 Most Cited Cases](#)

In class action challenging constitutionality of conditions at state institution for delinquent boys, statute did not require convening of three- judge court since plaintiffs did not seek to enjoin an officer of the state from acting pursuant to


boys were constitutionally inadequate with respect to physical living quarters, in view of expert testimony that living quarters were substantially overcrowded. [U.S.C.A.Const. Amends. 8, 14.](#)

[17] Infants  275
[211k275 Most Cited Cases](#)
(Formerly 329k2 Reformatories)

Educational facilities at state institution for delinquent boys were constitutionally deficient and thus officials of institution would be ordered to submit plan to remedy deficiencies in educational program. [U.S.C.A.Const. Amends. 8, 14.](#)

[18] Infants  275
[211k275 Most Cited Cases](#)
(Formerly 329k2 Reformatories)

Vocational training program at state institution for delinquent boys was constitutionally deficient, and thus officials of institution would be ordered to submit plan to remedy the deficiency. [U.S.C.A.Const. Amends. 8, 14.](#)

[19] Infants  275
[211k275 Most Cited Cases](#)
(Formerly 329k2 Reformatories)

Recreational facilities at state institution for delinquent boys were constitutionally deficient, and thus officials of institution would be ordered to submit to court plan to remedy each of the deficiencies, including specific steps to increase amount of recreation time, to establish physical education program, and to implement leisure-time program which would provide students with opportunities to develop skills in arts, crafts and music.

[20] Constitutional Law  255(4)
[92k255\(4\) Most Cited Cases](#)

Refusal of superintendent of state institution for delinquent boys to parole or release students from the institution without proper approval of committing court violated students' rights to due process of law, as did superintendent's practice of refusing to release students for vacations without permission of committing court, and thus both practices would be enjoined. [U.S.C.A.Const. Amend. 14](#); Code Miss.1972, § 21-19.

[21] Prisons 

(Cite as: 432 F.Supp. 1130)

[U.S.C. s 1983](#) and the United States Constitution. This Court has jurisdiction pursuant to [28 U.S.C. s 1343](#).

At the time of the filing of his complaint, the named plaintiff, Kenneth Morgan, was 16 years old and was confined under an order of the Chancery Court of Rankin County, Mississippi finding him to be delinquent. On April 1, 1975, the Court certified the case as a class action under [Rule 23\(b\)\(2\) of the Federal Rules](#)

(Cite as: 432 F.Supp. 1130)

plaintiffs, we will describe the Mississippi juvenile justice system under which plaintiff and the members of his class have been committed to OTS, and will discuss the two principal legal theories under which plaintiffs attack the conditions at OTS.

I. THE MISSISSIPPI JUVENILE JUSTICE SYSTEM.

Under the Mississippi Youth Court Act, [Miss.Code Ann. ss 43-21-1](#)

to specific acts directed at selected individuals, but is equally pertinent to general conditions of confinement," *1137 [Gates v. Collier, 501 F.2d 1291, 1301 \(5th Cir. 1974\)](#), such as many of the conditions challenged by plaintiffs here. [Williams v. Edwards, 547 F.2d 1206 \(5th Cir. 1977\)](#).

III. THREE-JUDGE COURT.

[8][9] Although no party has raised the question of the necessity under 28 U.S.C. s 2281 of convening a three-judge court in this case, this issue is jurisdictional, and it is incumbent on the Court to do so sua sponte. [Morales v. Turman, supra, 535 F.2d at 873 n. 11; \[FN5a\] Sands v. Wainwright, 491 F.2d 417, 424 \(5th Cir. 1973\)](#), cert. denied, [Guajardo v. Estelle, 416 U.S. 992, 94 S.Ct. 2403, 40 L.Ed.2d 771 \(1974\)](#). We do not deem it necessary, however, to set forth in detail the legal principles which govern a determination of the applicability of s 2281 to cases attacking on constitutional grounds conditions of

covered with a tile or terrazzo-like material. See also, Exs. P-1 to P-5.

[FN6](#). The day room is approximately 16 feet by 26 feet. Except for some double beds, there is no furniture or recreational equipment in the day room. Pretrial Order P H(6) at 26. The day room is used as a living- sleeping area for some students just prior to their release from the ITU. Davis 79-80.

One of the cells was padded until recently. It has no window, furnishings, or slab for sleeping. The toilet consists of a hole in the floor with a flushing mechanism located outside of the cell. Pretrial Order P H(4) at 24; Ex. P-3. This cell is regularly used to house students during the day when all of the other cells are in use. Pretrial Order P H(4) at 24; Brodsky 10.

The other fourteen cells have no furnishings, except a combination wash basin/commode and a concrete slab built into the wall for sleeping. [FN7](#) Each of these cells has a small opaque outside window, which

maximum period of confinement that should be permitted, although all agreed that any form of isolation such as confinement in the ITU should only be used as a cooling-off or time-out period to allow a student to get himself under control and should never exceed 24 hours. Phelps 61-62; Brodsky 12-13; Milan 82-83; Fannin 76-79; Draper 32; Cox 62. The experts also agreed that even this limited use of the ITU for very short periods of isolation would require substantial improvements in the physical condition and furnishings of the present ITU cells. Brodsky 31, 84; Milan 79-80; Cox 59-60; Fannin 73-74, 95.

[FN10.](#) According to OTS records, one student became so depressed about being in the ITU that he thought of suicide and tried to cut both wrists with a piece of wire from his mattress. Sproat II at 30-31 and Exh. P-1 thereto.

[FN11.](#) This is not to say that some students do not need to be confined under more secure conditions than presently exist in the regular cottages at OTS. Rather, the experts made clear that some students need more secure arrangements, but they still must receive the full range of treatment services under the more secure conditions. This has been done in South Carolina and in Louisiana, where students needing secure facilities are assigned for all or most of their commitments to maximum security units where they receive a full range of intensive treatment programs on a regular basis. DeCell 87; Phelps 61-67, 69-70. In contrast, the ITU serves merely to isolate the OTS students from all treatment services and in an environment where treatment cannot possibly be successful.

[FN12.](#) Isolation at the Mississippi State Penitentiary at Parchman is limited to temporary time-out periods for prisoners who have lost control of themselves. Reed

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example, pointed out from his own experience in South Carolina that isolation in a lock-up such as the ITU does not make students penitent but instead increases their hostilities and adds to their behavior problems. DeCell 30-31. Dr. Brodsky found that the students in the ITU showed ". . . little sense of deterrence. They felt much more that they were victims rather than they had learned ~~the lesson.~~" Brodsky 28-29. See also, Milan 76, 79.

Courts have uniformly prohibited the use of juvenile lockup facilities such as the ITU. For example, in *Inmates of Boys' Training School v. Affleck*, supra, the district court enjoined the future confinement of juvenile offenders in two maximum security facilities which, like the ITU here, were used to punish students for running away from the institution or for violating its rules. Despite the lack of any physical abuse of the students, Q q 0.24 0 0 -0.24 18 774 cm BT41 0 0 -41

The experts strongly rejected the possibility that placement in the ITU would deter the kinds of conduct which put them there. Mr. DeCell, for

the continued

(Cite as: 432 F.Supp. 1130)

In our view the "right to treatment" includes the right to minimum acceptable standards of care and treatment for juveniles and the right to individualized care and treatment. Because children differ in their need for rehabilitation, individual need for treatment will differ. When a state assumes the place of a juvenile's parents, it assumes as well the parental duties, and its treatment of its juveniles should, so far as can be reasonably required, be what proper parental care would provide. Without a program of individual treatment the result may be that the juveniles will not be rehabilitated, but warehoused, and

treatment plan . . . (t) here is no such thing as a service oriented institution." Cox 30. Dr. Milan described the function of the treatment plan as insuring that the school's programs focus on the students' identifiable needs as well as permitting regular re-evaluations of the services being provided. Milan 22-23. [\[FN20\]](#) Finally, Dr. Draper and Dr. Fannin testified that treatment plans are essential as a means of assuring accountability of staff to students. Draper 20-21; Fannin 26-27. [\[FN21\]](#)

[FN20](#). Dr. Milan testified:

This gives to (the student), first of all, a certain security. He knows what's going to be happening to him during his stay here. Secondly, it gives him a means of evaluating his progress in the program. . . . It also controls the activities of the staff, and the staff can then key in on the treatment program and attack each one of these problems in the logical sequence. It also tells the staff how the student is progressing, where he is, whether or not he is going as rapidly as it is expected that he will go, and if he's not, it serves as a warning sign that there is something the matter with either the treatment program or the procedures that are being employed in the implementation of that program. . . .

Milan 22-23.

[FN21](#). In the South Carolina juvenile corrections system, a written workup is done on each student which serves as the basis for his or her treatment program. DeCell 49-50. In Louisiana, written treatment plans are also prepared for each student. These plans are "the basic document(s) upon which everything else will be built as far as

Cox 32.

Although counselors at OTS are supposed to follow the students' development, they do not have regular conferences with the students' teachers, recreation supervisors or job supervisors, nor do they receive periodic reports from other staff members who work with their students. Unless there are severe behavior problems, no full staff evaluations are conducted on individual students. Pretrial Order P G(12) at 14.

The failure of OTS to evaluate and re-evaluate the individual needs of its students completely undermines the rehabilitative purposes of the training school. Therefore, the defendants will be ordered to submit a plan to establish a complete diagnostic and evaluation procedure for all incoming students and all present OTS students who have been at the school for less than 90 days. In addition, defendants will be ordered to formulate individualized written treatment plans for all students, in accordance with generally accepted professional standards, to determine cottage placements on the basis of the students' individual needs and programs as set forth in the treatment plans, and to institute a program of periodic staff reviews and evaluation of

responsibility of implementing and overseeing intervention programs.
Milan 59-60.

(2) Counselors. Master's level social workers or counselors must be employed in sufficient numbers to provide adequate treatment to juveniles. Cox 37-38; Draper 19; Milan 63. The experts testified that the counselor/student ratio must not exceed 1:15-20 for the counselors to do their job adequately. Cox 43, 44; Draper 17; Milan 63.

OTS accepts counselors if they have an undergraduate college degree in one of the behavioral sciences. Counselors are not required to have prior experience working with adolescents, nor are they required to take courses in social work or child psychology after they are hired. Pretrial Order P G(11) at 13. None of the present counselors has a master's degree, Milan 33, and OTS has no inservice or pre-service training program for its counselors, although experts testified that continuous on-the-job training is essential. Cox 42; [\[FN26\]](#) Draper 19; Brodsky 41.

[FN26](#). Ghe

[FN28](#). Examples of the present cottage parents' previous occupations are farmworker, maid, grocery clerk, truck driver, plumber, janitor. Pretrial Order P G(16) at 11-12.

[FN29](#). The proof indicates that better qualified cottage parents are available, Fannin 38, but the OTS pay scale is too low to attract qualified individuals. Sproat I 162-163; Russell 21-22.

OTS cottage parents are responsible for supervising from 40 to as many as 55 students. Pretrial Order P G(7) at 12. Consequently, their time is spent maintaining order and enforcing the OTS rules, Pretrial Order P B(8) at 12, and it is impossible for them to perform any meaningful treatment function. Phelps 22. Dr. Milan described this problem:

Houseparents with whom I talked described themselves as sitters and this is also indicated in depositions. They look at themselves as responsible for order and discipline and protection of students from other students. They don't see themselves formally as members of a treatment team. They act in a manner appropriate to this self-definition . . . If he's going to be anything other than this, three things must be done. One, that his

(Cite as: 432 F.Supp. 1130)

inflicted wounds, following which he was placed in the ITU. Four days later, he was finally evaluated by a psychologist and subsequently transferred to a state mental institution. Sproat II 23-25; Williams 30-35.

[FN32](#). For example, student "T.C.S.," was determined by the former OTS evaluation psychologist to be in need of referral to an eye specialist and a hearing specialist. These referrals were never made. Sproat II at 36- 37.

It is essential that these staff deficiencies be

(Cite as: 432 F.Supp. 1130)

residential cottages satisfies both the 80 square foot standard for sleeping areas and the 40 square foot standard for day rooms. Pls. Exh. 1 to Russell Dep. Even at less than maximum capacity, several of the dormitories contain less than 50 square feet per student, and several of the day rooms contain less than 25 square feet per student. Cf. *Williams v. Edwards*, supra.

According to the experts, overcrowding in residential areas creates a hostile, chaotic environment which is counter-therapeutic to the needs of

Phelps 12, 45.

Defendants are aware of the problems caused by the size and condition of the OTS cottages. Superintendent Sproat testified that the placement of 40-50 students in the OTS cottages makes it impossible to implement an individualized treatment program, and that he had proposed replacing four of the present cottages with eight smaller cottages, which

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(Cite as: 432 F.Supp. 1130)

mathematics, Pretrial Order P J(13) at 32, and two small special education classes for the educable mentally retarded. Pretrial order P J(8) at 31. The experts identified numerous fundamental deficiencies in these programs.

1. OTS students are not evaluated to determine their educational needs. The majority of incoming students arrive without any school records, and, for approximately

fact do not progress beyond their entrance level. Pretrial Order P J(14) at 33. Finally, the school principal described one of the levels classes as amounting to nothing more than babysitting. Bell 28-29.

5. OTS has no training programs for its teachers. Pretrial Order P J(29) at 35. Expert testimony established that inservice training is critical to the educational program at a juvenile institution:

(I)t serves an instructional role. It provides an organized scheduled opportunity for additional information to be passed to the teachers about the students they are working with, to maximize their effectiveness. (I)t provides an opportunity for teachers to

(Cite as: 432 F.Supp. 1130)

evaluation committee and the experts concluded, and the Superintendent of OTS agreed, that vocational counselors [\[FN48\]](#) must be employed at OTS to remedy these difficulties. Pretrial Order Exh. O; Daniels 14-15; Milan 35-39; Cox 25-26; Sproat I 39, 108-110. Vocational counselors would evaluate students' vocational aptitude and interests to insure that they receive training for which they are suited. Counselors would also work with local agencies to find joCt

Defendants will be ordered to submit to the Court a plan to remedy each of the deficiencies in its recreation program which have been detailed here. The plan must include specific steps (1) to increase the amount of recreation time available to all OTS students, particularly to the students in Phase I and Phase II; (2) to establish a physical education program which satisfies all state standards and regulations; and (3) to implement a leisure-time program which will provide OTS students with opportunities to develop skills in arts, crafts and music.

F. Parole

[20] The evidence demonstrated that defendant, Sproat, refuses to parole or release a student from OTS without the prior approval of the committing court. Pretrial Order P G(36) at 21. Thus, a student could, if his committing court so determined, remain at OTS indefinitely, even though the training school had concluded that the student was completely rehabilitated and ready to return to society. [FN52]

[FN52]. For example, one student was approved for parole on February 8, 1975, but because the committing court refused to give permission, he was not released until November 8, 1975. Pretrial Order Exh. I. During the eight-month period from January 1, through August 31, 1975, 24 students were detained from one to three months

As previously discussed, under both the United States Constitution and Mississippi Law, the only purposes for which juveniles may be committed to OTS is their treatment and rehabilitation. Defendant Sproat's practice of holding students until the committing court has approved their release is inconsistent with and unnecessary to these rehabilitative purposes. His practice therefore violates the students' rights to due process of law, [\[FN55\]](#) and the Court will enter an order enjoining the practice.

[FN55.](#) Defendants' practice of refusing to release students for vacations without permission of the committing court, Pretrial Order P L(9) at 40, is likewise harmful to the students, Sproat I at 174-176, and violates their constitutional right to treatment.

VI. MEDICAL AND DENTAL CARE

[\[21\]](#) It is well settled that when a state confines a person in an institution, it assumes an obligation for the safekeeping of that individual, including the provision of adequate medical services. Thus, the denial of minimally adequate medical services to adult prisoners has been held to violate the Eighth Amendment's ban against cruel and unusual punishment, [Finney v. Arkansas Board of Correction](#), 505 F.2d 194, 202-204 (8th Cir. 1974); [Gates v. Collier](#), *supra* at 1301-1303; [Newman v. Alabama](#), 349 F.Supp. 278 (M.D.Ala.1972), *aff'd* in pertinent *1156 part, 503 F.2d 1320 (5th Cir. 1974),

(Cite as: 432 F.Supp. 1130)

specialists where indicated, at the state's reception and evaluation center. DeCell 45-46, 51-55. The experts from Louisiana and South Carolina both stated that the medical services at OTS are inadequate and must be improved. Phelps 19-20; DeCell 16-17. Prisoners at the Mississippi State Penitentiary also receive a full medical evaluation before they are placed in the general population. Reed 33.

[FN57](#). At least 40% of the students committed

(Cite as: 432 F.Supp. 1130)

on jail authorities to demonstrate that "all inmates of the jail have adequate access to the courts through means other than by access to legal materials." [515 F.2d at 332](#). In *Stevenson v. Reed*, *supra*, the court held that even the provision of legal materials is not sufficient for poorly

(Cite as: 432 F.Supp. 1130)

legal service to those indigent students at OTS who contact Community Legal Services requesting such assistance, Pretrial Order P O(5) at 43, and has offered to provide limited on- site legal services. Pretrial Order Exh. Q. The mail regulations that are in effect provide for privileged mail between *1159 a student and his attorney or other court officials. Further, in their Proposed Findings and Conclusions submitted