

August 14, 2003

Mr. Mark Bennett
Attorney General
State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

Re: Report on the Hawaii Youth Correctional Facility

Dear Mr. Bennett:

The American Civil Liberties Union of Hawaii (ACLU) conducted onsite visits at the Hawaii Youth Correctional Facility (HYCF) on June 3, 2003 and July 23, 2003. During our visits, we inspected physical conditions, interviewed the director of the facility, Melvin Ando, and met individually with a total of approximately 70 wards. We have also received phone calls from several staff members who are concerned about the conditions at HYCF. During our visits, we received the cooperation of Mr. Ando and the staff, and we were given near unfettered access to talk confidentially with wards. In light of the State's cooperation in this matter, and your expressed desire to improve conditions at HYCF, we thus write to report our findings in detail and to make recommendations for steps to address the inadequacies that we found at the facility.

I. FINDINGS

A. Basic Overview of Facility

The Hawaii Youth Correctional Facility consists of two separate facilities: one for boys and one for girls.

1. Boy's Facility

The Boy's Unit, or the Secure Custody Facility (SCF), has one main kitchen, medical and dental facilities, a control room, an administration area, and three housing modules (A, B, and C). There are 10 cells per module with a total of 30 cells. Each cell is designed for single occupant and is approx 85 square feet. There are no cameras in the individual cells, but there are cameras in the modules. Each module has kitchenette, TV room, and a shower.

The ages of boys at the facility range from 13 to 18. According to Mr. Ando, approximately 85% of the boys have emotional or physical disabilities. While the facility was originally intended to house only the most violent offenders, many of the wards are detained for minor offenses and probation violations.[1] <#_ftn1> According to Mr. Ando, the average stay at the facility is about 7 months.

2. Girl's Facility

The girls' facility has recently been remodeled. It consists of 10 cells, a general living area, a television room equipped with DVD player and cable, 3 single bathrooms (2 with showers), a kitchen, and a small laundry area. There is a separate section designed for visitations and private meetings but it is not utilized according to the supervisor because there are not enough guards on duty. There is a common bathroom in the general living area that wards are allowed to use at their discretion. The girls' cells are larger than the boys and have windows looking outside. The facility was clean.

The 10 cells are each designed for two people with a bunk bed. Most wards are housed two to a cell, but on July 23, 2003, there were three wards housed in one cell, and some wards were housed alone due to the facility's determination that they were lesbians. Wards stated that they prefer to have a roommate in order to keep from being lonely and that one form of punishment is being housed alone.

On June 3, 2002 there were approximately 21 female wards at the facility. On July 23, 2003, there were 18 female wards. The ages of the girls currently at the facility range from 14-17. Like the boys, many are in custody for minor offenses such as violation of probation, truancy, and running away from programs. On June 3, 2003, two of the girls were transgender.

The staff at the girls' facility is mostly male and only three female guards work there. At night, there are no female guards on duty.

3. Summary of Concerns

Our investigation identified a pattern of egregious conduct and conditions at HYCF that violate minimum professional and constitutional standards.[2]
<#_ftn2> These problems include: extreme overcrowding, unduly punitive living conditions; excessive confinement to cells; brutality and use of excessive force; sexual assault and harassment; lack of privacy at the girl's facility; grossly inadequate programming; lack of exercise and recreation; inadequate schooling and lack of access to education; failure to comply with IDEA; unreasonable limitations on outside contact with families, friends, and attorneys; inadequate training and supervision of staff; inadequate medical care; inadequate mental health care; and a completely defunct grievance process.

B. Overcrowding

The Secure Correctional Facility at HYCF was specifically designed to house no more than 30 boys. There are 30 cells at the facility and each cell was designed to hold only one boy and has room for only one bed, which is built into the wall. When we last visited the facility on July 23, 2003, there were approximately 70 boys at the facility and records that we were provided on our first visit on June 3, 2003 showed that the facility regularly houses more than 70 boys and hardly ever has less than 60. As a result, male wards are housed two or three to each one-person cell and are forced to sleep on mattress on the floor next to the toilet.

Every ward we interviewed lived with at least one other ward, and several wards had been housed with two other cellmates for months on end. As stated above, the cells are only 85 square feet. On July 23, 2003, out of the 10 cells in module A, four were occupied by three persons. The situation was similar in Module B. One cell was also tripled in Module C. In each of these tripled cells, two mattresses were placed on the floor and one ward was forced to sleep right next to the toilet. When “only” two wards are kept in the room, one ward is still forced to sleep on the floor only a few feet from the toilet. When overcrowding is particular bad, up to 6 wards at a time have been forced to sleep in the “TV room,” which lacks running water or a toilet.[3] <#_ftn3> Wards complained of having to spend weeks in the TV room.[4] <#_ftn4>

Wards were also forced to relieve themselves in buckets kept in the TV room at night. Far from being an isolated occurrence, every ward we spoke to about this confirmed that this was the practice rather than the exception. Worse, wards indicated that when supervisors came in the morning, they would sometimes put the wards on lockdown as punishment for urinating in the bucket.

The overcrowded conditions at HYCF violate constitutional standards.[5] <#_ftn5> The level of overcrowding also contributes in significant part to each of the problems discussed below.[6] <#_ftn6>

C. Unduly Punitive Living Conditions

Since the first of June 2003, male wards at the Hawaii Youth Correctional Facility have been locked in bare cells for up to 18 hours or more a day. Wards have not been allowed to have anything in their cells other than the clothes on their backs, bedding, and a Bible.[7] <#_ftn7> They are not allowed toilet paper,[8] <#_ftn8> personal hygiene products such as toothpaste and soap, letters, pictures of family members or friends, or any other reading material in their cells. These harsh and punitive living conditions are patently unconstitutional.[9] <#_ftn9>

Confining children to bare, empty cells is abusive and damaging to their well being. It is also not reasonably related to any legitimate penological interest. According to Mr. Ando, the policy of not allowing any personal affects in the cells was instigated because some wards were stuffing items into the toilet. Even if this is true, the proper course of action is to deal with the wards that are the problem. It is not appropriate to punish all wards as a group. Wards cannot be forced to sit in their cells with nothing to do but stare at the walls, sleep or read the Bible. Moreover, limiting reading materials to the Bible is a clear Establishment Clause violation.

At a minimum, wards must be allowed toilet paper, personal hygiene products such as toothpaste and soap, [10] <#_ftn10> letters, reading material other than the Bible, [11] <#_ftn11> and pictures of their family members in their cells. This is one problem area where situation at the facility can be drastically improved by a simple change in policy and we urge the facility to change this policy immediately.

D. Abusive Discipline without Due Process

1. Abusive Discipline

HYCF does not seem to have any functioning system of positive incentives to manage youth behavior, and instead relies almost solely on discipline such as room confinement and physical force to manage the facility. This leads to unconstitutionally abusive disciplinary practices.[12] <#_ftn12>

Wards at the HYCF facility are confined to “early dorms” for weeks at the nearly unlimited discretion of the guards as punishment for such minor offenses as talking back to a guard, or not obeying guard instructions, no matter how abusive the instruction. Wards are typically let out of their cells at about 9:30 in the morning (the time varies according to guard), but when placed on early dorms are required to return to their cells at noon, 2 p.m. or 5 p.m, depending on the severity of the early dorms. When restricted to early dorms wards miss out on “outside” time, which was from 6:30-8:30, during which they could watch TV and play pool, as well as recreation time, and phone calls to their family on Tuesdays. Wards on early dorms have nothing to do but sit in their cells and sleep or stare at the walls. As a result of sleeping all day, many wards must take prescription sleeping pills in order to sleep at night. Early dorms thus result in wards being confined to their cells from 18-22 hours per day.

Almost every ward indicated that they had at some point been placed on early dorms, sometimes for months. Approximately half of the wards in Module C on July 23, 2003 were confined to early dorms. The most common reason for being placed on early dorms was “talking back” to staff. Wards also indicated that some guards would “egg them on” by taunting them until they got angry so that the guard could then place them on early dorms.

For violations such as fighting or attempted escape, wards are regularly placed on lockdown. When on lockdown, wards are only allowed out of their cells for ten minutes a day to shower. Female wards reported that mattresses are also taken away when they are on lockdown. At the time of our visit on July 23, 2003, one male ward was on a 30-day lockdown, another male ward was on a 45-day lockdown (and reported having been locked down most of the last 4 months) and one female ward had been on lockdown for two weeks. On our first visit, another male ward reported that he was once placed on lockdown for 60 days.[13] <#_ftn13>

Wards and staff also reported several instances where wards were physically restrained by being tied to chairs or other furniture. During our initial visit on June 3, 2003, Mr. Ando showed us a restraint chair where wards were restrained “only if they were a danger to themselves.” However, according to the personal accounts of individual wards and staff, wards are sometimes tied to chairs as punishment when they are absolutely no danger to themselves or others.[14] <#_ftn14> In addition, we have been informed by reliable sources that the wards are sometimes tied to the restraint chair and placed in the recreation yard for hours where there are no cameras, and where other wards can see and make fun of them.

Other humiliating and inappropriate forms of punishment include making male wards take off their pants and boxers and squat on the floor naked,[15] <#_ftn15> leaving wards naked in the holding cell for hours and making fun of them, denying wards food, taking away sheets and pillows, forcing wards to sleep on concrete by taking away mattresses, and physical violence.[16] <#_ftn16>

2. Lack of Due Process

Discipline is imposed at HYCF in an arbitrary, capricious and often malicious manner, without any of the due process protections required by

law.[17] <#_ftn17> On rare instances wards reported that disciplinary hearings were held, but even in those cases they were not allowed to present any evidence or call witnesses. In the vast majority of cases, however, wards are simply informed that they are being placed on early dorms or lockdown without written notice or any opportunity to defend themselves.

E. Brutality and Use of Excessive Force

We found that guards persistently used excessive physical force against the wards.[18] <#_ftn18> Consequently, there is a general atmosphere of fear at the facility and wards live in fear of being harmed by the guards. This problem seems to be created, in part, by lax supervision of guards, lack of discipline for improper or abusive actions, poor training of guards to de-escalate situations and control their own emotions;[19] <#_ftn19> and by overcrowded and understaffed conditions that place great strain on the guards.

The vast majority of male wards that we spoke with had been victim to or had witnessed excessive force by guards. Every ward that we spoke to had heard of incidents of violence by guards and expressed fear of being beaten by guards. Concerned staff also reported pervasive violence by guards against wards, including the not uncommon practice of banging wards heads against concrete walls and floors. We repeatedly heard firsthand accounts from wards relating to several recent incidents of guard violence. The wards consistently identified the same guards as the most violent of the bunch. These guards are as follows: [redacted]

YCO[redacted]

The guard who was by far the most identified by wards and staff as physically abusive was [redacted].[20] <#_ftn20> [redacted] seems to delight in using violence against the wards. He constantly threatens wards with violence and brags to wards that he can do whatever he wants and nothing will ever happen to him. He has been placed on administrative leave on at least one occasion for use of excessive force. Ultimately, he was allowed to return to work and continues to have contact with wards. He thus apparently believes he is untouchable and tells wards as much. He tells wards repeatedly that he can do whatever he wants and nothing will happen

to him, because he “has been there 20 years and always gets off.” He tells wards that he would even beat them in front of the camera. He throws chairs at doors when the wards are too loud. He often “sucker” punches wards in the stomach. He “clotheslines” wards to the face and neck if he catches them in a fight (even if the fight is over by the time he arrives). He chokes wards until foam comes out of their mouths. Not surprisingly, a number of wards expressed great fear of [redacted].

[redacted] recently beat a [redacted] ward on May 30, 2003. Several wards observed this incident, all of whom are willing to testify. [redacted sentence]. The May 30, 2003 incident began when the victim and another ward got into a fight. The fight was short however and every witness account indicates that by the time [redacted] arrived on the scene, the fight had ended. [redacted] then proceeded to blindside the victim and hit him two or three times with a closed fist. The Code Red siren went off and the wards were all herded back to their cells. Thereafter, the victim’s roommate was told to leave the cell, and [redacted] entered with two other guards. At that point [redacted] said, “I told you not to fight on my shift.” He then landed five or six punches and “uppercuts” to the child’s face and head. The child suffered a split lip, black eyes, and a contusion on the side, jaw area of his face. When the nurse came, [redacted] said, “Listen, the nurse is coming, don’t tell anyone about this, and I won’t write you up.” The child had been in lockdown since the beating when we visited the facility on July 23, 2003.

YCO [redacted]

According to wards, [redacted] is a relatively new addition to the HYCF staff. Already he has established a reputation among wards as one of the most violent and abusive guards. The reputation seems to be based primarily upon two recent incidents. According to several eyewitnesses, who are willing to testify, one recent incident occurred in Module C in early July 2003. The victim was confined to his cell on “lockdown” and was forced to eat his cell while other wards ate dinner in the module. [redacted] did not give the ward any juice, so the ward yelled out that he wanted some

juice. [redacted] responded, “Shut the fuck up before I come in there and kick your head in.” The ward again said he wanted some juice. [redacted] went into the cell and slammed the child’s head into the concrete bed and punched him in the face several times. Afterwards, when asked what happened by one ward, [redacted] bragged, “He’s a bitch. I socked his ass.”

In another incident, [redacted] used excessive force against a ward in breaking up a fight. According to eyewitnesses, [redacted] tackled the ward to the ground, held him in a chokehold and then slammed his head repeatedly into the concrete yelling, “Do you want to fuck with me?”

YCO [redacted]

[redacted] is repeatedly mentioned as among the most violent guards by wards. [redacted] was a longtime guard at the boy’s facility, and has recently been transferred to the girl’s facility.[21] <#_ftn21> Specific incidents involving [redacted] include beating a ward while other staff kept lookout, hitting a ward on the back of head during a fight and continuing to beat him so severely that he had to see a doctor, beating a ward in the stomach and face with a plate, and punching a ward in the face while handcuffed.

YCO [redacted]

[redacted] was also repeatedly singled out by both wards and staff as violent. In an incident reported by staff, on August 5, 2003, [redacted] allegedly broke the arm of a thirteen-year-old child while beating him. Wards reported that [redacted] also handcuffed a ward for threatening to hit a guard and then “pile-driven” or “body-slammed” him into the concrete floor.

YCO [redacted]

[redacted] was singled out as violent by several wards. Specific incidents including him choking and suffocating a child restrained to a chair (reported by staff), bloodying the face of a ward by punching him, inflicting rib shots on wards, and entering a cell and hitting two wards with a stick because they were too loud.

YCO [redacted]

[redacted] is a female guard at the girls' facility. [redacted] and [redacted], another female guard, reportedly beat three girls that tried to escape last year and then kept them in lockdown until bruises healed. Several of the girls currently at the facility also witnessed a recent incident in which [redacted] and [redacted] took down one of the wards when she was fighting with another girl. They put the child in a headlock, choked her, punched her in the face, dragged her to a cell, and then kept her in lockdown for 2 weeks until her bruises healed. [redacted] also recently hit a another girl who has since been discharged. When the girl threatened to write [redacted] up, [redacted] "kissed up to her." When the ward filed a grievance anyway, [redacted] "retaliated" against her afterwards.

YCO [redacted]

[redacted]'s partner in beating three escapees and another ward. See above.

YCO [redacted]

[redacted]'s name came up on several occasions as one of the violent guards. It was reported that he once injured a boy and then refused to allow him to see the nurse.

YCO[redacted]

[redacted] was also mentioned as violent by several wards. He has reportedly threatened wards with knives and recently threw a ward into a wall.

YCO[redacted]

Identified generally as a violent guard. Specific incidents included hitting one ward and "clotheslining" another.

YCO[redacted]

Identified generally as a violent guard who "clotheslines" wards.

YCO [redacted]

Identified generally as a violent guard. No specific incidents mentioned.

YCO[redacted]

[redacted] is a female guard in the boy's facility. We were told of specific incidents where she ordered hits on wards by other wards, and then protected the ward that carried out the hits. Several wards corroborated these accounts.

F. Sexual Harassment and Assault

There are only three female guards at the girls' facility. Overnight, and at other times, there are no female guards on duty. This situation has resulted in several sexual assaults against girls by male staff over the past few years and at least one recent rape. There were also reports of guards raping wards by trading cigarettes for sex. In 2001, two guards who allegedly sexually assaulted wards were transferred to the boys' facility. Details are not discussed here to protect the identities of the victims. Wards also reported that the male guards sometimes make sexual comments to the girls, including comments about their breasts and about raping them.[22] <#_ftn22> Wards reported that since the recent rape, there has been less talk of sex and less flirting between the guards and the wards. Wards expressed concern that the night shift is comprised entirely of male guards and that they feel vulnerable after the rape because male guards could enter their cells at any time.

G. Lack of Privacy in Girls' Facility

In addition to sexual harassment and sexual assault, girls suffer from lack of privacy when getting dressed, sleeping, and using the bathroom. Male guards look and walk into the girls' cells at will, and the overnight shift is comprised of 2 male guards and no females. Consequently, we were told that girls are required to wear a shirt and shorts while sleeping. However, on June 3, 2003 during our visit, we witnessed a male guard walk into the cell of a girl sleeping in her bra. Not only did

he walk in, but he invited us to walk in as well. He did not tell her to put on a shirt.

One ward reported that she found out that a certain male guard would secretly watch her change her bra. The guard is no longer there. In addition, wards complained that sometimes the male guards look into their cells while they are on the toilet.[23] <#_ftn23>

While male guards do not do strip searches or pat downs of the girls, male (and female) guards make the girls take off their bras and shake out their pants after school.[24] <#_ftn24>

Girls shower individually and did not complain of any problems relating to showering, even though only male guards are present during showers in the evening. Wards reported that male guards knock on the door and tell them their time is over. However, if there were an emergency, male guards would have to enter the shower, as no female guards are immediately available during showers.

F. Lack of Exercise and Recreation

At the time of our visit on July 23, 2003, the boys had not had recreation time at all for over three weeks.[25] <#_ftn25> Instead, they were confined all day to their cells or module. Wards were told that “[redacted],” the Recreation Coordinator, was out with a shoulder injury.[26] <#_ftn26> When wards complained, they were told by YCOs that eating and brushing their teeth counted as recreation time.

Even before [redacted]’s shoulder injury, wards reported receiving recreation only sporadically, and often not for weeks at a time, whenever

[redacted] chose not to show up for work. Wards complained that [redacted]'s mom had apparently died about five or six times, as they were often given that as an excuse. The facility had no substitute for [redacted] and would compensate for his absence by letting the wards out in the recreation yard. Wards indicated that when they had recreation, which was usually only about two times a week, it lasted only 45 minutes. [27] <#_ftn27> In addition, wards reported receiving no recreation when on lockdown or early dorms.[28] <#_ftn28>

During lunch on July 23, 2003, I spoke with Mr. Ando about the lack of recreation time. Later that afternoon, a "temporary" recreation coordinator visited each module and told wards that recreation would start the next day. They were told that three days a week would be mandatory weight lifting and two days a week they would play basketball. While this is an improvement over the complete denial of recreation, wards still do not receive outdoor recreation, nor will they get any aerobic exercise five days a week or any exercise at all two days a week.

The recreation situation is similarly dire at the girls' facility. On July 19, 2003, the recreation person at the girls' facility was fired. The wards had not had recreation since, and were instead confined to their cells. They were told that it would be at least the end of the month before someone new would be hired and they would not have recreation time until then. According to several girls who had been at the facility before, there have been several periods in the past where the girls would go weeks or months without recreation time.

G. Inadequate Schooling and Lack of Access to Education

The facility blatantly violates state and federal laws requiring that they provide adequate schooling to every ward.[29] <#_ftn29> Rather treating school as a mandatory requirement for all wards, guards deny wards schooling to punish them for misbehavior. Moreover, wards who do not

want to go to school are not required to go. At the time of our visit on June 3, 2003, most, if not all, of the boys in module C were not attending school full-time. [30] <#_ftn30> Some had been kicked out of school altogether and were confined to their cells. Others were being “tutored” only an hour or two per day, which consisted of sitting in a room doing schoolwork under the supervision of a guard. To the extent that any of these wards have emotional disabilities and are special education students, this is a violation of the Individuals with Disabilities in Education Act (IDEA).[31] <#_ftn31> In addition, many wards said that they were not allowed to attend school at all because they were “short-term.” Instead, these short-term wards stayed in their cells while the other wards attended class. [32] <#_ftn32> Wards who are placed in lockdown are not allowed to attend school and are not tutored.

Wards had not been in school for the whole month of July due to “summer vacation.” For wards this meant being confined to their modules or cells all day. Some wards had not been outside for months.

In addition, vocational training opportunities are grossly inadequate. Only a few wards out of the approximately 70 that we interviewed had participated in a vocational program or had been offered an opportunity to do so. Some wards participate in the welding program, some in the roofing, and a few in the kitchen program. Most wards who were eligible according to the facilities own policies (i.e. - not short-term) and had tried to get in a vocational program were denied admission into a vocational program because of limited resources and space. However, the majority of wards had no idea how to get into a vocational training program and had never been informed of vocational opportunities. Rather, the impression among wards was that only “favored” kids got to work in vocational programs.

H. Unreasonable Limitations on Outside Contact

Children are confined for the purpose of treatment and rehabilitation. Children need the emotional support of their family, and access to the community may be critical to the success of court intervention. Thus, the court in D.B. v. Tewksbury, 545 F. Supp. 896, 904 (D. Or. 1982), found that children confined in a jail were deprived of their constitutional rights because they were denied regular visits, use of telephone, and use of the mails. The court found that this needlessly intensified children's fears and hostilities, and was counterproductive to the goals of the juvenile justice system.

1. Unreasonable Limitations on Visitation

The restrictive visitation policies at HYCF fall far short of professional and legal standards.[33] <#_ftn33> Visits are only allowed one day a week on Sunday during limited hours. Wards in the first half of the alphabet are allowed visits from 10:15 to 11:30 and wards in the second half from 11:45 to 1:00. There is no visitation at any other time during the week. Recently, the administration has tried to exclude siblings from visiting, but this has so far been resisted by the social workers. Children in lockdown are denied visitation. One [redacted] ward had only seen his parents about seven times over five months because the guards continually keep him in lockdown. Children are only allowed visits from approved people, which generally means immediate family only. Wards are not allowed calls or visits from friends or significant others. Since many wards are estranged from their families, this means that they are complete cut off from the community and have not outside contact at all.

2. Unreasonable Limitations on Telephone Access

HYCF places undue restrictions on children's ability to make telephone calls.[34] <#_ftn34> Wards are at HYCF are only allowed to talk on the phone with family for 5 minutes once a week on Tuesdays.[35] <#_ftn35> Wards who are on early dorms on Tuesdays are denied any phone calls for the whole week.[36] <#_ftn36> For wards, not being able to talk to their families is devastating. Moreover, 5 minutes is not enough time for wards to have any conversation of substance with their families. Wards have no

privacy on the phone because all calls are received in the main area of the module and guards sit nearby listening. Wards are only allowed calls to people on the “approved list,” which means only immediate family.

3. Unreasonable restrictions on Mail

HYCF also places a host of unreasonable restrictions on mail, including the censorship of outgoing mail.[37] <#_ftn37> Wards are limited to two letters a week and are not allowed to send mail to anyone under eighteen, which means wards are not allowed to write to younger siblings and some female wards are not allowed to write to the fathers of their children if the father is under eighteen. Wards are also prohibited from writing to anyone in prison, including their own parents. Social workers read outgoing and incoming mail, and make wards rewrite letters if the content or “attitude” of the letter is not acceptable to the social worker.[38] <#_ftn38> Guards often read incoming mail. [39] <#_ftn39> Guards sometimes take mail away from wards and throw away pictures of family members and friends. Wards in the boys’ facility are not allowed any letters in their cells and are only allowed to keep six letters with their belongings, which are locked in a cabinet. Wards are also sometimes not allowed to write letters if they are in lockdown or early dorms. Wards are sometimes denied writing instruments and paper to write letters.[40] <#_ftn40>

I. Lack of Access to Courts and Counsel

It appears that the HYCF does not have law library at all, nor does it provide wards with any legal assistance from persons trained in the law such access to volunteer or legal services attorneys, law students, or inmate paralegal.[41] <#_ftn41> Wards also indicated that it was difficult to speak with their attorney’s because they have to put in a request through the social workers. Social workers then often sit and listen while they are on the phone.

J. Inadequate Training and Supervision of Staff

Staff at HYCF appear inadequately supervised and are assigned to positions for which they are obviously unfit. Moreover, staff members are not disciplined for abusive behavior and/or the use of excessive force toward wards. Staff who are clearly unfit for service and who repeatedly abuse the wards are allowed to keep their positions and are allowed to continue their abusive and violent behavior.[42] <#_ftn42> This has created situation where the guards are in control of the facility and run the facility without significant control or interference by HYCF administration. The resulting atmosphere is one of desperation and terror for the wards, who feel powerless to complain about abuses. In addition, Mr. Ando appears either unconcerned or uninformed as to the day-to-day situation at the facility. Mr. Ando repeatedly gave us inaccurate information that did not reflect reality and could not answer basic questions that should have been within his purview as director. He seemed as surprised as us at some of the conditions that we encountered.[43] <#_ftn43>

K. Inadequate Medical Care

HYCF has only one full-time nurse, and no full-time doctor. Additional nurses are contracted from agency twice a week during the daytime, but there is no other full-time medical staff. The fulltime nurse must conduct sick call, manage and distribute medication, review intake medical screenings, arrange outside appointments and consultations, and respond to emergencies, in addition to performing the required physical examinations on new intakes. Both Mr. Ando and the nurse agreed that the facility needs three full-time nurses. In addition, the facility hires one contract physician who is supposed to come to the facility up to three times per week. Wards claim that the doctor often only comes one day a week.

The nurse on staff appears to make a sincere effort to take care of the needs of the children to the best of her ability. However, she is only one person, and understaffing, and facility overcrowding, leads to predictable problems. [44] <#_ftn44> For example, one ward claims to have been waiting more than three months to see a doctor.

Another ward has a cyst on his leg and says that he has only been allowed to see a doctor once. One girl noted that she was not able to see a doctor for two weeks when she had a bladder infection. Another girl was not allowed to see a doctor when she had a severe sore throat. One ward has had an ear infection for approximately three weeks and has been unable to see a doctor. And one ward has been prescribed medication to be taken three times daily but it is only administered twice daily because the nurse only comes by twice a day.

Many wards complained that YCOs do not allow them to see the nurse when they are sick.[45] <#_ftn45> Other wards complained that they are afraid to mention that they are sick, because being sick usually leads to lockdown. One ward, who has diabetes, complained that guards refused to feed her when the nurse determined her blood sugar was low.

L. Inadequate Mental Health Care

Though our investigation into the adequacy of the mental health care at the facility was necessarily limited due to lack of access to files or knowledge of the personal circumstances of each child, HYCF appears to have problems in the provision of mental health care as well.[46] <#_ftn46>

First, as discussed above, children are locked in cells and denied outside contact with little regard for their emotional or mental well-being. One child has been repeatedly denied court ordered visitation with his counselor because he was on early dorms. Wards complained that they were abruptly taken off their medications upon entering the facility, and many stated that after months they were still waiting to be put back on medication. One ward was particularly concerned because he says that he gets “agitated and angry

easy” without his medicine and the other kids pick on him a lot. He is afraid that he will lose his temper and then get in trouble, so he stays in his cell as much as possible. Many wards stated that they were depressed, but were not allowed to see a doctor. Other wards stated that they have to take sleeping pills to sleep at night because otherwise they just “stare at the walls and go crazy.” One ward stated that they just “try to dope us up to keep us under control.” Another ward stated that he had been at the facility for months but he had only been allowed to see the psychiatrist once for about 10 minutes.

M. Inadequate Classification System and Failure to Protect

HYCF does not have a formal classification system whereby more violent wards are segregated from vulnerable wards.[47] <#_ftn47> Inadequate classification compounds the risks associated with operating the overcrowded facilities. Statistically speaking, only a small number of detained children will go on to become career criminals, and a minority of the children at HYCF are detained for violent offenses. This means that there are a great many potentially vulnerable wards (even the range in age and size among the wards is tremendous), and the failure to properly classify wards greatly increases the risk of injury to such wards.[48] <#_ftn48>

N. Inadequate Grievance Procedures

The grievance process at HYCF is completely defunct.[49] <#_ftn49> There is a unanimous consensus among the wards that the grievance process is futile and that the grievances are thrown away or ignored. Several wards have seen supervisors crumple up grievances and throw them away. Other wards have been told by staff that grievances are just thrown away. No ward that was interviewed had ever received a formal response to a grievance.

Worse, every ward feared retaliation from the guards should they file a grievance relating to guard misconduct. Wards reported that staff knows who writes grievances about them, and then staff retaliates against them. Wards who wrote grievances reported “mysteriously” being confined to early dorms and being physically threatened by guards as a result.[50] <#_ftn50>

Wards are also consistently discouraged from filing grievances. The forms are only obtainable by asking the guards, and guards routinely require that wards tell them what the grievance is about before they will give them a form. Guards also tell the wards “there’s no point in filing a grievance, they don’t do anything anyway.”[51] <#_ftn51> Some guards tell the wards that the guard on duty has to sign grievances for them to be valid, which means that the guard must read the grievance. Wards also stated that the social worker is not the only person to have access to the grievance box and that sometimes the guards will pick up the grievances instead.

As strong evidence that the grievance system is inoperable, Mr. Ando stated that he was the second step in the grievance process, but could only remember having seen “a couple” grievances.

II MINIMUM REMEDIAL MEASURES

To rectify the illegal conditions and practices at HYCF, the following minimum remedial measures must be implemented:

1. Eliminate overcrowding. Means to be considered should include the adoption of a population cap requiring the automatic release of wards to alternate placements anytime the male population exceeds 30 or the female population exceeds 20, and the introduction of legislation to prohibit the confinement at HYCF of juveniles charged with non-violent offenses.
2. Eliminate punitive conditions at HYCF and cease immediately the practice of not allowing wards to have anything in their cells other than the clothes on their backs, bedding, and a Bible. At a minimum, wards must be

allowed toilet paper, personal hygiene products such as toothpaste and soap, letters, reading material other than the Bible, and pictures of their family members in their cells.

3. Put in place a functioning system of positive incentives to manage youth behavior.

4. Cease reliance upon room confinement and physical force as the primary means of managing the facility.

5. Cease placing wards on lockdown for periods longer than 24 hours.

6. Cease placing wards on early dorms for minor offenses and limit early dorms to five days maximum for serious offenses.

7. Ensure that wards are given adequate due process hearings prior to significant disciplinary confinement such as early dorms or lockdown.

8. Cease physically restraining wards as punishment and cease placing restrained wards in public areas visible to other wards.

9. Cease other humiliating and inappropriate forms of punishment including making male wards take off their pants and boxers and squat on the floor naked, leaving wards naked in the holding cell, denying wards food, taking away sheets and pillows, forcing wards to sleep on the concrete without mattresses, and physical violence.

10. Adequately protect wards from staff abuse and abusive disciplinary practices.

11. Provide sufficient staff training (including training in child development, de-escalation of conflict, and anger management) and supervision, including appropriate risk management practices, to detect and respond to incidents of staff abuse.

12. Immediately place the following guards on administrative leave and begin proceedings to terminate and/or criminally prosecute them:
[redacted]

13. Investigate allegations of sexual assault at the girls' facility and begin criminal prosecutions against any guard involved in the sexual assault of female wards.

14. Ensure that there is at least one female guard on duty at all times at the girls' facility.

15. Prohibit male guards from looking or walking into the girls' cells without notice to ensure that girls are fully clothed and not on the toilet.

16. Adopt policies and procedures ensuring that wards have an opportunity for at least an hour per day, everyday, of outdoor large muscle-exercise, weather permitting

17. Adopt policies and procedures ensuring that wards have other daily activities including radio, television, games, and books to occupy non-programmed time.
18. Ensure sufficient staffing to prevent cancellation of recreation time due to the absence of the employee in charge of recreation.
19. Ensure that wards on lockdown and/or early dorms are provided an hour of recreation time everyday.
20. Cease the practice of denying schooling as a means of punishing wards.
21. Cease the practice of allowing wards who do not want to go to school to remain in their cells.
22. Comply with the requirements for provision of special education, as required by the IDEA and Section 504 of the Rehabilitation Act, including the “stay put rule” which sets forth strict procedural protections which must be followed before a child may be removed from school for behavioral problems.
23. Cease the policy and practice of denying “short-term” wards the ability to attend school full-time.
24. Cease the practice of confining wards to the module or their cells during “summer vacation” from school, and provide alternative activities during this time such a field trips and community service opportunities.

25. Provide adequate vocational training opportunities and adequately inform wards of these opportunities.

26. Cease unreasonable restrictions on visitation by allowing visitation several hours of the day, several days of the week, and by allowing visitations by adult relatives, family friends, and siblings.

27. Cease the practice of denying visitation to children on lockdown or other forms of discipline.

28. Provide reasonable access to telephones each day, including calls to parents, relatives, and attorneys.

29. Allow wards a minimum of 30 minutes phone time per week to speak with parents and relatives.

30. Cease the monitoring of wards' phone calls.

31. Cease the practice of completely denying phone calls to wards on lockdown or early dorms.

32. Immediately lift unreasonable restrictions on mail including limiting wards to two letters per week, not allowing wards to send mail to anyone under eighteen, and not allowing wards to write to parents in prison.

33. Cease the practice of reading outgoing mail and of making wards rewrite letters if the content or “attitude” of the letter is not acceptable.
34. Cease reading wards incoming mail without reasonable suspicion.
35. Cease taking mail and pictures of family members and friends away from wards.
36. Cease the practice of not allowing wards on lockdown or early dorms an opportunity to write letters.
37. On a daily basis, provide ample time, writing instruments and paper for wards who wish to write letters
38. Ensure that wards have access to adequate law libraries or adequate assistance from persons trained in the law such as volunteer or legal services attorneys, law students, or inmate paralegals.
39. Make it easier for wards to speak with their attorneys.
40. Cease the monitoring of legal calls by social workers.
41. Hire additional medical staff to ensure that wards have adequate and timely access to medical services.

42. Adopt a formal sick call procedure where wards can submit sick call slips to see a doctor and eliminate the ability of guards to unilaterally deny wards' requests to see a doctor.

43. Place the mental well-being of wards first and ensure that they have adequate access to mental health services and medication.

44. Cease placing mentally ill wards in environments where they cannot receive adequate mental health care or where they face a likelihood of punishment or other harm in response to their mental illness.

45. Establish a functioning grievance system where there is notice to the wards of their right to file a grievance, easy and confidential access to grievance forms, a clear and simple procedure, provision for prompt investigation of the grievance, protection of the wards from retaliation for filing a grievance, an opportunity for the ward to present his grievance to an impartial panel, notice to the ward of the decision of the panel, appropriate disciplinary sanction to staff if the grievance is found justified, and written records of the grievance, investigation, decision and final action taken.

46. Discipline staff who interfere with the right of wards to file grievances or threaten retaliation against wards who file grievances.

47. Hire an outside expert to create and implement adequate quality assurance mechanisms and perform reviews to ensure the efficacy of the above corrective measures.

The serious problems at HYCF outlined in this letter demand immediate attention. The ACLU is committed to ensuring that something is done to improve conditions at HYCF.

I believe that you share my desire to ensure the well being of the wards under the State's care. I thus look forward to working with you to address these concerns. Given the gravity of the situation, however, the ACLU requests that the state respond to this report within 20 days from the date of this letter with a detailed plan and proposal as to how it intends to respond to the issues and recommendations raised above. Otherwise, given the gravity of the situation, we will be forced to take this matter public and to pursue other options.

Very Truly Yours,

Brent T. White

CC: Linda Lingle, Governor, State of Hawaii

Sharon Agnew, Director, Office of Youth Services

□

[1] The housing of such juveniles in the secure HYCF, rather than in alternate placement facilities such as shelter care or group homes, contributes significantly to the overcrowding that is discussed below.

Mr. Ando indicated that judges place juveniles at HYCF due to the lack of alternative placement options in the community. As a result, more than half the detainees at the HYCF were detained for minor offenses, violation of probation, or violation of the rules of an alternative placement. Such juveniles suffer disproportionately from the harms associated with HYCF's punitive conditions and other deficiencies.

[2] Under the constitutional standard applicable to detained children, the Due Process Clause is violated where children are held under conditions that "amount to punishment." Milonas v. Williams, 691 F.2d 931 (10th Cir. 1982), cert. denied, 460 U.S. 1096 (1983); see Bell v. Wolfish, 441 U.S. 520, 535, 99 S. Ct. 1861, 1872 (1979). Significant deviation from professional standards is evidence of a constitutional violation. Youngberg v. Romeo, 457 U.S. 307, 321-322, 102 S. Ct. 2452, 2461 (1982).

[3] Mr. Ando claimed during our first visit that there were never more than 3 wards in the TV room. However, information from the wards contradicts this claim as several were kept in the TV room with five or six other wards.

[4] Mr. Ando indicated that the longest the boys would remain in the TV room was 4-5 days. However, several wards contradicted this claim and indicated that they were in the TV room for two to three weeks.

[5] Since children are confined for rehabilitative not punitive purposes, courts may find that the constitution is violated where overpopulation means, for example, that children are subjected to uncomfortable conditions such as being forced to sleep on floor mattresses in dayrooms and hallways. Alexander S. v. Boyd, 876 F. Supp. 773, 791 (D.S.C. 1995), aff'd in part and rev'd in part on other grounds, 113 F.3d 1373 (4th Cir. 1997), cert. denied, 118 S. Ct. 880 (1998); Doe by Doe v. Washington, 150 F.3d 920 (8th Cir. 1998). For example, in Nami v. Fauver, 82 F.3d 63 (3rd Cir. 1996), the court held that young adults in the administrative segregation unit of a youth correctional facility were entitled to claim constitutional violations where they were doubled celled in 80 square foot rooms with only one bed (so that one person has to sleep on the floor next to the toilet).

Several cases other hold that forcing pre-trial detainees, who are in a similar legal position as juvenile detainees, to sleep on mattresses on the floor violates constitutional due process protections. See Thompson v. City of Los Angeles, 885 F.2d 1439, 1448 (9th Cir. 1989) (facility must provide mattress and bed); Lyons v. Powell, 838 F.2d 28, 31 (1st Cir. 1988); Lareau v. Manson, 651 F.2d 96, 105 (2d Cir. 1981). While double celling itself is not per se unconstitutional, it is a factor to be taken into account in conjunction with other conditions of confinement affecting basic human needs such as “essential food, medical care, or sanitation.” Rhodes v. Chapman, 452 U.S. 337, 348 101 S. Ct. 2392, 2400 (1981).

[6] It should be noted that budgetary problems cannot be used to justify or excuse violations of constitutional rights. See Smith v. Sullivan, 611 F.2d 1039, 1043-1044 (10th Cir. 1980) (spending limits cannot excuse unconstitutional overcrowding); Rutherford v. Pitchess, 457 F. Supp. 104, 118 (C.D. Cal. 1978) (budgetary problems could not be used to defeat changes constitutionally mandated in jails); Ahrens v. Thomas, 434 F. Supp. 873, 880 (W.D. Mo. 1977) (delay in final determination of prison conditions case until state has committed funds for construction of new facility cannot be justified because state has duty to maintain appropriate correctional institutions), aff’d in part, 570 F.2d 286 (8th Cir. 1978); Martella v. Kelley, 359 F. Supp. 478, 481 (S.D.N.Y. 1973); Harris v. Angelina County, Texas, 31 F.3d 331, 336 (5th Cir. 1994) (holding county liable where county claimed it did everything in its power to relieve crowding, but the state refused to take committed inmates: “Even if a cost defense were recognized, we would find it inapplicable here, since the evidence did not establish that additional funding was unavailable from the taxpayers to address the overcrowding”); Ramos v. Lamm, 639 F.2d 559, 574, n. 19 (10th Cir. 1980) (inadequate funding for staff does not justify unconstitutional safety risks to inmates), cert. denied, 450 U.S. 1041, 99 S. Ct. 1861 (1981).

[7] As of ACLU’s site visit on July 23, 2003.

[8] Wards complained that guards would sometimes refuse to provide toilet paper when wards need to use the bathroom and would withhold toilet paper to punish or torment wards they did not like.

[9] Treatment of children in the juvenile justice system is based on the premise that children are less mature and responsible than adults, and

should not be held to the same standards. Eddings v. Oklahoma, 455 U.S. 104, 115-116, 102 S. Ct. 869, 877 (1982). Our laws do not consider children to have been "convicted" of crimes, and the purpose for institutional confinement of children emphasizes rehabilitation rather than punishment, in contrast to the incarceration of adults. See Alexander S. v. Boyd, 876 F. Supp. 773, 782 (D.S.C. 1995), aff'd in part and rev'd in part on other grounds, 113 F.3d 1373 (4th Cir. 1997), cert. denied, 118 S. Ct. 880 (1998); Youngberg v. Romeo, 457 U.S. 307, 321-322, 102 S. Ct. 2452, 2461 (1982); Alexander S., 876 F. Supp. at 796-799; Gary H. v. Hegstrom, 831 F.2d 1430 (9th Cir. 1987).

Some of the cases included in this letter involve adult inmates or children confined in adult facilities. This is because some of children's rights in institutional cases parallel the rights of adult inmates, and adult institutional cases are often used as authority in deciding cases involving children. Also, there has been a great deal more litigation over conditions in adult facilities, so sometimes adult cases provide the only guidance on a particular issue. However, even though the courts may look to adult institutional cases for guidance, it is clearly established that children are entitled to a higher standard of care.

[10] The denial of access to toilets or personal hygiene materials is not reasonably related to a legitimate goal of the facility and violates the Fourteenth Amendment. Jones v. Thompson, 818 F. Supp. 1263 (S.D. Ind. 1993).

[11] Courts have long recognized that "[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution" and, in particular, that the First Amendment protects the flow of information to detainees. Turner v. Safley, 482 U.S. 78, 84, 89-90 (1987); see also Pell v. Procunier, 417 U.S. 817, 822 (1974) ("[A] prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system"); Bell v. Wolfish, 441 U.S. 520, 545 (1979) ("Our cases have held that sentenced prisoners enjoy freedom of speech...under the First and Fourteenth Amendments"). While some debate remains regarding the extent to which outside reading material may be partially restricted without infringing constitutional rights, it is now well established that a wholesale ban on outside books, magazines, or newspapers is a patent

violation of the First Amendment. The Ninth Circuit has repeatedly held that even partial restrictions on outside publications violate the First Amendment rights of prisoners in some circumstances. See Crofton v. Roe 170 F.3d 957, 958 (9th Cir. 1999)(striking down regulation prohibiting the receipt by a prisoner of any book, magazine, or other publication, unless the prisoner ordered the publication from the publisher and paid for it out of the prisoner's own prison account); Prison Legal News v. Cook, 238 F.3d 1145, 1149-50, 1151 (9th Cir. 2001)(holding that a ban on receipt of subscription non-profit organization mail was not rationally related to asserted penological interests, and therefore violated the First Amendment rights of both inmates and publishers); Morrison v. Hall, 261 F.3d 896, 904 (9th Circuit 2001) (holding that restriction on pre-paid, for-profit subscription publications has no rational relation to legitimate penological objectives); Miniken v. Walter, 978 F.Supp. 1356 (E.D. Wash. 1997) (holding that application of prison bulk mail regulation to exclude a personal subscription to newsletter violated prisoner's First Amendment rights); Thomas v. Leslie, 176 F.3d 489 1999 WL 281416, at *7, 8 (10th Cir. April 21, 1999) (holding that county jail's absolute ban on newspapers had no rational connection to purported penological objectives and therefore violated the First Amendment); Jackson v. Elrod, 881 F.2d 441, 445 (7th Cir. 1989) (holding pretrial detainee has right to receive hard-backed books); and Green v. Ferrell, 801 F.2d 765, 772 (5th Cir. 1986) (holding ban on newspapers and magazines violates First Amendment).

It follows a fortiori that a blanket prohibition on reading materials other than the Bible, as is the case at the Hawaii Youth Correctional Facility, necessarily violates the wards' rights to free speech as well.

[12] The Fourteenth Amendment requires that restrictions on the liberty of individuals not convicted of crimes (e.g., juveniles) must be reasonably related to some legitimate government objective, such as rehabilitation, safety, or internal order and security. Santana v. Collazo, 714 F.2d 1172, 1180 (1st Cir. 1983) (citations omitted), cert. denied, 466 U.S. 974, 104 S. Ct. 2352 (1984). If the restriction is not reasonably related to a legitimate goal – if it is arbitrary or purposeless, for example– then the restriction unconstitutionally impinges upon the individuals' liberty interests and is considered punitive in violation of the Due Process Clause. Wilson v. Philadelphia Detention Center, 986 F. Supp. 282, 288-289 (E.D. Penn. 1997).

[13] Courts have expressed deep concern about the punitive isolation of children. Lollis v. New York State Department of Social Services, 322 F. Supp. 473 (S.D.N.Y. 1970), modified, 328 F. Supp. 1115 (S.D.N.Y. 1971). Moreover, what would be permissible as punishment for adults may be unacceptable for children, since the effects of isolation on children may be even more damaging. Children have a very different perception of time (5 minutes may seem like an eternity), and their capacity to cope with sensory deprivation may be very limited. Thus, in Lollis v. New York State Department of Social Services, 322 F. Supp. 473 (S.D.N.Y. 1970), modified, 328 F. Supp. 1115 (S.D.N.Y. 1971), the court found unconstitutional the placement of a 14-year-old status offender in isolation in a 6 ft. by 9 ft. room, for 24 hours a day, for two weeks, because she had gotten into a fight with another girl.

[14] Juvenile institutional cases have recognized that restraints may be used for a limited period to prevent injury of the minor or others. Gary W. v. Louisiana, 437 F. Supp. 1209 (E.D. La. 1976); Pena v. New York State Division for Youth, 419 F. Supp. 203, 208 (S.D.N.Y. 1976) (unless child is uncontrollable and constitutes a serious and evident danger to himself or others, use of physical restraints is prohibited as a constitutional minimum). Those courts have also held that restraints may not be used for longer than 30 minutes without authorization of qualified professionals or institutional administrators. Gary W. v. Louisiana, 437 F. Supp. 1209, 1229 (E.D. La. 1976); Pena v. New York Division for Youth, 419 F. Supp. 203, 211 (S.D.N.Y. 1976). This conforms to the principle that restraints may not be used as punishment (e.g. punishment for misbehavior) and that the only possible justification is for temporary protection of out-of-control children by qualified professionals. See Pena v. New York Division for Youth, 419 F. Supp. 203, 207 (S.D.N.Y. 1976) (use of hand and feet restraints to control excited behavior of juveniles was antitherapeutic and punitive, it violated 14th and 8th Amendments). Moreover, children should not be chained or fastened to walls or furniture. Pena v. New York State Division for Youth, 419 F. Supp. 203, 211 (S.D.N.Y. 1976) (prohibiting the restraint of children to a fixed object as a constitutional minimum).

[15] This is a punishment used by guard [redacted] who was generally identified as the most abusive and violent of all the guards.

[16] Discussed separately below.

[17] Juveniles may be isolated and locked in their rooms as an immediate response to out-of-control behavior that endangers the juvenile, other juveniles, or staff. However, once the juvenile has regained control, further isolation may only be imposed if the juvenile is afforded notice of the charges and an informal hearing before a staff member not involved in the incident. Cf. H.C. v. Jarrard, 786 F.2d at 1089; Gary H. v. Hegstrom, 831 F.2d 1430, 1443 (9th Cir. 1987); Patterson v. Hopkins, 481 F.2d 640 (5th Cir. 1973).

An extensive body of law governs due process with regard to adult prison disciplinary proceedings. In Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963 (1974), the Supreme Court set forth procedural due process protections for inmates whenever a punishment that will deprive an inmate of a protected “liberty interest” is to be imposed. The Wolff decision affords inmates the following procedural due process protections with regard to disciplinary proceedings: (a) advance written notice of the charges against them; (b) an opportunity to call witnesses and present documentary evidence in their defense where permitting them to do so would not be unduly hazardous to institutional safety or correctional goals; (c) an impartial decision maker (i.e., not the staff member involved in the incident); and (d) a written decision describing the evidence relied upon, and the reasons for any disciplinary action taken. 418 U.S. 539, 563, 566, 571, 94 S. Ct. 2963, 2978, 2979, 2982 (1974). In addition, due process requires that there is “some evidence” provided to support the finding of the disciplinary board. Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 455, 105 S. Ct. 2768, 2774 (1985). When disciplining detained juveniles, lower courts have required that detention officials afford juveniles similar due process protections. See H.C. by Hewett v. Jarrard, 786 F.2d 1080 (11th Cir. 1986) (finding violation of due process where minor was placed in isolation for 7 days without written notice or an opportunity to defend himself).

[18] Use of excessive force against juveniles is unconstitutional. Wilson v. U.S. Dist. Court for the Eastern Dist. of California, 520 U.S. 1230 (1997); Pelfrey v. Chambers, 43 F.3d 1034 (6th Cir. 1995); Felix v. McCarthy, 939 F.2d 699 (9th Cir. 1991); cert. denied, 502 U.S. 1093 (1992); Luciano v. Galindo, 944 F.2d 261 (5th Cir. 1991); Burton v. Kuchel, 865 F. Supp. 456, 463 (N.D. Ill. 1994); Estate of Davis by Ostenfeld v. Delo, 115 F.3d 1388 (8th Cir. 1997); Hill v. Shelander, 992 F.2d 714 (7th Cir. 1993).

[19] Many wards reported that the guards bring their problems to work and take them out on the wards.

[20] According to the wards, [redacted].

[21] [redacted] is a large man even by YCO standards and was somewhat hostile to us on our visits. During the second visit, he was at the girls' facility and kept walking back and forth looking into the interview room, making the women ACLU law clerks feel uncomfortable and threatened.

[22] At least one female ward was too nervous to talk about this topic and kept looking out the window towards the guards' desk.

[23] Inmates are entitled to some protection against exposure of their genitals to persons of the opposite sex. See Hayes v. Marriott, 70 F.3d 1144, 1146 (10th Cir. 1995); Lee v. Downs, 641 F.2d 1117, 1119 (4th Cir. 1981); Arey v. Robinson, 819 F. Supp. 478, 486 (D. Md. 1992). Children are even more susceptible to trauma from intrusions into personal privacy than adults. D.B. v. Tewksbury, 545 F. Supp. 896, 904 (D. Or. 1982) (finding that a lack of privacy in institutional settings, especially bathroom use, contributes to feelings of anxiety and loss of self-esteem which are counterproductive to the goals of the juvenile justice system; and see, Flores v. Meese, 681 F. Supp. 665 (C.D. Cal. 1988).

[24] In at least once case random, suspicionless, clothed searches of female inmates by male guards have been found unconstitutional. See Jordan v. Gardner, 986 F.2d 1521 (9th Cir. 1993).

[25] Wards are constitutionally entitled to fresh air and regular exercise. Spain v. Procunier, 600 F.2d 189 (9th Cir. 1979). Because the purpose of juvenile confinement is non-punitive, and because children's health and developmental needs demand a great deal of physical activity, their needs for recreation and exercise are much greater than those of adults. It also gives them an opportunity to get rid of tension and frustration that otherwise might result in institutional misbehavior. Accordingly, the failure of juvenile facilities to provide regular exercise and recreation violates children's constitutional rights. The cases vary greatly on what exercise must be provided, but as a minimum, children should have an opportunity for at least an hour per day of outdoor large muscle-exercise, weather

permitting. Facilities should also provide activities including radio, television, games, and books to occupy the children's non-programmed time. See D.B. v. Tewksbury, 545 F. Supp. 896 (D. Or. 1982); Thomas v. Mears, 474 F. Supp. 908 (E.D. Ark. 1979); Ahrens v. Thomas, 434 F. Supp. 873 (W.D. Mo. 1977), affd in part, modified in part, 570 F.2d 286 (8th Cir.1978); Morgan v. Sproat, 432 F. Supp. 1130 (S.D. Miss. 1977); Martarella v. Kelley, 359 F. Supp. 478, 485 (S.D.N.Y. 1973); Baker v. Hamilton, 345 F. Supp. 345 (W.D. Ky. 1972); Inmates of Boys Training School v. Affleck, 346 F. Supp. 1354, 1369-70 (D.R.I. 1972), Civil No. 4529 (D.R.I. Jan. 15, 1979) (final order).

[26] According to several eyewitness accounts, [redacted] hurt his shoulder when he used excessive force to break up a fight. Reportedly, [redacted] picked up a ward and body slammed him to the ground, then proceeded to grind the child's face into the ground (resulting in injuries to the child's face) and to choke the child until "foam" come out of his mouth.

[27] According to Mr. Ando, wards are entitled to 1 and ½ hours of recreation per day, except for Sunday and Monday.

[28] Mr. Ando stated that if the ward is on disciplinary sanction, the ward will still receive recreation time by himself. This may be the policy, but as far as we could tell it is certainly not the practice.

[29] Detained children have a constitutional right to an adequate educational program. D.B. v. Tewksbury, 545 F. Supp. 896 (D. Or. 1982); Tommy P. v. Board of County Commissioners, 645 P.2d 697 (1982); Inmates of Boys Training School v. Affleck, Civil No. 4529 (D.R.I. Jan. 15, 1979), previous opinion, 346 F. Supp. 1354 (D.R.I. 1972); West Virginia v. Werner, 242 S.E.2d 907 (W. Va. 1978); Morgan v. Sproat, 432 F. Supp. 1130 (S.D. Miss. 1977). Moreover, state laws require children to attend school until a certain age and define the course of instruction. The Hawaii Youth Correctional Facility must, at a minimum, comply with state law requirements.

[30] Mr. Ando could not answer our question as to whether any wards in Module C were in school fulltime.

[31] Delinquent children who have disabilities, including emotional disabilities that result in inappropriate behavior, are entitled to services through the special education system. 20 U. S. Code §1401(3)(A), §1401(26); 34 Code of Federal Regulations § 300.7(a)(1), § 300.7(c)(9)(i), §300.7(c)(10). IDEA's "stay put rule" sets forth strict procedural protections that must be followed before a child may be removed from school for behavioral problems.

[32] Mr. Ando informed us that wards detained for 90 days or less attend a separate school from the other wards for half days (8 to 11 am). Wards told a different story and said that they were not allowed to attend school because the guards "were too lazy to go to the trouble of taking them."

[33] Although there is no set constitutional standard for visitation, professional standards and case law call for institutions housing children to provide for "reasonable" visitation. As part of "reasonableness," visits should be available during several hours of the day, with provision of alternative visiting times for parents who are unable to schedule visits during the normal hours. Approved visitors should include adult relatives and family friends. Younger brothers, sisters, and others should be allowed to visit with approval of the minor's probation officer or counselor. Conversations should not be monitored except where there is a reasonable suspicion that a crime, escape or threat to security may occur. Depriving children of meaningful contact with their family works against the rehabilitative purpose of the juvenile justice system.

[34] The facility must provide "reasonable" access to telephones. The calls may be made to parents, relatives, and attorneys. Monitoring may only occur where there is some justification similar to that required for monitoring visits. Lack of telephone and other access issues may also give rise to ADA and Rehabilitation Act violations. See Hanson v. Sangamon County Sheriff's Dept., 991 F. Supp. 1059 (C.D. Ill. 1998); Ahrens v. Thomas, 434 F. Supp. 873 (W.D. Mo. 1977), aff'd in part, modified in part, 570 F.2d 286 (8th Cir. 1978); Gary W. v. Louisiana, 437 F. Supp. 1209 (E.D. La. 1976).

[35] A few wards receive calls on Saturdays instead of Tuesdays.

[36] The YCOs use this fact to further punish and target un-favored wards by placing them on early dorms on Tuesday.

[37] When outgoing mail is to be read, there must be notification and an opportunity for the individual to appeal to someone other than the person who originally disapproved the correspondence. Thornburgh v. Abbott, 490 U.S. 401, 109 S. Ct. 1874 (1989); Procunier v. Martinez, 416 U.S. 396, 94 S. Ct. 1800 (1974). Cases involving juvenile institutions have long offered protection against the indiscriminate opening and reading of mail. Nelson v. Heyne, 335 F. Supp. 451 (N.D. Ind. 1972), aff'd, 491 F.2d 352 (7th Cir. 1974), cert. denied, 417 U.S. 976 (1974) (a blanket policy of opening all mail violated the First Amendment).

[38] Children are entitled to privacy and free expression in their correspondence. Where institutions try to justify the reading of mail as part of the child's "rehabilitation," courts may find a transparent attempt to impermissibly censor children's mail. In Milonas v. Williams, 691 F.2d 931 (10th Cir. 1982), cert. denied, 460 U.S. 1096 (1983) the Provo Boys School was reading all of the children's outgoing mail and judging its content. The school said it was doing this for therapeutic reasons. Letters which contained things which staff felt to be untrue or which demonstrated "negative thinking" (such as criticism about the school), were brought to the children's attention, and children were forced to rewrite letters. Letters were also sent out with notations in the margins such as "manipulative." The Tenth Circuit Court of Appeals found this practice constitutionally unacceptable.

[39] There are two categories of mail: privileged and non-privileged. Privileged mail is between the child and his attorney, a judge, a legislator, or some other public official. Privileged mail is usually designated as such (e.g. "legal mail") on the envelope. Staff, except to inspect it for contraband, may not open privileged mail. See Wolff v. McDonnell, 418 U.S. 539, 574-77, 94 S. Ct. 2963 (1974). Non-privileged mail is all other mail. Mail from someone outside the facility to a child may be inspected for contraband, but may only be read by staff if there are grounds to believe that the mail contains escape

plans, or plans for criminal activity, or that it constitutes a violation of the law (e.g., a death threat to someone), or obscenity. Even then, the staff must be able to demonstrate some factual basis to support their suspicions, based on the specific individual's record or other facts related to institutional security.

[40] Detention centers should have written policies embodying detained children's rights to mail privacy and assuring that children will be provided with reasonable amounts of writing materials and postage.

[41] Correctional facilities must assure that inmates have meaningful access to counsel and the courts. Younger v. Gilmore, 404 U.S.15, 92 S. Ct. 250 (1971). In Bounds v. Smith, 430 U.S. 817, 828, 97 S. Ct. 1491 (1977), the Supreme Court held that the right to access to the courts is "fundamental" and that prison officials must provide prisoners with access. Specifically, the Court held that the provision of adequate libraries or adequate assistance from persons trained in the law would meet the constitutional requirement, and that facilities should explore various avenues, such as involvement of volunteer or legal services attorneys, law students, inmate paralegal, or public defenders.

Because children are even less able than adult inmates to perform legal research, some courts have required institutions to provide more than access to legal materials to meet their needs. The decision in John L. v. Adams, 969 F.2d 228 (6th Cir. 1992), called for officials to contract with private attorneys to provide part-time legal assistance to children in the state institutions.

Children in administrative segregation or protective custody within institutions must also have meaningful access to the courts. For example, in Nami v. Fauver, 82 F.3d 63 (3rd Cir. 1996), the court reversed the dismissal of a §1983 action brought by juveniles in protective custody at a youth correctional facility, finding that denying the juveniles legal materials unless they specifically requested them by name, allowing the juveniles access to a paralegal only for disciplinary charges and not allowing the isolated juveniles to help one another with legal access due to a no-talking policy, stated a valid §1983 claim.

[42] Over the past two decades, courts have found institutional administrators and supervisors liable for a wide range of conduct relating to hiring, training, supervision, assignment, direction and

retention of staff. See Powell v. Schriver, 175 F.3d 107 (2d Cir. 1999); Estate of Davis by Ostenfeld v. Delo, 115 F.3d 1388 (8th Cir. 1997) Greason v. Kemp, 891 F.2d 829 (11th Cir. 1990) Meade v. Gibbs, 841 F.2d 1512, 1527 (10th Cir. 1988).

[43] For example, on June 3, 2003, when we discovered three individuals locked in a cell in module B, Mr. Ando seemed genuinely surprised. He asked the correctional officer on duty about the situation and the guard indicated that he was simply following orders. It was unclear whom the orders came from, but Ando did not know what was going on in the housing units, and was apparently not monitoring the housing situation. Similarly, on June 3, 2003, he did not know whether any of the boys in C module were attending the school full-time and had to ask a YCO in our presence. The interaction left the distinct impression that the guards made the decisions as to who went to school.

[44] Wards have a constitutional right to adequate medical care. Estelle v. Gamble, 429 U.S. 97 (1976); H.C. v. Jarrard, 786 F.2d at 1086. Factors relevant to whether medical care is adequate include access to a full-time doctor, the provisions for regular sick call, whether prescription drugs are dispensed by non-medical personnel, the provisions for handling medical or dental emergencies, provisions for notifying parents of medical problems, and the provisions for medical services for inmates with ongoing medical needs.

Substantial delays in medical treatment may also result in a finding that medical care is constitutionally inadequate. See Durmer v. O'Carroll, 991 F.2d 64 (3rd Cir. 1991); Lancaster v. Monroe County, Ala., 116 F.3d 1419, 1426-27 (11th Cir. 1997); H.C. by Hewett v. Jarrard, 786 F.2d 1080 (11th Cir. 1986) (juvenile detainee case finding three-day delay in medical treatment for shoulder injury amounted violation of the juvenile's constitutional rights).

[45] [redacted] in particular is one of the worst in this regard.

[46] Children are entitled to adequate mental health care as part of their constitutional right to medical care. Many detained children are mentally ill or suffer from severe emotional disturbances. Sometimes

the fact of being confined away from home adds to their disturbance. It is crucial therefore, that facilities screen minors for mental health problems, that there be provision for emergency psychological services, that there be established procedures for dealing with suicidal youngsters, that medications be prescribed and administered by qualified medical personnel, that there be provisions for children to request psychological care, and that there be adequate staffing for ongoing psychological services. This is critical for detention centers, since a disproportionate number of suicides and attempted suicides by detained juveniles have occurred (as compared with incarcerated adults), and children are often extremely distraught about incarceration.

For the components of a minimally adequate mental health system, see Ruiz v. Estelle, 503 F. Supp. 1265 (S.D. Tex. 1980), aff'd in part and vacated in part, 679 F.2d 1115 (5th Cir.), amended in part, 688 F.2d 266 (5th Cir. 1982), cert. denied, 460 U.S. 1042 (1983). See also, Coleman v. Wilson, 912 F. Supp. 1282 (E.D. Cal. 1995), finding constitutional violations where a prison system failed to provide: (1) a systematic program for screening and evaluating inmates for mental health needs; (2) a treatment program that involved more than segregation and close supervision of mentally ill inmates; (3) employment of a sufficient number of trained mental health professionals; (4) maintenance of accurate, complete, and confidential mental health records; (5) administration of psychotropic medication with appropriate supervision and periodic evaluation; and (6) a basic program to identify, treat, and supervise inmates at risk for suicide.

[47] Children have a right to be free from unreasonable threats to their physical safety. Facilities must have a system for screening and separating aggressive juveniles from more passive ones and determining appropriate levels of institutional classification. Alexander S. v. Boyd, 876 F. Supp. 773 (D.S.C. 1995), aff'd in part and rev'd in part on other grounds, 113 F.3d 1373 (4th Cir. 1997), cert. denied, 118 S. Ct. 880 (1998). Similarly, the failure to protect children from the sexual behavior of other confined children may result in liability. Guidry v. Rapides Parish School Board, 560 So.2d 125 (La. Ct. App. 1990).

[48] Moreover, many wards reported that guards would routinely let fights go on for a while before breaking them up, and would sometimes have wards make "hits" on other wards. One staff member reported an incident of a guard announcing to wards that a particular boy was in for sexually assaulting a young girl so that the boy would be beaten up by other wards.

[49] Detained youths have a constitutional right to file grievances with facility administrators regarding their treatment at HYCF. See Bradely v. Hall, 64 F.3d 1276 (9th Cir. 1995). Grievance procedures are an important part of institutional operations. They provide a means of addressing perceived injustices, and increasing communication between staff and confined persons. They also offer institutional administrators an important quality-control mechanism and a way to learn about abusive staff or other issues needing official attention.

The basic elements of an adequate grievance system are notice to the children of the availability, an explanation of the purpose and scope of the procedure, a clear and simple procedure for the child to present his grievance to staff, provisions for prompt investigation of the grievance, an opportunity for the child to present his grievance to an impartial panel, notice to the child of the decision of the panel, appropriate disciplinary sanction to staff if the grievance is found justified, and written records of the grievance, investigation, decision and final action taken.

[50] It is clear that the constitutional right to seek redress of grievances is violated if there is any retaliation against wards for filing grievances. Dixon v. Brown, 38 F.3d 379 (8th Cir. 1994).

[51] YCO [redacted] tells wards, "Who are they going to believe? You or me? I'll just lie, and they'll never believe you."