IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

SOUTH CAROLINA STATE CONFERENCE OF NAACP;

DISABILITY RIGHTS SOUTH CAROLINA;

JUSTICE 360;

Plaintiffs,

v.

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE;

EDEN HENDRICK, individually and in her official capacity as Executive Director of the South Carolina Department of Juvenile Justice;

Defendants.

Case No. 0:22-cv-1338-MGL-PJG

PLAINTIFFS' RENEWED MOTION FOR PRELIMINARY INJUNCTION[1]

[1] This motion is not accompanied by a separate memorandum of law because it contains a full explanation of the motion, including the relief sought, as required in Local Civ. R. 7.05. *See* Local Civ. R. 7.04.

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INTRODUCTION

Conditions in the five secure facilities operated by the South Carolina Department of Corrections (DJJ) remain, to quote both Defendant Director Hendrick and a South Carolina State Senator, "terrible."[2] As this lawsuit has alleged since it was filed in April 2022, rampant and severe violence, overuse of isolation, a lack of essential rehabilitative services, and disgusting conditions plague DJJ facilities, and have only worsened in the last eighteen months. This narrowed motion seeks urgent relief in two of those areas—violence and isolation—to prevent further irreparable harm to DRSC's detained constituents, Justice 360's detained clients, and each of the three Plaintiff organizations.

DJJ's own data, along with other key pieces of evidence, demonstrate that the extreme violence and isolation faced by DJJ youths remain untenably high on a daily basis. As a result of these systemic failures, *every* child detained in one of the five secure facilities operated by the South Carolina Department of Juvenile Justice (DJJ)—including the specific children Plaintiff organizations serve and represent—is being denied their Fourteenth Amendment right to be held in an objectively safe, rehabilitative environment. *See Alexander S. by & through Bowers v. Boyd*, 876 F. Supp. 773, 796 (D.S.C. 1995); *Doe 4 by & through Lopez v. Shenandoah Valley Juvenile Ctr. Comm'n*, 985 F.3d 327, 342 (4th Cir. 2021). And while DJJ's poor staff training and practices undeniably contribute to these violations, the central cause is clear: DJJ facilities are severely overcrowded and understaffed, allowing the rampant violence to continue unabated, and leading DJJ personnel to impose isolation on children indiscriminately. Yet for years, DJJ has failed to solve their staffing deficiencies. And to compound its problems further, DJJ staff continually recommend the placement of more children into DJJ custody.

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[2] Mary Green, *DJJ asks for $30M for new detention center, saying current facility overcrowded and 'not safe,'* WISTV10, Jan. 23, 2023 (available at: https://www.wistv.com/2023/01/24/djj-asks-30m-new-detention-center-saying-current-facility-overcrowded-not-safe/); September 12, 2023 Public Hearing, Joint Citizens and Legislative Committee on Children, at 2:44:45—2:45:08, https://www.scstatehouse.gov/video/archives.php.

In short: relief is urgently needed. This Court can and should direct Defendants to make specific changes and improvements to reduce violence and isolation. By failing to do so without Court intervention, Defendants have fallen far short of their professional and constitutional obligations under *Youngberg v. Romeo*, 457 U.S. 307 (1982). Without timely and decisive relief from this Court, the irreparable harms caused by these violations to Justice 360, Disability Rights South Carolina, and the South Carolina State Conference of NAACP will continue unabated.

STATEMENT OF FACTS[3]

South Carolina law entitles children detained in DJJ's five secure facilities to rehabilitative services and treatment. *See, e.g.*, S.C. Code Ann. § 63-19-360(5) ("The Department of Juvenile Justice shall provide educational programs and services to all pre-adjudicatory juveniles in its custody."); *Alexander S. by & through Bowers v. Boyd*, 876 F. Supp. 773, 796 (D.S.C. 1995) ("South Carolina law clearly establishes that the purpose of confining juveniles who violate the law is not to punish them, but to provide training and services to correct their delinquent behavior—that is to say, to rehabilitate them."). For those services to have any chance at efficacy, DJJ must also keep the children in its care safe. Under the prevailing standards of professional judgment, "safety" requires both protection from violence at the hands of other youth or staff, *see* Declaration of Phyllis Becker ("Becker Decl.") ¶¶ 24-25, 28, 36-37, and protection from frequent, prolonged periods of isolation, which are antithetical to the rehabilitative goals of juvenile detention. *see* Declaration of David Muhammad ("Muhammad Decl.") ¶¶ 19-22, 49, 54; Becker Decl. ¶ 91.

As detailed below, DJJ fails to satisfy its professional obligation to protect the children in its care from frequent violence and from frequent, prolonged, and psychologically damaging isolation. These facts (which have largely gone unchallenged) are established by DJJ's own

[3] The facts highlighted herein are only those relevant to the targeted injunctive relief that Plaintiffs seek, which goes to the rampant violence and excessive use of isolation at DJJ. The constitutional violations at DJJ alleged in this lawsuit, including its failures to provide its children proper education and rehabilitative care, span well beyond the focus of this motion.

records and through the fact and expert witnesses who have submitted declarations in support of this motion, including monitors who routinely observe DJJ facilities, advocates who represent children in DJJ custody, and three experts in child psychology and juvenile detention administration.[4]

I. Children detained at DJJ are subjected to rampant violence and fear of violence.

Violence across DJJ's facilities is both rampant and worsening. Facilities are so dangerous that correctional staff will not work out of fear for their own safety. ECF No. 97-5 at 2 (JCO took "unauthorized leave" due to "concerns with her safety" at MEC). In May and June 2023, the two most recent months for which DJJ has released its internal statistics, DJJ reported 197 youth-on-youth assaults, 83 fights, and 148 youth injuries across DJJ's five secure facilities.[5] *See* Declaration of Beth Franco, ("Franco Decl.") at Ex. A. That is, an average day at DJJ over these two months involved almost 5 fights and more than 2 injured children. These are the numbers DJJ captures and reports, which are likely underinclusive, and reflect only youth-on-youth violence.

[4] Due to the extreme difficulty of obtaining signed declarations from children in DJJ facilities, some of Plaintiffs' evidentiary submissions in support of this motion contain accounts relayed to the declarants from children in DJJ facilities, as well as the declarants' own observations. At the preliminary injunction stage, the Court can rely on hearsay or otherwise inadmissible evidence. *See, e.g.*, *S.C. Progressive Network Educ. Fund v. Andino*, 493 F. Supp. 3d 460, 465–66 (D.S.C. 2020); *Nat'l Ass'n for Advancement of Colored People, Inc. by & through Myrtle Beach Branch v. City of Myrtle Beach*, 383 F. Supp. 3d 603, 609 (D.S.C. 2019); *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709, 725–26 (4th Cir. 2016), *vacated and remanded on other grounds*, 137 S. Ct. 1239 (2017))).

[5] By comparison, between January and February 2022, the most recent DJJ data available to Plaintiffs when they filed this case, DJJ reported "only" 89 youth-on-youth assaults, 46 fights, and 61 injuries across DJJ's five secure facilities. Franco Decl. at Ex. A. In November and December 2022, the most recent figures when Plaintiffs filed their previous motion for preliminary injunction, DJJ reported 237 youth-on-youth assaults, 119 fights, and 101 injuries across its five secure facilities. [*Id.*]. The May and June 2023 figures reflect increased rates of violence at every facility except BRRC, from which DJJ has removed much of the child population in the last two years. [*Id.*].

The South Carolina Department of Children's Advocacy ("DCA") also tracks violence at DJJ facilities, and its data further corroborates that violence continues to worsen. During the 2021-22 fiscal year (Defendant Hendrick's first year leading DJJ), DCA tracked 299 "critical incidents" at DJJ facilities. ECF No. 82-2 at 11. Of those 299 incidents, 157 were "physical assaults." *Id.* In the next year, those numbers skyrocketed. In the 2022-23 fiscal year, DCA tracked 501 "critical incidents," with 338 classified as "physical assaults." *Id.* at 4. If these incidents are broken down by facility, it is easy to see how DJJ's manipulation of facility populations to accommodate the DOJ settlement serves only to relocate the violence to other facilities:

Facility	**FY 2021-2022**	**FY 2022-2023**	**Percent Change**
JDC	91	188	107%
MEC	47	161	243%
UEC	44	75	70%
CEC	14	32	129%
BRRC	65	45	-31%

Violence is also inflicted upon children by staff. The recent upticks in facility-wide riots and understaffing have ushered in the use of tasers and pepper spray by DJJ staff to subdue children. Declaration of Quanesha Brown ("Brown Decl.") ¶¶ 10, 20, 23-34 (noting tasers and pepper spray are also used during regular operations); Declaration of Allison Franz ("Franz Decl.") ¶¶ 10, 22; Chris Joseph, *Department of Juvenile Justice whistleblower calls out post-riot policy choices*, WIS 10 (Aug. 22, 2023), https://tinyurl.com/33b3dyb2.

The injuries children suffer from this violence are severe—including broken jaws, concussions, fractured arms and ribs, stab wounds, and deep lacerations. ECF 117, ¶¶ 72-81, 249. Many of these injuries are the result of children being attacked by other children wielding homemade weapons such as shanks or sharpened broomsticks. For example, in March 2023, one

child in DJJ custody was stabbed with a shank, which his attackers then photographed and posted on Instagram. ECF 117, ¶ 78. After that child recovered, DJJ staff attempted to place him right back in the same pod as his attackers. *Id.*

The violence is so relentless that all children risk being attacked. DJJ staff frequently move children from one facility to another, Brown Decl. ¶ 16; ECF 82-10 (Hoyns Decl.) ¶ 7, and children often break out of or escape from one area within a facility to attack children in another, Brown Decl. ¶¶ 30-32; Brown Decl. ¶ 30. One child in Defendants' custody, a fourteen-year-old with a serious mental illness, reports being attacked in all three of the facilities that he's been in while in DJJ custody—JDC, UEC, and MEC—and being assaulted in every single pod that he's been in within these facilities. ECF 117 ¶ 75. After being beaten with a "lock in a sock," he was forced to get staples to seal a head wound; he was placed in isolation as a form of protective custody but reported that he is frequently targeted for attacks whenever his door opens. *Id*.

Children and staff have created an ever-expanding taxonomy to describe different forms of violence. "Fight nights," "friendlies," or "rounds," for example, are planned fights between children. ECF 117 ¶ 98; ECF 82-18 (Declaration of Phylliss Ross) ¶ 21; ECF 82-7 (Freedman Decl.) ¶ 24. One child at MEC described being in six "rounds" within 30 days. Ross Decl. ¶ 21. "Blitzes" are attacks in which multiple children team-up to attack one child. ECF 117 ¶ 99; Ross Decl. ¶ 12. Making others "pay rent" involves attacking a child to demand that they hand over snacks or food. ECF ¶ 100.

The constant fights and assaults at DJJ frequently take place with staff knowledge and without staff intervention, ECF 117 ¶ 103, because there are too few staff to intervene safely, *see* ECF 117 ¶¶ 65, 93; *see also id.* ¶ 54 (frequent riots require outside police intervention).

A. <u>DJJ is responsible for the violence in its facilities.</u>

The severe violence in DJJ facilities is the result of DJJ's failure to maintain appropriate staffing levels for the amount of children in DJJ custody.

DJJ does not come close to necessary, baseline staff-to-child ratios at its facilities. Brown Decl. ¶¶ 40-42; *id.* ¶ 30 (noting security failures during riot due to severe understaffing); ECF No. 97-7 at 2 (showing 174 security-staff vacancies). The South Carolina Code requires that "[s]taff on duty must be sufficient to provide for a juvenile-staff ratio adequate for custody, control, and supervision, and to provide full coverage of all designated security posts, excluding administrative, program, and other support staff." S.C. Code Ann. § 63-19-360(5). Federal standards under the Prison Rape Elimination Act ("PREA") mandate a minimum juvenile-to-security staff ratio of 8:1. *See* 28 C.F.R. § 115.313(c).

DJJ's facilities come nowhere close to meeting this ratio. In 2021, a PREA audit revealed that the Juvenile Detention Center ("JDC"), DJJ's pretrial detention center, routinely operated at ratios of between 11:1 and 15:1. ECF No. 1-4 at 23-24. Since then, as documents provided in discovery show, DJJ's understaffing problem has only gotten worse. As of March 7, 2023, DJJ's records showed dismal vacancy rates for security posts at each of its five facilities: 42% at BRRC, 47% at CEC, 31.5% at JDC, 38% at MEC, and 48% at UEC. ECF No. 97-7 at 2. According to DJJ personnel, "[e]ven under normal circumstances we are short staffed," and "lacking the manpower" to prevent violent incidents. *See* ECF No. 97-8 at 2 (attempting to justify why children were not allowed to shower). As an internal BRRC staffing study admitted, "[a]t the present time, a 1:8 staffing ratio is not possible." ECF No. 97-14 at 7. The same report acknowledged that increasing staffing is absolutely vital to meeting DJJ's obligation to provide safe and therapeutic conditions of confinement. *See id.* at 9 ("It is obvious that more staff presence means more opportunities for youth to learn pro-social behavior and to receive attention, support, and redirection for positive youth development."); *see also* Becker Decl. ¶ 31 ("Understaffing and overcapacity… seriously undermine[] DJJ's ability to accomplish core responsibilities toward the children in its care, including education, development, and rehabilitation.").

Because there are too many children and not enough staff, children are often left unattended, and staff are unable to prevent or promptly break up fights. Brown Decl. ¶ 14, 27. A

staff member at MEC described the facility as so short-staffed that "one pod was being monitored using 'indirect supervision,'—which means that there are no staff physically present in the pod." ECF 82-8 (Coyle Decl.) ¶ 29. During one attack at JDC, "two JDC staff members locked themselves in another room and waited for security officers to arrive," which took half an hour. *Id.* ¶ 10; *see also* Brown Decl. ¶ 31. Other staff are refusing to show up for their own safety, in large part because they are so outnumbered by the children. ECF No. 97-5 at 2. And, as described further below, JCOs frequently resort to isolating children in their cells when there are not enough staff present. Brown Decl. ¶ 62.

The danger from understaffing at DJJ is further compounded by the overcrowding in its facilities. Franz Decl. at ¶¶ 10-15; Becker Decl. ¶ 31. As just one example, JDC, which is designed to house 72 children, was holding approximately 130 children in April 2023. ECF 117 ¶ 62. On April 6, just *7 staff members* were present for daytime supervision of those 130 children. ECF No. 97-9 at 2. For the same shift, JDC was unable to fill any of the 5 positions assigned to the facility's infirmary or school, and failed to fill any of its 3 "roving officer" posts. *Id.* That night, across DJJ's facilities, 85 children—approximately 30% of the children in DJJ's charge—slept in "boat beds," which are small plastic containers placed on the floors of common areas and hallways. ECF No. 97-6 at 2; Franz Decl. ¶ 12 ("When JDC is over capacity, staff put boat beds on the floors of the units and in the hallways and children sleep in them, sometimes for days or weeks."). Children assigned to boat beds are particularly vulnerable to violence because they are not in secure cells. Brown Decl. ¶ 35. When children misbehave, they are often assigned their own room for security reasons, which, in turn, incentivizes misbehavior. Franz Decl. ¶ 13.

What staff DJJ does have are inadequately trained. *See, e.g.*, ECF No. 1-2 at 12 (audit reporting that 74% of correctional officers found DJJ's de-escalation training to be inadequate); *id.* at 14-15 (reporting an "increase in work hours logged by … untrained and inexperienced staff"); *id.* at 29, 32, 33; Brown Decl. ¶ 27 ("I have learned that RRTs are not effective in de-escalating disturbances, but instead respond in a manner that escalates situations further."). JCOs frequently fail to intervene promptly. ECF No. 97-14 at 8 ("[A]n unfortunate and inappropriate

practice" is that "[w]hen incidents get out of control, . . . JCO staff stands back and does not get involved with trying to mitigate or de-escalate the incident. Therefore, bad conduct by youth escalates into a full-blown incident where an emergency develops."). When DJJ staff do intervene, they often escalate the violence and cause additional harm to children. Brown Decl. ¶ 24 ("Children reported to me that during disturbances, tasers and pepper spray are used on children."). Multiple children at MEC, for example, recently reported being tased and pepper sprayed by DJJ security staffers. *see also* Brown Decl. ¶¶ 10, 20, 23, 24 (reporting regular use of tasers across DJJ facilities by its newly formed "Rapid Response Team"). Sometimes, DJJ staff directly instigate violence, such as by bribing children with special privileges or outside food in exchange for engaging in fights. Ross Decl. ¶ 25; Freedman Decl. ¶ 26.

Despite the rampant violence caused by DJJ facilities being overcrowded and understaffed, DJJ personnel routinely recommend that courts order the detention of more juveniles at DJJ. They do so by recommending detention at juvenile detention hearings, or recommending the denial of parole, without regard for the harm being caused by the already overcrowded, understaffed DJJ facilities. Franz Decl. ¶ 11.

B. Violence at DJJ causes substantial harm, especially to DRSC's child-constituents.

DRSC's mentally ill constituents—which comprise "the majority" of detained youth, *compare* 42 U.S.C. §§ 10802(3), (4), *with* 2022 Accountability Report[6], S. Carolina Dept. of Juvenile Justice at 5—are "more likely to be bullied, assaulted, and victimized than other children," FAC ¶ 319. Given the nearly unprecedented levels of violence at DJJ facilities, *see* Muhammad Decl. ¶¶ 21, 71; Franco Decl. Ex. A (197 youth-on-youth assaults, 83 fights, and 148 youth injuries in 2 months), children with mental illness cannot escape unscathed. The acute violence-related harms suffered by DRSC's constituents whom DRSC specifically identified in Plaintiffs' complaint demonstrate the ways the DJJ's violence reaches and affects DRSC's child

[6] Available at: https://dc.statelibrary.sc.gov/handle/10827/46820 (asserting that "the majority" of children detained at DJJ "meet criteria for at least one mental health disorder.")

constituents, as discussed in the declaration of Quanesha Brown. Child 5, for example, has already been assaulted five times at JDC. Brown Decl. ¶ 12. Child 6 was assaulted with a boat bed and other objects. Brown Decl. ¶ 13. Child 8, who is detained at MEC, was kept in isolation for an entire month just to keep him from being assaulted. Brown Decl. ¶ 70. Child 10 has been assaulted 3 times since arriving at BRRC. Brown Decl. ¶ 21. Child 12 was told by a RRT member—the staff supposed to be keeping children safe—to "come fight [him]" and then was sprayed with mace by another RRT member. Brown Decl. ¶ 28. These examples are but a small window into the hundreds of assaults that are endured by the children with mental illness that are entrusted to the care of DJJ.

Even beyond the physical injuries that result from violence at DJJ, the culture of violence[7] and perpetual threat of physical harm also takes a tremendous emotional, psychological, and developmental toll on children with mental illness. Whether or not personally victimized, DJJ residents live with the fear that violence can break out at any point. *E.g.*, FAC ¶¶ 249-251 (discussing Child 1's reaction to seeing another child's jaw get broken during a riot); Franz Decl. ¶¶ 11, 22. This chronic uncertainty about their safety places youth at significant risk of developing Post-Traumatic Stress Disorder—with attendant hypervigilance, including exaggerated startle response, problems concentrating, sleep disturbance, and irritable behavior. Declaration of Louis M. Kraus, M.D. ("Kraus Decl.") ¶¶ 71-76; Franz Decl. ¶ 11 ("Child 1 . . . now demonstrates hypervigilance, sullenness, and deep suspicion of others."). And that same symptomology may lead children to act out, resulting in punishments for their mental health issues. Kraus Decl. ¶ 76. Unsurprisingly, one witness reports that, "[d]ue to the constant fear of being targeted by a gang—including by gang-affiliated DJJ staff—detained youth are constantly on alert, leading to an atmosphere that exacerbates trauma and behavioral problems because of the constant violence." Freedman Decl. ¶ 29.

[7] In 18 months of litigation, Defendants have never meaningfully disputed Plaintiffs' claims of rampant, uncontrolled violence in DJJ facilities. It would be hard to do so, given that the raw violence statistics are maintained by DJJ itself.

The hovering specter of violence also impedes education and recreation, which further sets back children's progress and defeats the purpose of their ostensibly rehabilitative detention. DJJ's own concerns that it does not have the resources to control violence has led it to deny education by cutting classes short or canceling them altogether. Brown Decl. ¶ 63, 68. Likewise, the prospect of violence results in children only infrequently going outside, because DJJ cannot adequately supervise children outdoors. *See* Brown Decl. ¶ 59-60 (noting overuse of isolation as punishment prevents children from receiving recreation); Ross Decl. ¶ 40.

In short, DJJ's failure to create a safe environment produces cascading harms. DJJ staff cannot protect the children in DJJ's care, which means that children are exposed to brutal violence. To stop that violence—often belatedly, after children have suffered terrible injuries—DJJ staff resort to extreme measures, like tasing these children, which only further creates a culture of dangerousness. And, because they cannot keep children safe, DJJ staff often isolate them—sometimes for weeks on end—and deny them critical recreation or outdoor access. *E.g.*, Brown Decl. ¶ 64 (Child 6); ¶ 70 (Child 8).

In fact, for many children the constant threat of violence means barely being able to leave their cells at all. When a child is targeted for repeated attacks—usually because they are younger, smaller, or suffer from mental illness—DJJ often resorts to placing them in extended isolation as its only means of protection. Franz Decl. ¶¶ 7-8, 34-36. In isolation, these children have little to no human contact, grossly insufficient access to hygiene services, and even fewer educational or rehabilitational opportunities than when they are not in isolation. *Infra* Part II.

II. Children held at DJJ often suffer from excessive forms of isolation.

A. DJJ frequently uses isolation as a punishment and as a solution to violence and understaffing.

Expert and professional standards leave no doubt that juvenile detention officials may only subject children to solitary confinement or isolation in the rarest of instances, and for no more than a few hours. Becker Decl. ¶¶ 94-102; Kraus Decl. ¶¶ 49-57; Muhammad Decl. ¶¶ 23-48. This is because solitary confinement is an extreme state of being that can have profound

negative impacts on children. Becker Decl. ¶ 96-97. In Plaintiffs' expert David Muhammad's words: "solitary confinement should not be utilized frequently or for lengthy periods of time for any reason for children. My view is shared by juvenile justice experts nationwide, has been memorialized in professional standards for juvenile justice administrators, and has been supported by federal and state government efforts to minimize or eliminate the use of solitary confinement for youth." Muhammad Decl. ¶ 39.

But, in DJJ facilities, isolation, like violence, is commonplace. DJJ's own document disclosures prove that DJJ continues to use isolation to punish misbehavior. *See* ECF No. 97-10 at 2, as a tool for dealing with understaffing; ECF No. 97-11 at 2-27 (showing over 170 instances of the use of isolation to enforce "early curfew"), and even for no specified reason at all; ECF No. 97-10 at 2 (showing children isolated at MEC for durations of 3, 6, 7, and 9 days, all for "other" "unknown" reasons). *See* Franz Decl. ¶ 36 ("Early curfew is a frequent punishment" that is sometimes "impose[d] . . . on entire units, . . . even if some of the juveniles have done nothing wrong."). DJJ's own records show 514 separate instances of isolation in the month of February 2023 alone. ECF No. 97-11 at 2-27. DJJ staff often use isolation to punish children for minor offenses, such as "showing disrespect, not complying with officers' directions, or using profanity towards officers … masturbating in their beds[,] or exposing themselves to officers." ECF No. 1-6 at 14; *accord* Brown Decl. ¶¶ 59, 80. DJJ staff even subject children to isolation for behavior that does not qualify as an offense, like having playing-cards, being unable to urinate for a drug test, or being insufficiently apologetic. ECF No. 1-6 at 14; Brown Decl. ¶¶ 59, 80. These practices are contrary to DJJ's own written policies. *See* ECF 13-2, Ex. B at 6-7 (previous Declaration of Phyllis Ross) (DJJ policy requiring interventions other than isolation where a child "is safe, but is not calm and/or cooperative").

DJJ also uses isolation as an administrative or security procedure to compensate for its inadequate staff-to-child ratio and poor staff training. Perhaps most alarmingly, DJJ uses such isolation when it cannot treat or respond to the needs of children with disabilities. For example, DJJ staff put one child at JDC into isolation because they could not manage his mental illness.

Freedman Decl. ¶ 35. Other times, DJJ staff resort to solitary confinement of *victims* of violence because they cannot otherwise keep these victims safe. Brown Decl. ¶ 70 (Child 8). And, when there are not enough staff members at a facility, as is often the case, DJJ confines children to their individual cells, using isolation as a population management and "protection" tool. Ross Decl. ¶¶ 20, 30, 32, 34. These *de facto* forms of isolation are rarely documented. Ross Decl. ¶ 31.

Children are often isolated for prolonged periods of time—days, weeks, or even months. Brown Decl. ¶ 59-79 (describing numerous bouts of months-long solitary confinement). In November 2022, for example, a child at MEC spent 12 days in solitary confinement and then, only five days after being released, another full month. Hoyns Decl. ¶ 12. At UEC, a child has been in isolation for 5 months. Brown Decl. ¶ 79. As of February 15, 2023, a child at BRRC had been in isolation for three weeks, and had not been let out of his cell at all the day before. *Id.* ¶ 74. Children at UEC have reported periods of isolation lasting for 3, 5 and 7 months. *Id.* ¶ 77-79. Another child, who was recently in DJJ custody, reported spending over half of his nearly three years at JDC in solitary confinement. Freedman Decl. ¶ 36.

DJJ's isolation practices are contrary to its own mandatory policies on the criteria for, duration of, and supervision of isolation. DJJ policy says that "juveniles placed in isolation or room confinement must be closely monitored," "receive encouragement and support from the staff," and be "assessed by a staff member at least every 15 minutes until all [] compliance criteria are met." *See* ECF 13-2, Ex. B at 6-7 (previous Declaration of Phyllis Ross). Also, within four hours of placement, a manager must conduct an investigation, interview the juvenile, return them to their unit unless they are, or are under, a "*severe* threat of harm," and complete documentation of the same. *Id.* Ex. B at 6-7, 11-12 (emphasis added). Contrary to these requirements, JCOs will fill out paperwork extending children's time in solitary confinement past four hours without ever evaluating or checking on them; in fact, they will pre-emptively prepare that paperwork before four hours has even passed. *Id.* ¶ 44. Moreover, the required documentation is often neither "thorough [nor] accurate" and is almost never completed in full. ECF No. 1-2 at 34. Though DJJ has implemented a "S.T.A.R." program that is supposed to

divert children from isolation, the program has not resulted in any meaningful changes to DJJ's isolation practices. Brown Decl. ¶¶ 80-81, Ex. A.

B. Children in isolation suffer from dismal conditions and nearly nonexistent services.

Isolation in DJJ facilities occurs in conditions that resemble the worst forms of adult solitary confinement. *E.g.*, Brown Decl. ¶¶ 47-53 (describing isolated children trapped in rooms flooded with raw sewage and feces from drainage issues, mold that makes them sick, and broken toilets). At JDC, for example, children are isolated in cells that are approximately 9 feet by 9 feet in size. Brown Decl. ¶ 67. Each cell has a bed, a "desk" (a plank sticking out of the wall for a table and two planks sticking out of the wall on either side, lower to the ground, to sit on), a sink, and a toilet. *Id.*; Freedman Decl. ¶ 33. The door to each cell has a small, approximately 1.5-by-1.5-foot window and a small window behind the bed. Freedman Decl. ¶ 33. These windows have been coated with a substance that makes them opaque and that limits the amount of natural light in the cells. *Id.*

Isolation at DJJ is an extraordinary deprivation. When children are isolated, they often do not receive rehabilitative services—no matter their need or the reason for the solitary confinement. Isolated children cannot attend classes in person and only rarely receive insufficient substitutes for instruction like worksheets. Franz Decl. ¶ 23; Brown Decl. ¶ 63-64, 68, 70, 78; ECF 13-2 ¶ 55. They are often unable to go outside at all. Brown Decl. ¶ 60; ECF 13-2 ¶ 60. Sometimes even their basic needs are not met. Children in isolation have, for example, reported being unable to use the restroom or access water unless they are let out of their cells. FAC ¶ 305; Brown Decl. ¶ 71 (Child 7); Franz Decl. ¶ 43; *see also* ECF 13-2 ¶¶ 9, 62. At UEC, one child in isolation for 7 months was denied a shower for over 30 days while in isolation, Brown Decl. ¶ 77, while another child who has been in isolation at UEC for 5 months has been denied showers for three to four days, *id.* ¶ 79.

C. Isolation causes profound and lifelong damage to children.

Isolating children, even for short periods of time, has grave consequences for children's mental health. *See* Kraus Decl. ¶¶ 30-38. Dr. Louis Kraus is a Professor and Chief of Child and Adolescent Psychiatry at Rush University Medical Center in Chicago, Illinois. *Id.* ¶ 1. He has worked with youth in correctional settings for over thirty years, including nine years as the treating psychiatrist at the Illinois Maximum Security Youth Center in Joliet, Illinois. *Id*. ¶ 2. Dr. Kraus describes how children are in the process of developing socially, psychologically, and neurologically; that in-progress development makes the risk of psychological harm even greater when youth are in isolation. *Id.* ¶ 30. Not only do children have a greater need for social stimulation, they experience time differently from adults—a day to a child feels longer than a day to an adult. *Id.* ¶ 32.

Removing children from regular routines, school, mental health treatment, and socialization with their peers and adults can result in long-term trust issues, hypervigilance, and paranoia. *Id.* ¶¶ 28-29. For children with pre-existing mental health issues, isolation risks worsening those issues or precipitating additional mental health problems, including post-traumatic stress disorders, psychosis, anxiety disorders, major depression, agitation, suicidal ideation, suicidal intent, self-mutilation, and suicidal behavior. *Id.* ¶ 29. Indeed, a nationwide survey documented that "50.6 percent of youth who committed suicide did so while in isolation." Muhammad Decl. ¶ 35; *see also* Fatos Kaba et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 Am. J. Pub. Health 442, 442 (2014) (finding that 53.3% of acts of self-harm and 45.0% of acts of potentially fatal self-harm in New York City jails occurred within the group of individuals in solitary confinement). According to data provided by the South Carolina Department of Children's Advocacy (DCA), there have been 31 "near-fatalities" at DJJ facilities in the last 2 years—with 29 of those arising from a child's failed suicide attempt. Chaney Decl., Ex. A & B.

Children in DJJ's custody exhibit these adverse mental health effects following time spent in isolation. Franz Decl. ¶ 15 (Child 1). The consequences can be lasting. *Id.* And for some,

they are dire—a child who was detained at UEC, for example, tried to hang herself in the shower after she was released from isolation. Freedman Decl. ¶ 39; ECF No. 1-6 at 16-17 (DOJ report from February 2020 noting that numerous youth in isolation at DJJ facilities "displayed deteriorating mental health conditions attributable to the unreasonable length and conditions of confinement in isolation" and that "[s]everal of these youth displayed suicidal ideations."). In yet another recent report, one child "engaged in self-harm by cutting herself." ECF 82-19 (Brown Decl. 3/17) ¶ 54. DJJ continued to place children in isolation in that cell afterwards, though it had not been cleaned and remained covered in blood. *Id.*

DJJ's use of isolation creates a vicious cycle. Children in DJJ custody report that the isolation they experience causes them to resort to fights or disturbances as a means of breaking up the monotony of their days. ECF 13-2 ¶ 46. In general, lengthy periods of isolation do not help change children's behavior in a productive or positive manner. Muhammad Decl. ¶ 38. In fact, research confirms that isolation increases violence, because it exacerbates other underlying mental health issues and deprives children of important, stabilizing social connections with other children and staff. *Id.* ¶ 37-38; Kraus Decl. ¶ 56; Becker Decl. ¶¶ 94-97; *e.g.*, Franz Decl. ¶ 15 (explaining how isolation keeps Child 1 from speaking to his family on the phone), ¶ 36 (explaining how "early curfew" keeps many children from speaking to family and loved ones).

All told, the conditions in DJJ's facilities represent bedlam and punishment, not treatment and care. These conditions have only worsened since Plaintiffs identified similar issues in their prior Motion for Preliminary Injunction filed on May 24, 2022.

D. Justice 360, DRSC, and DRSC's child-constituents all suffer acute harm from Defendants' isolation practices.

Justice 360's clients and DRSC's child-constituents are regularly harmed by Defendants' unlawful isolation practices. Ali Franz states, for example, that isolation has had a "particularly destructive impact" on Child 1 and has led to feelings of alienation and hopelessness. Franz Decl. ¶ 15. Child 3, another client of Ms. Franz, "is regularly isolated," including for "23 hours per day." *Id.* at ¶ 27. Isolation has devastating effects on Child 3's wellbeing, especially given

that he already suffers from depression, PTSD, and occasional suicidal ideation. *Id.* at ¶ 27-28. Defendants' isolation of Children 1 and 3 directly harms Ms. Franz's ability to represent their legal interests and drains Justice 360's limited resources (here, staff time). *See, e.g.*, Franz Decl. ¶ 5.

The use of isolation is ubiquitous at DJJ facilities. ECF No. 97-11 (showing 514 separate instances of isolation February 2023). Even still, children with mental illness are even more likely than their peers to be held in isolation. FAC ¶ 133 ("DJJ ignores diagnoses and places children in isolation despite, and very often because of, their mental disabilities."); Franz Decl. ¶ 37. The isolation experienced by the specific children DRSC has identified as its constituents bears this out. *See* Brown Decl. at ¶¶ 64-79 (discussing the repeated, prolonged, and unjustified isolation of Children 6, 7, 8, 9, 10, 11, and 13). Child 10 spent over a year in isolation. *Id.* at ¶ 75. Child 13 spent five months in isolation. *Id.* at ¶ 79. And these are but representative examples of the rampant isolation faced by all children with mental illness at DJJ.

LEGAL STANDARD

To obtain a preliminary injunction, a plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). When the government is the opposing party, the last two factors may be considered together. *Nken v. Holder*, 556 U.S. 418, 435 (2009); *see Roe v. Dep't of Def.*, 947 F.3d 207, 230 (4th Cir. 2020).

ARGUMENT

I. Plaintiffs are likely to succeed on the merits of their Fourteenth Amendment claims.

The Fourteenth Amendment requires DJJ to provide a safe and rehabilitative environment for every child in its care. *See Alexander S.*, 876 F. Supp. At 798 n.44 (applying the standards of *Youngberg v. Romeo*, 457 U.S. 307 (1982)). Instead, DJJ subjects those children—a majority of

whom are constituents of DRSC—to unreasonable dangers and extended and frequent periods of isolation. In doing so, DJJ violates the Fourteenth Amendment rights, *see Alexander S.*, 876 F. Supp. at 797, of DRSC constituents and directly harms each Plaintiff organization. Plaintiffs are therefore likely to prevail on the merits of Counts 1 and 2.

A. Plaintiffs' Fourteenth Amendment claims are governed by the "professional judgment" standard from *Youngberg v. Romeo*.

As Defendants have acknowledged, detention institutions are subject to heightened standards of scrutiny under the Due Process Clause of the Fourteenth Amendment. ECF No. 16 (Defendants Response in Opposition to Motion for Preliminary Injunction); *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (holding that, unlike convicted prisoners, pretrial detainees are entitled to be free from "any type of punishment"). This is even more true of detained youth. For one thing, "[t]he objectives [of children's detention] are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment." *Kent v. United States*, 383 U.S. 541, 554 (1966). For another, "youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and psychological damage." *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982). Overall, "children are constitutionally different," *Miller v. Alabama*, 567 U.S. 460, 471 (2012), and "because the state has no legitimate interest in punishment, the conditions of juvenile confinement, like those of confinement of the mentally ill, are subject to more exacting scrutiny than conditions imposed on convicted criminals." *Santana v. Collazo*, 714 F.2d 1172, 1180 (1st Cir. 1983).

The nature and constitutional status of children's detention means that courts review Fourteenth Amendment claims arising in that context under the protective standards of *Youngberg v. Romeo*. *See Alexander S.*, 876 F. Supp. at 798 n.44; *Doe 4 by & through Lopez v. Shenandoah Valley Juvenile Ctr. Comm'n*, 985 F.3d 327, 342 (4th Cir. 2021) (discussing "the unique psychological needs of children and the state's corresponding duty to care for them"), *cert. denied*, 142 S. Ct. 583 (2021). The *Youngberg* standard requires that detention facilities act

according to professional judgment in balancing the goals of confinement and confined persons' rights and needs, and it prohibits any "substantial departure from accepted professional judgment, practice, or standards." *Youngberg*, 457 U.S. at 323. This objective standard guarantees baseline protections, such as having a safe environment conducive to rehabilitation, limiting the use of isolation only to "when and to the extent professional judgment deems . . . necessary," and providing the rehabilitative services "an appropriate professional would consider reasonable." *Id.* at 324; *see also Jackson v. Indiana*, 406 U.S. 715, 738 (1972) ("[A]t the least, due process requires that the nature . . . of commitment bear some reasonable relation to the purpose for which the individual is committed."). Importantly, the Fourteenth Amendment *Youngberg* standard is an objective standard that "presents a lower standard of culpability compared to the Eighth Amendment." *Doe 4*, 985 F.3d at 343.

In support of this motion, Plaintiffs submit testimony from three qualified professionals, each of whom has decades of experience with youth correctional settings. *See generally* Becker Decl. (testimony of Phyllis Becker, a 26-year veteran and former Director of the Missouri Division of Youth Services); Muhammad Decl. (testimony of David Muhammad, a former senior officer at several juvenile and adult corrections departments, and a court-appointed monitor for Illinois's juvenile justice system); Kraus Decl. (testimony of Dr. Louis Kraus, Chief of Child and Adolescent Psychiatry at Rush University Medical Center in Chicago, who has worked with youth in correctional settings for 30 years). When assessed in combination with precedent, this expert testimony informs the standards of professional judgment against which the constitutionality of DJJ's conduct should be measured. *See Youngberg*, 457 U.S. at 323. As explained below, that testimony makes clear a conclusion that non-professionals could also reach, based on the shocking facts on the ground alone: that DJJ falls far short of professional standards for rehabilitating and keeping children safe in a juvenile detention facility. As a result, DJJ has violated its constitutional obligations and Plaintiffs are likely to prevail on the merits of their claims. *Id.*

B. Count 1: Defendants' failure to protect the children detained in DJJ facilities violates the Fourteenth Amendment.

"[W]hen the State takes a person," let alone a child, "into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being." *Doe 4*, 985 F.3d at 338 (quotation marks omitted); *see also Youngberg*, 457 U.S. at 324 ("The State . . . has the unquestioned duty to provide reasonable safety for all residents and personnel within the institution."). Here, as in *Alexander S.*, "[s]afety, in the context of this case, encompasses the [children's] right to reasonable protection from the aggression of others, whether 'others' be juveniles or staff." 876 F. Supp. At 798; *see also Savidge v. Fincannon*, 836 F.2d 898, 907-08 (5th Cir. 1988) (under the *Youngberg* standard, Fourteenth Amendment requires the state to provide a "reasonably safe physical environment" to institutionalized persons); *United States v. Hinds Cnty.*, 2023 WL 1116530, at *6 (S.D. Miss. Jan. 30, 2023) (reinstating consent decree requiring juvenile detention center "to ensure a safe facility and address the substantial risk of serious harm to which youthful detainees remain exposed").

As set forth above, violence within DJJ facilities is endemic, and the children that Plaintiffs represent there are simply not safe—either from the other children they are detained alongside or from the staff who are supposed to look after them. *Supra* pp. 3-5; *see, e.g.*, FAC ¶ 307 (Child 9 "has experienced physical violence from public security officers"); Brown Decl. ¶ 25 ("On August 26, 2023, Child 9 was sprayed with mace by a PSO while he was having a seizure."); *id.* ¶¶ 18-19. Some children are attacked repeatedly, *e.g.*, FAC ¶ 303 (Child 5 "has been assaulted five times"); Brown Decl. ¶ 12 (similar); FAC ¶ 308 (Child 10 "has been assaulted three times"); Brown Decl. ¶ 12 (similar); Franz Decl. ¶ 7 ("Because he is so young, Child 1 has been routinely targeted for abuse by other children."), and all children are at risk of being attacked, FAC ¶ 214. According to juvenile corrections expert David Muhammad, the conditions are "brutal and torturous," and the "extremely high level of violence [at DJJ] is *far beyond the norm* in youth facilities nationally." Muhammad Decl. ¶¶ 22, 71 (emphasis added). In

fact, despite supervising three different juvenile facilities and serving three and a half years as a federal court monitor, Muhammad claims that he has "never witnessed anywhere near the level of violence that is reported to occur in South Carolina's DJJ facilities." *Id.*

Expert Phyllis Becker has 26 years working in and overseeing youth correctional institutions. She explains that the high incidents of violence at DJJ result from Defendants' failure to adhere to basic professional standards of care for a juvenile custodial setting—including appropriate staffing levels, staff training, and building security. *See* Becker Decl. ¶¶ 22-37, 62-80. Chronic understaffing—below even "the minimal staffing patterns set forth in the staffing plans"—prevents effective supervision and has facilitated violent episodes. *Id.* ¶ 63; Brown Decl. ¶ 40-42. In addition, "the limited staff in place . . . are not equipped to facilitate basic safety building blocks and a rehabilitative environment," and are behind in required "certifications in topics such as trauma awareness, emergency procedures, and suicide prevention, intervention, and security." Becker Decl. ¶ 26.

Defendants' substantial departure from professional standards in staffing their facilities is supported not only by Plaintiffs' expert testimony, but by Defendants' own data showing a dramatic divergence from the minimal 8:1 standard set by federal statute. That DJJ facilities are badly understaffed, and that said understaffing contributes to widespread violence, cannot be seriously disputed. In addition, some DJJ staff *are* the dangers children face in Defendants' care, instigating and even directly ordering violence, or responding to youth-on-youth violence with excessive force rather than de-escalation. *Supra* pp. 4-5. Staff participation in and wanton infliction of violence represent egregious violations of every professional standard governing staff care for detained children. Becker Decl. ¶¶ 34-35; *accord* Muhammad Decl. ¶ 72-78.

In short, Plaintiffs are likely to succeed on the merits of Count 1 ("Failure to Protect Children Entrusted to DJJ Care"). *Youngberg* demands that DJJ act in accordance with appropriate professional judgment to protect the children in its care from violence. DJJ's broad failure to do so violates these children's Fourteenth Amendment right to be free from "unsafe conditions." 457 U.S. at 315-16.

C. Count 2: Defendants use isolation more extensively than the Fourteenth Amendment allows.

DJJ's duty to create a safe environment for detained children dovetails with its constitutional obligation not to overuse isolation. Isolation is an extreme restraint that can be used only for a legitimate government purpose, *see Santana*, 714 F.2d at 1180, which means that, in the context of juvenile detention, isolation is constitutional only when deployed as a rare and short-term tool of last resort. *See generally R.G. v. Koller*, 415 F. Supp. 2d 1129 (D. Haw. 2006) (applying *Youngberg* and collecting authorities). DJJ flouts this standard and instead makes liberal use of sustained, around-the-clock isolation, for all sorts of purposes.

In *Youngberg*, the Supreme Court held that an institution like DJJ can impose additional restraints on individuals in its custody only "when and to the extent professional judgment deems this necessary to assure . . . safety." *Youngberg*, 457 U.S. at 324. The First Circuit elaborated on this standard in *Santana v. Collazo*. *See* 714 F.2d at 1178-82. The plaintiffs in that case challenged isolation practices used by Puerto Rico's juvenile detention system. *Id.* In siding with the plaintiffs, the First Circuit explained that *Youngberg*'s professional judgment standard mandates an assessment of whether solitary confinement is justified in light of available alternatives. "[I]f the state can avoid the current extensive use of isolation by minimal additional attention . . . it may well be unreasonable for the state not to do so." *Id.* at 1182; *see also G.H. v. Tamayo*, 339 F.R.D. 584, 587 (N.D. Fla. 2021) ("Used without a sufficient basis, or under unjustifiably harsh conditions, solitary confinement can be unconstitutional.")

Time and again, courts have made clear that isolating children is legitimate only in the rarest of circumstances. The court in *R.G. v. Koller*, for example, sided with plaintiffs who challenged the Hawaii juvenile justice system's use of indefinite isolation ostensibly to protect youth who were, or were perceived to be, gay or lesbian. 415 F. Supp. 2d at 1155. The court considered and credited "expert evidence before the court [which] uniformly indicate[d] that long-term segregation or isolation of youth is inherently punitive and is well outside the range of accepted professional practices." *Id*. Based on this evidence, the court concluded that, even if

Defendants were attempting to "respon[d] to legitimate safety needs," their "practices [we]re, at best, an excessive, and therefore unconstitutional, response." *Id.* at 1155-56; *see also Milonas v. Williams*, 691 F.2d 931, 942-43 (10th Cir. 1982) (affirming an injunction against placing children in isolation for any reason "other than to contain a boy who is physically violent"); *D.B. v. Tewksbury,* 545 F. Supp. 896, 905 (D. Or. 1982) (holding that "[p]lacement of younger children in isolation cells as a means of protecting them from older children" violates plaintiffs' Due Process rights under the Fourteenth Amendment). Most recently, in *United States v. Hinds County*, a district court in the Southern District of Mississippi reinstated a consent decree prohibiting the use of isolation unless a "youth['s] behavior threatens imminent harm to the youth or others," 2023 WL 1116530, at *9.[8] *See also Lollis v. N.Y. State Dep't of Soc. Servs.*, 322 F. Supp. 473, 480 (S.D.N.Y. 1970) (concluding that solitary confinement endured by a child was unconstitutional in light of expert testimony that extended use of isolation for children is "cruel and inhuman" and "counterproductive to the development of the child"); *Feliciano v. Barcelo*, 497 F. Supp. 14, 35 (D.P.R. 1979) ("Solitary confinement of young adults is unconstitutional."); *cf. Inmates of Boys' Training Sch. V. Affleck*, 346 F. Supp. 1354, 1372 (D.R.I. 1972) ("This Court is convinced that solitary confinement may be psychologically damaging, anti-rehabilitative, and, at times inhumane.").

Notably, many courts have found frequent and sustained solitary confinement of youth to be so abhorrent that the practice violates even the Eighth Amendment's proscription against cruel and unusual punishment, notwithstanding precedent affording the government more deference under that provision. In *Doe by & through Frazier v. Hommrich*, No. 3-16-0799, 2017 WL 1091864 (M.D. Tenn. Mar. 22, 2017), for example, the court held that "solitary confinement of juveniles in government custody for punitive or disciplinary reasons, especially for extended periods of time and especially for youth who may suffer from mental illness, violates the Eighth

[8] Also relevant here, the court's order in *Hinds County* required the jail to "[e]nsure that the Jail has sufficient staffing to adequately supervise prisoners, fulfill the terms of this Injunction, and allow for the safe operation of the Jail." 2023 WL 1116530 at *7.

Amendment's prohibitions against the inhuman treatment of detainees." *Id*. at *2; *see also G.H. by & through Henry v. Marstiller*, 424 F. Supp. 3d 1109, 1116 (N.D. Fla. 2019) ("Plaintiffs have alleged sufficient facts to show that isolation of children violates contemporary standards of decency."); *V.W. by & through Williams v. Conway*, 236 F.Supp.3d 554, 584 (N.D.N.Y. 2017) ("[P]laintiffs have identified substantial data from other jurisdictions as well as their own experts showing that the use of disciplinary confinement on juveniles is not reasonably calculated to restore prison safety.").

Plaintiffs' experts confirm what courts across the country have held repeatedly—that isolation of juveniles cannot be justified as conforming to appropriate professional standards except in rare, exigent circumstances. That is so not only because isolation is profoundly damaging to children, but because it tends to *worsen* their mental health issues and *reduce* the overall safety of an institution.

Dr. Louis Kraus is a psychiatrist and highly experienced former corrections facility monitor. Kraus Decl. App. A. He discusses the Council of Juvenile Correctional Administrators' broad opposition to the isolation of detained juveniles, which is based upon research demonstrating that isolation has negative public safety consequences, does not reduce violence, and likely increases recidivism—in addition to causing permanent psychological damage to children and being highly correlated with suicidality.[9] *Id.* ¶ 56. Dr. Kraus adds from his own experience that "[s]olitary confinement inhibits children's' ability to cope with stressful situations and leaves them angrier and more disturbed, therefore leading to more misbehavior and rule infractions." *Id.* ¶ 64. As a result, "solitary confinement at DJJ is counterproductive to public safety." *Id.* ¶ 63. Dr. Kraus points to specific alternatives to isolation that are available to DJJ. *Id.* ¶ 65.

[9] The Council of Juvenile Correctional Administrators "represents the youth correction chief executive officers in all 50 states, the District of Columbia, Puerto Rico and major metropolitan counties." CJJA, "About Us", https://www.cjja.net/about/ (last visited May 24, 2022).

As noted, Ms. Phyllis Becker has over 26 years of service with the Missouri Division of Youth Services, including serving as its Director. She cites research showing that facilities that minimally use isolation are actually *safer*—experiencing fewer injuries to youth and staff, less suicidal behavior, and lower overall levels of violence. Becker Decl. ¶ 94 & n.99. Ms. Becker explains how, during her tenure with the state of Missouri, "our default practice was the effective use of de-escalation techniques." *Id.* ¶ 101. "Based on my experience and knowledge in the field, punitive practices and interventions, such as isolation have not been shown to improve safety for youth and staff compared to positive youth development and rehabilitation-based approaches." *Id*. ¶ 94. Isolation not only makes youth in facilities less safe and negatively impacts their mental health, *id.* ¶ 95, it "is ineffective in supporting behavioral change because it disrupts youth programming and educational services," *id*. ¶ 97. "Thus, the use of isolation purportedly to protect youth from harm is known to do the exact opposite." *Id.* ¶ 98.

Mr. David Muhammad has years of experience serving in management and monitoring roles in youth and adult corrections, including as Deputy Director of Washington D.C.'s juvenile justice system, as Deputy Commissioner of New York City's probation department, as Chief Probation Officer of Alameda County, as a lead consultant in reforming Los Angeles County's Probation Department, and as a court appointed monitor overseeing Illinois's juvenile justice system. Muhammad Decl. ¶¶ 1-14. He corroborates Plaintiffs' other experts, observing that "punitive use of lengthy periods of isolation has been found to be ineffective in fostering behavior change" and instead may "contribute to violent episodes of acting out." *Id.* ¶¶ 34, 36.

The harms inflicted by the overuse of isolation itself constitutes "a substantial departure from accepted professional judgment, practice, or standards" and violates the Fourteenth Amendment. *Youngberg*, 457 U.S. at 323; *see supra* pp. 7-9 (detailing DJJ's practices). In addition, DJJ's failure to provide rehabilitative services and treatment to children while they are in isolation is a separate substantial departure constituting a Fourteenth Amendment violation as well. *See Youngberg*, 457 U.S. at 319 (concluding that Fourteenth Amendment liberty interests require the State to provide minimally adequate care and treatment); *Alexander S.*, 876 F. Supp.

At 790 ("Programming geared toward correcting the behavior of juveniles is central to the very nature of a juvenile training facility."), *id.* at 798 (requiring Defendants to ensure access to programming for all children); *Doe 4*, 985 F.3d at 338-39.[10] As such, Plaintiffs are likely to succeed on the merits of Count 2.

II. Plaintiffs, and the children they represent, will continue to suffer irreparable harm unless the Court grants preliminary injunctive relief.

The preliminary injunction requested by Plaintiffs is necessary to prevent continued, irreparable harm to Plaintiffs and their clients and constituents. As an initial matter, all Plaintiffs are irreparably harmed by the frustration of their core missions and the need to divert scarce resources toward remedying conditions in DJJ facilities. *See* Order, ECF No. 68 at 6 (holding that Justice 360 "provided evidence to support the existence of a concrete and particularized injury-in-fact" to its ability to perform its core mission); *Action NC v. Strach*, 216 F. Supp. 3d 597, 642-43 (M.D.N.C. 2016) ("That Organizational Plaintiffs would have to divert resources in the absence of such relief 25noughh to satisfy their burden of showing a likelihood of suffering irreparable harm."); *HIAS, Inc. v. Trump*, 985 F.3d 309 (4th Cir. 2021) (diversion of resources and frustration of purpose suffered by nonprofit refugee resettlement agencies held sufficiently irreparable to support nationwide preliminary injunction against Executive Order 13,888).

Plaintiff Justice 360 faces significant obstacles in achieving its mission of providing representation to children who face the possibility of being tried as adults. Franz Decl. ¶¶ 4-32. "[O]bstacles [that] unquestionably make it more difficult for [organizations] to accomplish their primary mission . . . provide injury for purposes both of standing and irreparable harm." *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016). In particular, conditions at DJJ have frustrated Justice 360 attorneys' ability to meet and confer with their clients about their important juvenile cases. Franz Decl. ¶¶ 12-16; *see Torres v. United States Dep't of Homeland*

[10] This Fourteenth Amendment requirement aligns with Defendants' state law duties, which mandate that children at DJJ receive "effective" rehabilitative services. *See Alexander S.*, 876 F. Supp. at 790 ("Defendants conceded that they have an obligation to develop effective programming for all of the juveniles housed at DJJ facilities.").

Sec., 411 F. Supp. 3d 1036, 1053 (C.D. Cal. 2019) (holding that Immigrant Lawyers Association could show direct organizational standing to challenge conditions of confinement at federal immigration facility because the conditions impaired the organization's attorneys' ability to represent their clients).

Conditions at DJJ have also caused, and will continue to cause, Justice 360 to divert precious time and resources away from its core mission to address ongoing harms suffered by children at DJJ. Vann Decl. ¶¶ 14-18. For example, one of Justice 360 attorney's clients—Child 1—has been detained at JDC for over a year, despite DJJ's insistence that JDC is a short-term pretrial detention facility. Franz Decl. ¶ 7. That client, who has serious mental health issues, has been forced to defend himself from constant attacks and—due to having to fight in self-defense—is frequently punished with isolation. *Id.* ¶¶ 7-8. As a result, his mental and physical wellbeing has deteriorated, he is less willing to share information with the Justice 360 attorney, and he arrives at attorney-client meetings "exhausted and sullen," impeding Justice 360's ability to represent him and requiring time to be taken away from other clients. *Id.* ¶¶ 7-18. As a result of the violence and

DRSC is further irreparably harmed through the members it represents—the children with mental illness who are detained in DJJ facilities. Franco Decl. ¶¶ 3, 10-15; *Casa de Maryland, Inc. v. Wolf*, 486 F. Supp. 3d 928, 969 (D. Md. 2020) (finding irreparable harm to organizational plaintiffs because "the kind of harm identified to the[ir] members is indisputably irreparable"); *Ass'n of Cmty. Cancer Ctrs. v. Azar*, 509 F. Supp. 3d 482, 500 (D. Md. 2020) (same). As detailed above, *supra* SOF, children represented by DRSC are repeatedly attacked and isolated because of the unsafe and unprofessional conditions Defendants allow to persist at DJJ. *E.g.*, Brown Decl. ¶¶ 13 ("Child 6 . . . was hit with a lock in a sock during a riot. Another time, he was hit with one of the 'boat beds.'"), 79 ("Child 13, who is at UEC[,] has been in isolation for 5 months.").

"It has long been established that the loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Mills v. District of Columbia*, 571

F.3d 1304, 1312 (D.C. Cir. 2009) (internal quotation marks omitted). Here, that presumption of irreparable harm to children's legal rights and interests is reinforced by precedent and is supported by expert evidence explaining the grave injuries suffered by these children as a result of Defendants' ongoing violations.

A. Harms from DJJ's failure to protect youth from violence

As discussed above, the physical, psychological, and emotional harms that flow from living in constant fear of violence are particularly acute for children with mental illness, including the specific children DRSC has identified as its constituents. *Supra* SOF, Part I(B). These children—whom Congress intended DRSC to litigate on behalf of, *see, e.g.*, *Indiana Prot. & Advoc. Servs. Comm'n v. Comm'r, Indiana Dep't of Correction*, 642 F. Supp. 2d 872, 877 (S.D. Ind. 2009)—are frequently targeted with violence at DJJ facilities and, even if they are not directly assaulted, are particularly vulnerable to the psychological damage associated with the constant fear of violence. *See* Franco Decl. at ¶ 13; Becker Decl. at ¶ 88. These harms are unquestionably irreparable and warrant preliminary injunctive relief.

It is well-established that harm from exposure to violence—such as is omnipresent at DJJ facilities—cannot be redressed with awards of money and is irreparable. *See Hernandez v. Cnty. Of Monterey*, 110 F. Supp. 3d 929, 956 (N.D. Cal. 2015) ("[P]ain, suffering and the risk of death constitute 'irreparable harm' sufficient to support a preliminary injunction in prison cases." (bracket in original)) (quoting *Jones 'El v. Berge*, 164 F. Supp. 2d 1096, 1123 (W.D. Wis. 2001); *Von Colln v. Cnty. Of Ventura*, 189 F.R.D. 583, 598 (C.D. Cal. 1999) ("Defendants do not argue that pain and suffering is not irreparable harm, nor could they.").

Phyllis Becker, one of Plaintiffs' experts, describes the harmful effects of violence and the threat of violence and explains that the ongoing and persistent violence at DJJ creates a lack of stability, or physical and emotional safety, for children detained in DJJ. *See* Becker Decl. ¶¶ 24-25, 34-38, 43, 103-106. This is particularly problematic because children involved in the juvenile justice system arrive there with higher rates of prior trauma as compared to the general

population. *Id.* ¶ 40. Worse, when violence results in restrictions to youth access to programming, as is the case at DJJ facilities, the curtailment of such programming only makes future violence more likely. *Id.* ¶¶ 43, 108.

Likewise, Plaintiffs' expert, Dr. Louis Kraus, explains that trauma from violence, or the threat of violence, subjects youth to significant risk of developing Post-Traumatic Stress Disorder (PTSD). Kraus Decl. ¶ 65. Dr. Kraus has decades of experience in treating children and adolescents with mental health challenges, including over 30 years working with youth in correctional settings. *Id.* ¶¶ 1-2. He notes that violence-induced PTSD may cause children to experience negative alterations in cognition (including dissociative amnesia) and to develop persistent and exaggerated negative beliefs about themselves. *Id.* ¶ 74. This trauma may also cause markedly diminished interest in participation in significant activities, feelings of detachment or estrangement from others, and a persistent inability to experience positive emotions. *Id.* Children may also suffer from hypervigilance that manifests in exaggerated startled responses, problems concentrating, sleep disturbance, and irritable behavior—in addition to persistent emotional states of fear, anger, guilt, and shame. *Id.* ¶ 74-75.

All of these developmental harms can cause detained youth exposed to violence to act out as part of their PTSD symptomatology, putting them at risk of being punished for inappropriate behavior. *Id.* ¶ 76. When compounded with DJJ's unconstitutional use of isolation to punish youth for minor infractions, this can lead to a cascading effect of harms.

B. <u>Harms from DJJ's use of isolation</u>

Like violence, DRSC's child constituents are particularly likely to be isolated and particularly vulnerable to the harmful effects of isolation. *See supra* SOF, Part II(D). Also like violence, "[t]he harm suffered in solitary confinement is not harm easily undone." *Hommrich*, 2017 WL 1091864, at *2; *see, e.g.*, *Friedmann v. Parker*, No. 3:21-CV-00721, 2021 WL 5494522, at *7 (M.D. Tenn. Nov. 23, 2021) (granting preliminary injunction based on irreparable injury caused by extended solitary confinement). Indeed, "[t]he potential emotional

and psychological harm that prolonged periods of isolation . . . can wreak on prisoners is paradigmatic irreparable harm." *Porter v. Clarke*, 290 F. Supp. 3d 518, 533 (E.D. Va. 2018), *aff'd* 923 F.3d 348 (4th Cir. 2019) (observing that courts have "taken note" of an "extensive—and growing—body of literature" documenting the "serious psychological and emotional harm caused by segregated or solitary confinement"); *see also V.W.*, 236 F. Supp. 3d at 588-89 (finding irreparable harm because "solitary confinement on juveniles puts them at serious risk of short- and long-term psychological damage, and that the related deprivation of education . . . hinders important aspects of their adolescent development"); *accord A.T. by & through Tillman v. Harder*, 298 F. Supp. 3d 391, 417 (N.D.N.Y. 2018); *United States v. Bowlson*, No. 01-CR-80834-1, 2021 WL 2646091, at *3 (E.D. Mich. June 28, 2021) (explaining that uses of isolation are "not only ineffective in correcting behavior . . ., they have been found to worsen already debilitating conditions, as evidenced by the United Nations' classification of solitary confinement as torture"), *appeal docketed*, No. 21-2746 (6th Cir. July 23, 2021).

Plaintiffs' experts echo these findings and describe the unique dangers and acute consequences that solitary confinement creates for detained children. Youth in solitary confinement "exhibit fear, dissociative episodes, and anxiety, which may lead to increased levels of hopelessness, paranoia, and lack of trust in others." Kraus Decl. ¶ 32. For children with pre-existing mental health issues, isolation risks worsening those issues or precipitating additional mental health concerns, up to and including suicidal behavior. *Id.* ¶ 31. Many of these symptoms can persist long after youth are removed from solitary confinement, as the trauma they experience can permanently alter their brain development. *Id.* ¶¶ 34-36. Even when used for short periods of time, isolation can cause chronic conditions like depression, with symptoms such as low self-esteem, vegetative features, and hopelessness. It can likewise cause youth to develop "long-term trust issues with adults, including paranoia, anger, and hatred," preventing these youth from establishing therapeutic relationships with mental health professionals in the future. *Id.* ¶ 35; *see also* Muhammad Decl. ¶¶ 37.

The experiences of particular children subjected to isolation at DJJ are consistent with the risks and lasting harm Dr. Kraus identifies. For instance, as noted above, one child attempted to hang herself in the shower after being released from isolation. *Supra* pp. 14. Another child who endured isolation while in DJJ custody reported lasting paranoia and anxiety. Freedman Decl. ¶ 36. Yet another child placed in isolation recently attempted cutting herself. Brown Decl. 3/17 ¶ 34.

The harms experienced by these children in isolation in turn cause harm to the Plaintiffs. For example, for the three years in which one Justice 360 client was detained in JDC, he spent more than half his time in isolation. Freedman Decl. ¶ 36. As a result, his mood became unstable, he reported feeling paranoid and anxious, and he struggled to sleep—even after leaving JDC. *Id.* Due to these symptoms, among others, of his deteriorated mental health, it became more difficult for Justice 360 to effectively represent him. *Id.* Similarly, Ali Franz's representation of Child 1 is materially impeded by DJJ's repeated use of isolation to punish Child 1, which causes him to physically and emotionally deteriorate. Franz Decl. at ¶¶ 7-18.

Finally, it is well-established that the denial of rehabilitative services for children, including educational programming and mental health care, comprises irreparable harm. *See, e.g.*, *N.J. v. New York*, 872 F. Supp. 2d 204, 214 (E.D.N.Y. 2011) ("[I]nterruption of a child's schooling causing a hiatus not only in the student's education but also in other social and psychological developmental processes that take place during the child's schooling, raises a strong possibility of irreparable injury." (quotation marks omitted)); *Seaman v. Virginia*, No. 22-cv-6, _ F. Supp. 3d _, 2022 WL 872023, at *25 (W.D. Va. Mar. 23, 2022) ("The inability to access education constitutes irreparable harm because it is of critical importance to child development and its loss cannot be compensated with monetary damages." (quotation marks omitted)), *appeal docketed*, No. 22-1455 (4th Cir. Apr. 27, 2022); *C.P.X. through S.P.X. v. Garcia*, 450 F. Supp. 3d 854, 921 (S.D. Iowa 2020) ("[T]he provision of inadequate mental health care . . . creates risk that [children's] mental health wi[ll] deteriorate.").

Since all children requiring mental health services are constituents of Plaintiff DRSC, that irreparable harm falls on Plaintiff DRSC as well. And the effects of these dire harms on the children in DJJ custody once again harm Plaintiff in turn. For example, rather than spending time on their advocacy for their clients in court, Justice 360 attorneys have spent time replacing the essential schoolwork that they are missing. Franz Decl. ¶¶ 24-25.

III. The balance of hardships and public interest favor preliminary injunctive relief.

The final requirement of a preliminary injunction is for plaintiffs "to establish clearly that the balance of equities tips in their favor and that an injunction also is in the public interest." *Thomas v. Andino*, No. 20-CV-01552, 2020 WL 2617329, at *22 (D.S.C. May 25, 2020). "In cases involving significant public interest, courts may consider the balance of the equities and the public interest factors together." *Id.* (cleaned up).

Here, Defendants' substantial departures from professional standards violate the constitutional rights of DRSC's child constituents, *see Hinds Cty.*, 2023 WL 1116530, at *3 (determining that a lack of consent decree requiring juvenile detention facility to "compl[y] with its constitutional obligations as it relates to the youthful detainees… runs counter to public interest"), and cause direct harm to each organizational Plaintiff. As set forth above, Defendants' acts and failings maim and traumatize the children in their care (including clients of Justice 360 and constituents of DRSC); worsen their prospects upon release; and render pointless the state's deprivation of those children's liberty for purported rehabilitation.

Moreover, these same acts also impair the *public*'s interest in reducing the recidivism of juvenile offenders. *See Alexander S.*, 876 F. Supp. at 793 (discussing the "compelling state interest in protecting the community from crime" (quotation marks omitted)). Research shows that "placing detained youth in isolation has 'negative public safety consequences, does not reduce violence and likely increases recidivism.'" Kraus Decl. ¶ 56; *see id.* ¶¶ 63-64. Similarly, "[t]here is substantial evidence that academic and vocational education programs are among the most cost-effective and efficient ways to reduce recidivism and improve outcomes as youth

return to their communities and enter the workforce or continue their education." Leone Decl. ¶ 31. Conversely, the absence of services "centered around positive youth development" can "drive up recidivism." Becker Decl. ¶ 108.

In contrast to these compelling public interests, "a state is no way harmed by the issuance of a preliminary injunction which prevents [it] from enforcing restrictions likely to be found unconstitutional." *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002). These equities cry out for injunctive relief now.

CONCLUSION

DJJ has not been a responsible custodian to the children in its care. Despite years of litigation, despite this Court's prior orders and findings, and despite Plaintiffs raising the same severe issues set forth in this motion in their complaint and prior motion nearly one year ago, DJJ continues to flunk the rehabilitative mission to which the public entrusts it. The conditions in Defendants' facilities are deplorable in myriad ways and violate multiple Fourteenth Amendment rights. These conditions cause irreparable harm to the detained children with mental illness that DRSC is statutorily responsible for protecting and advocating for, and impedes the missions and drains the resources of each Plaintiff organization. These harms will continue unless Defendants are compelled to remedy them, and the equities overwhelmingly favor immediate relief to protect children at DJJ and the public alike. This Court, therefore, should grant Plaintiffs' motion and grant relief that is appropriately tailored to the violations established through Counts 1 (rampant violence) and 2 (overuse of isolation) of Plaintiffs' First Amended Complaint.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court order Defendants, their agents, officials, employees, and all persons acting in concert with them under color of state law or otherwise, to:

1. Promptly develop and implement a written plan through which DJJ can achieve and maintain at least an 8:1 youth-to-staff ratio at all DJJ facilities at all times;
2. Immediately cease the use of solitary confinement or forced isolation (including room or cell confinement) of detained children as a punitive or disciplinary measure, or for any other reason other than an immediate and substantial risk of great bodily harm to self or others;
3. Immediately cease the practice of "23-and-1" isolation;
4. Observe the following conditions, where isolation or separation of detained children is reasonably necessary to address an immediate and substantial risk of great bodily harm:
   a) No child shall be placed in isolation for an initial period of greater than two hours, after which a reevaluation must be conducted by DJJ staff;
   b) Children placed in solitary confinement or isolation should receive regular, in-person safety checks from DJJ staff;
   c) Ensure that youth in isolation for more than two hours:
      i. Receive all regularly scheduled social worker visits, mental health services, and other health services;
      ii. Receive any rehabilitative programming that was scheduled or in process before placement in isolation;
      iii. Receive educational services with the general population, unless such attendance is determined to present an immediate and substantial threat of physical harm to others, or an unreasonable risk of significant disruption of the classroom environment, in which such case youth in restrictive isolation shall receive alternative educational services of a comparable type and quality on the same days and at the same time as the general population receives such services;
5. Undertake a review of placements of all youth currently held in solitary confinement or forced isolation, with any youth held in such settings to be immediately released to the general population if their continued placement in isolation otherwise violates the terms of the Court's Order;

6. Enjoin DJJ employees from recommending placement in a secure DJJ facility for any child arrested or detained for a status offense;

7. Require DJJ employees, in each detention hearing, to make a record in the family court regarding the following:

   a) current population levels at JDC, including whether they exceed the facility's built capacity;

   b) current security staffing levels at JDC, including whether they fall below DJJ's staffing plan; and

   c) most recent violence statistics for JDC.

Respectfully submitted,

October 27, 2023

ACLU OF SOUTH CAROLINA

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Tel: (843) 282-7953
achaney@aclusc.org

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mtiku@naacpnet.org

dmadoff@jenner.com

**PRO HAC VICE APPLICATIONS TO BE FILED*

DECLARATION OF BETH FRANCO

I, Beth Franco, certify under penalty of perjury that the following statements are true and correct pursuant to 28 U.S.C. § 1746:

1. My name is Beth Franco, and I am the Executive Director of Disability Rights South Carolina ("DRSC").

2. I have served as Executive Director since December 2018.

DRSC has Statutory Authority to Advocate for Children with Disabilities

3. Under South Carolina law, DRSC serves as the state's Protection and Advocacy System and Client Assistance Program. S.C. Code §§ 43-33-310, *et seq.* South Carolina Law entrusts DRSC as the primary advocacy organization for children with disabilities in DJJ custody.

4. As part of its statutory charter, DRSC helps people with disabilities understand and defend their rights. We do so through information and referral services, client assistance, training, abuse and neglect investigation, legal assistance, and advocacy for change.

5. DRSC has a vested stake in improving the neglectful conditions at DJJ on behalf of the many children with disabilities that are detained there.

6. As Executive Director, I provide oversight and assistance to our Board of Directors and staff members to ensure that DRSC adheres to the statutory guidelines provided under the Developmental Disabilities Assistance and Bill of Rights Act ("DD Act"), 42 U.S.C. § 15401 et seq. and the Protection and Advocacy for Individuals with Mental Illness Act of 1986 ("PAIMI Act"), 42 U.S.C. §10801 et seq. In order to receive the federal funding necessary to maintain our operations, DRSC must adhere to the central mission of advocating for individuals with disabilities.

7. DRSC's work is also driven by the needs of its constituents. Our advocacy efforts are shaped by the feedback we receive from surveys and focus groups led by our constituents. For example, the PAIMI Act advisory council, which is in part comprised of individuals with mental illnesses and their families, facilitates focus groups with DRSC that enable us to collect the information that guides our advocacy efforts. The reports produced from these meetings are reviewed by the Board of Directors in order to adopt our goals and priorities for the entire year.

8. DRSC is also subject to periodic audits to ensure that its advocacy efforts and financial practices are aligned with the statutory obligations.

9. In furtherance of its mission and statutory obligations, DRSC conducts routine monitoring at the Department of Juvenile Justice in an effort to ensure that those facilities provide adequate services to children with disabilities. DRSC has conducted such monitoring for over thirty years.

DRSC Clients and Constituents Have Been Harmed at DJJ

10. At DRSC, individuals with disabilities are our constituents and we regularly advocate and litigate on their behalf.

11. DRSC is currently formally advocating on behalf of 20 children across all five of DJJ's secure facilities – the Juvenile Detention Center, Midlands Evaluation Center, Upstate Evaluation Center, Coastal Evaluation Center, and Broad River Road Complex. Our advocacy includes attending DJJ Staffing meetings to ensure appropriate placement and services for youth with serious mental illness and other disabilities, and checking with these youth during our monitoring visits of facilities. Our notes from DJJ Staffing meetings and monitoring visits are kept in our Client Services Database. As Executive Director, I work with our advocate

coordinator to oversee our monitoring and work with our legal team to create advocacy strategies for our clients and launch investigations if necessary.

12. We maintain an open file for each of the 20 children, as long as they remain at a DJJ facility and are in need of our services.

13. As Executive Director, I am in constant communication with the monitoring team, and I also receive information from DJJ and its staff. Based on what I have learned from my conversations with our monitoring team, as well as reviewing the reports in our Client Services Database and the information provided by DJJ, it is clear that our clients in DJJ custody are being attacked and repeatedly subjected to brutal violence. For example, according to our monitors, multiple children we represent were recently attacked at JDC, UEC, and MEC. These attacks have caused significant physical and emotional harm to these children and have increased the level of care and assistance they need from DRSC staff.

14. Our monitors have also reported that our clients are subjected to hazardous living conditions. For example, the lack of safe beds has disrupted the sleep schedules of many of our children for fear of being attacked. Some of these children report not wanting to take medicine that is essential to treat their disabilities because they do not want to fall asleep and risk being harmed.

15. I have also heard from our monitors that children we represent have recently been unnecessarily kept in prolonged periods of isolation. Unnecessarily isolating the children we represent, which includes children with severe mental illnesses and disabilities, has a particularly devastating effect on those children, because it often exacerbates their underlying mental health illnesses.

16. Finally, the dangerous conditions and isolation in DJJ's facilities have forced me and my organization to divert resources away from other priorities and limited our ability to advocate for the children in DJJ custody whom we are statutorily mandated to advocate on behalf of. My organization is tasked by statute with advocating for individuals with mental health illnesses who are in any state facility—including both adults and children. But the conditions at DJJ facilities require us to dedicate a disproportionate amount of our staff's time working to remedy or combat those conditions; one of my advocates, for example, is forced almost exclusively to monitor DJJ facilities on an almost constant basis. At times, conditions are so dangerous that we're required to send multiple advocates, so that we ensure that our advocates can look out for each other. At other times, it just is not possible for our monitors to make it into certain DJJ facilities.

17. Attached as Exhibit A are true and correct copies of DJJ's monthly Performance-based Standard (PbS) Youth Assault/Injury Data from April 2023 until June 2023, the most recent month for which we have received that data.

Date: 10/26/2023

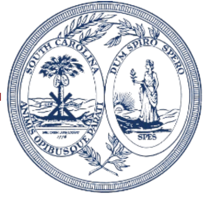
Beth Franco

Beth Franco
Executive Director, Disability Rights South Carolina

L. Eden Hendrick
Executive Director

P.O. Box 21069
Columbia, SC 29221-1069
djj.sc.gov

Henry McMaster
Governor



June 5, 2023

Via Email Only (franco@pandasc.org)
Beth Franco, Executive Director
Disability Rights South Carolina
3710 Landmark Drive, Suite 208
Columbia, South Carolina 29204

Re: April 2023 Youth Assault/Injury Data

Dear Ms. Franco:

Attached please find reports from each of the South Carolina Department of Juvenile Justice's (SCDJJ) secure evaluation, detention, and commitment facilities for the month of April 2023. These reports reflect Performance-based Standards (PbS) data regarding juvenile assaults/fights and juvenile-on-juvenile injuries in each facility.

Regarding injuries during the month of April as documented by SCDJJ Health Services, there were 609 sick call appointments for juvenile/juvenile aggression, eight referrals to the emergency room due to an injury, and 5 hospitalizations due to an injury. Please refer to my letter dated November 8, 2018, to Gloria Prevost, a copy of which was previously provided, for an explanation as to why the number of incidents or injuries reported by PbS will differ from the number of sick call appointments for juvenile/juvenile aggression.

At the end of April, 138 committed youth were confined in SCDJJ's commitment facilities, 73 youth were temporarily committed to one of SCDJJ's three secure evaluation centers for evaluation, and 122 youth were detained in SCDJJ's Juvenile Detention Center for a total of 333 youth in secure custody. In addition, 194 youth were assigned to wilderness programs, marine institutes, mental health placements, or other community residence placements.

Please let me know if you have any questions about this data or if I can be of assistance.

With kindest personal regards, I am,

Sincerely,

Shannon A. Davis

Shannon A Davis
Staff Attorney

cc: L. Eden Hendrick, Executive Director
Mack McGhee, Deputy Director
David Ross, Deputy Director
Janette Chen-Rodriguez (chen@disabilityrightssc.org)

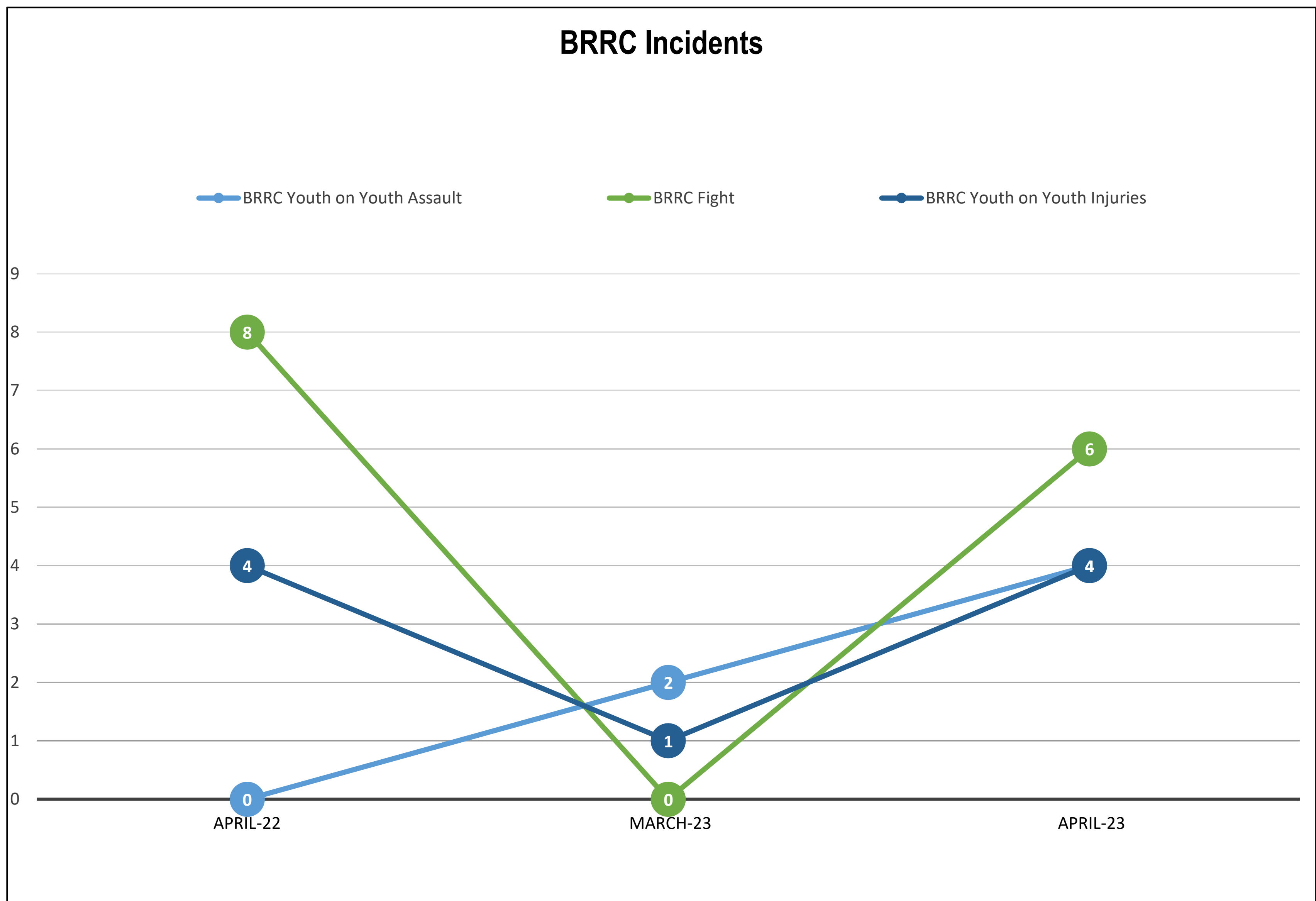
Attachment

PbS Monthly Report for Disability Rights South Carolina

For the Period April 2022, March 2023, April 2023

Niaja Kennedy
Standards Administrator

June 5, 2023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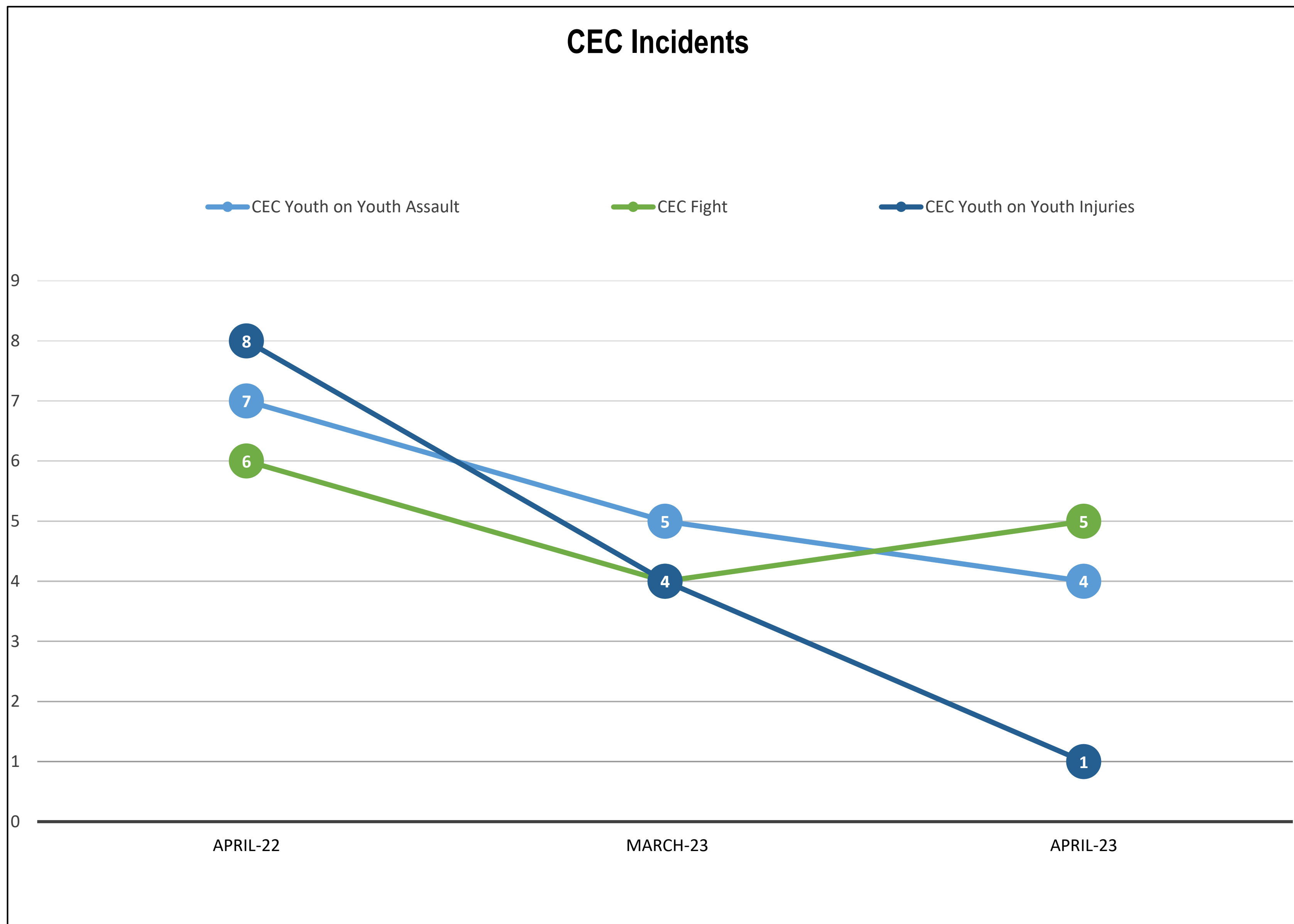

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JDC Incidents
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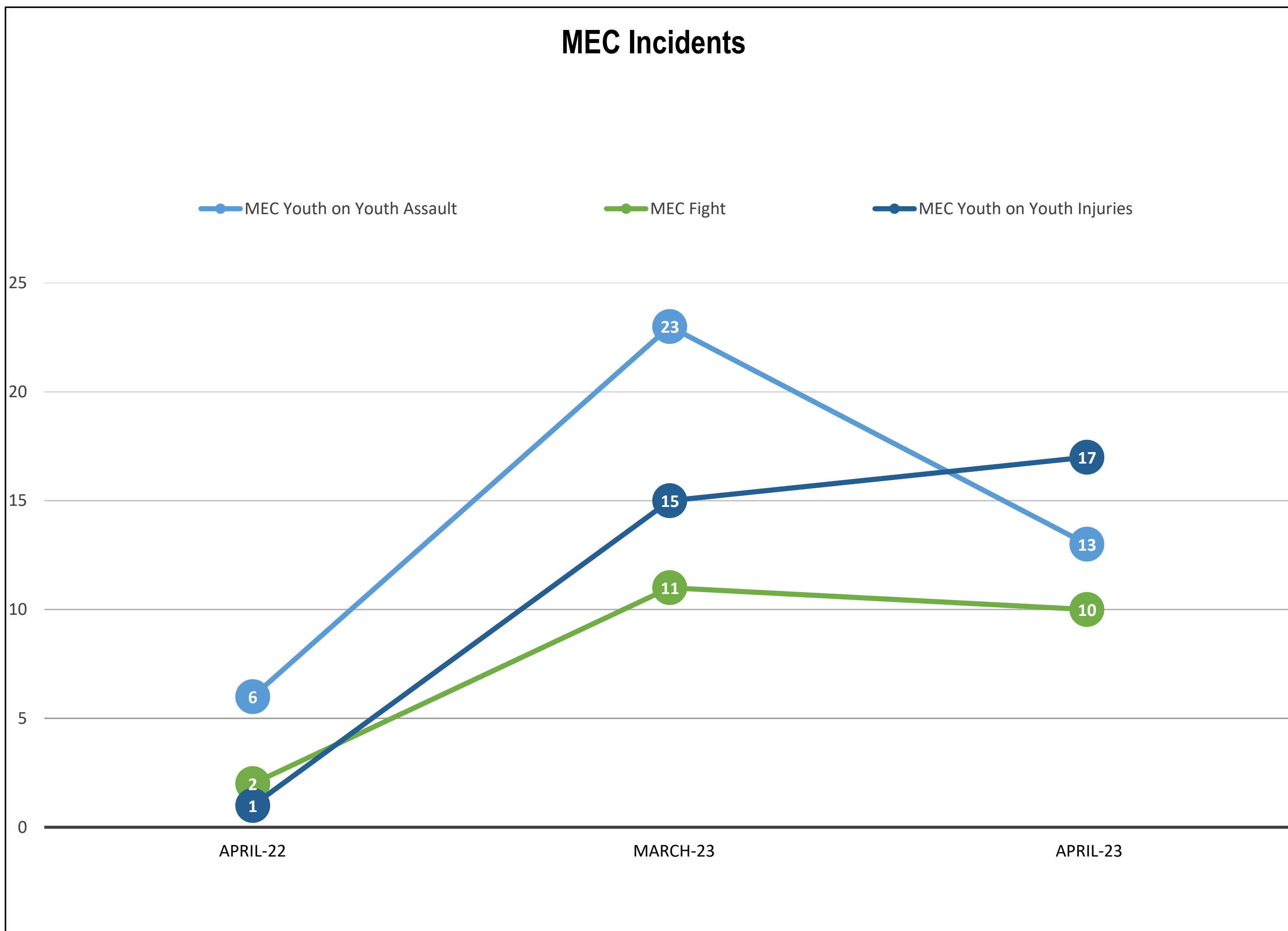
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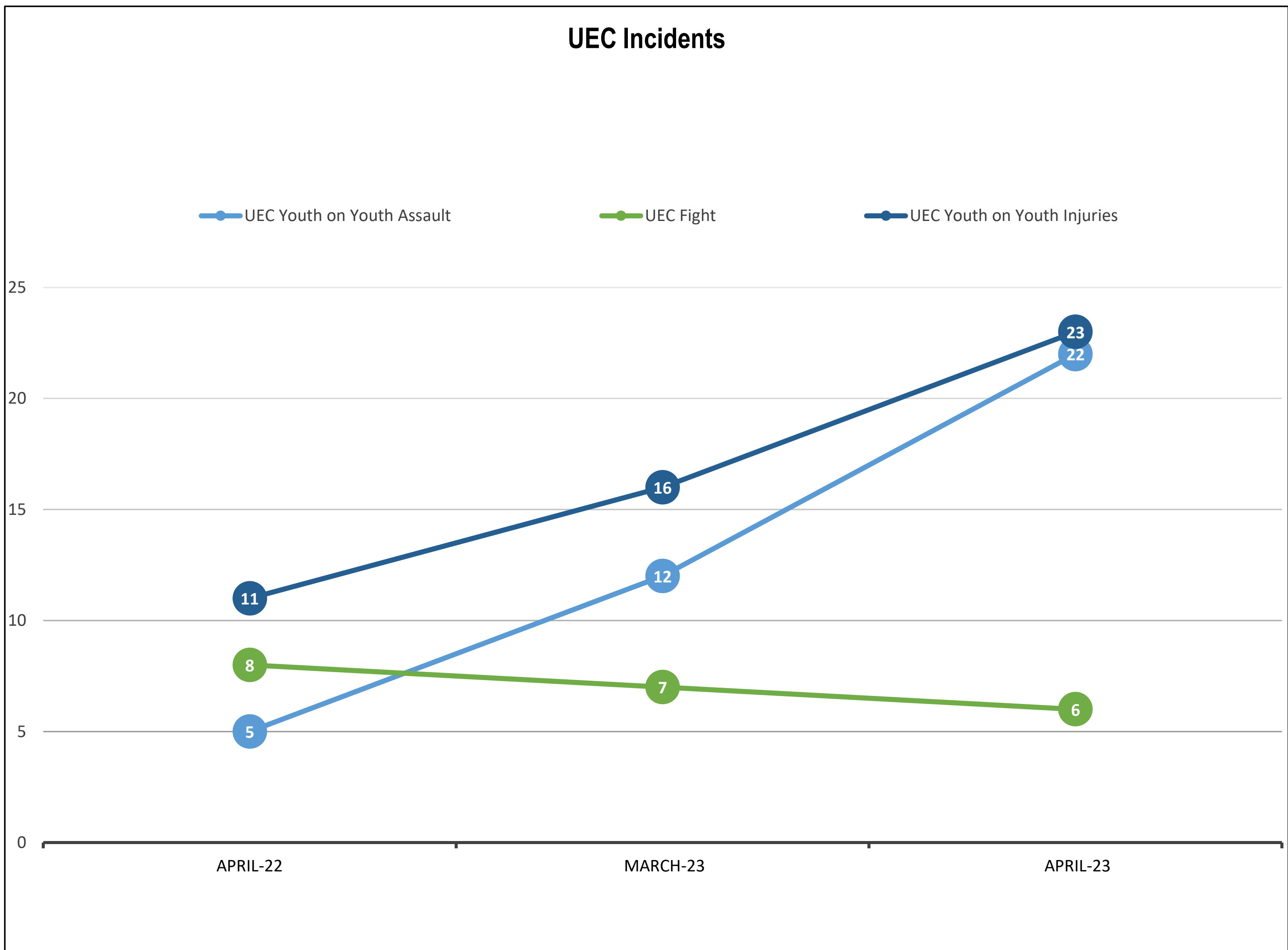
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L. Eden Hendrick
Executive Director

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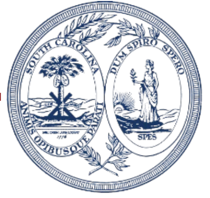
Henry McMaster
Governor



July 18, 2023

Via Email Only (franco@pandasc.org)
Beth Franco, Executive Director
Disability Rights South Carolina
3710 Landmark Drive, Suite 208
Columbia, South Carolina 29204

Re: May 2023 Youth Assault/Injury Data

Dear Ms. Franco:

Attached please find reports from each of the South Carolina Department of Juvenile Justice's (SCDJJ) secure evaluation, detention, and commitment facilities for the month of May 2023. These reports reflect Performance-based Standards (PbS) data regarding juvenile assaults/fights and juvenile-on-juvenile injuries in each facility.

Regarding injuries during the month of May as documented by SCDJJ Health Services, there were 534 sick call appointments for juvenile/juvenile aggression, four referrals to the emergency room due to an injury, and three hospitalizations due to an injury. Please refer to my letter dated November 8, 2018, to Gloria Prevost, a copy of which was previously provided, for an explanation as to why the number of incidents or injuries reported by PbS will differ from the number of sick call appointments for juvenile/juvenile aggression.

At the end of May, 138 committed youth were confined in SCDJJ's commitment facilities, 55 youth were temporarily committed to one of SCDJJ's three secure evaluation centers for evaluation, and 133 youth were detained in SCDJJ's Juvenile Detention Center for a total of 326 youth in secure custody. In addition, 199 youth were assigned to wilderness programs, marine institutes, mental health placements, or other community residence placements.

Please let me know if you have any questions about this data or if I can be of assistance.

Sincerely,

Shannon A. Davis

Shannon A Davis
Staff Attorney

cc: L. Eden Hendrick, Executive Director
Mack McGhee, Deputy Director
David Ross, Deputy Director
Janette Chen-Rodriguez (chen@disabilityrightssc.org)

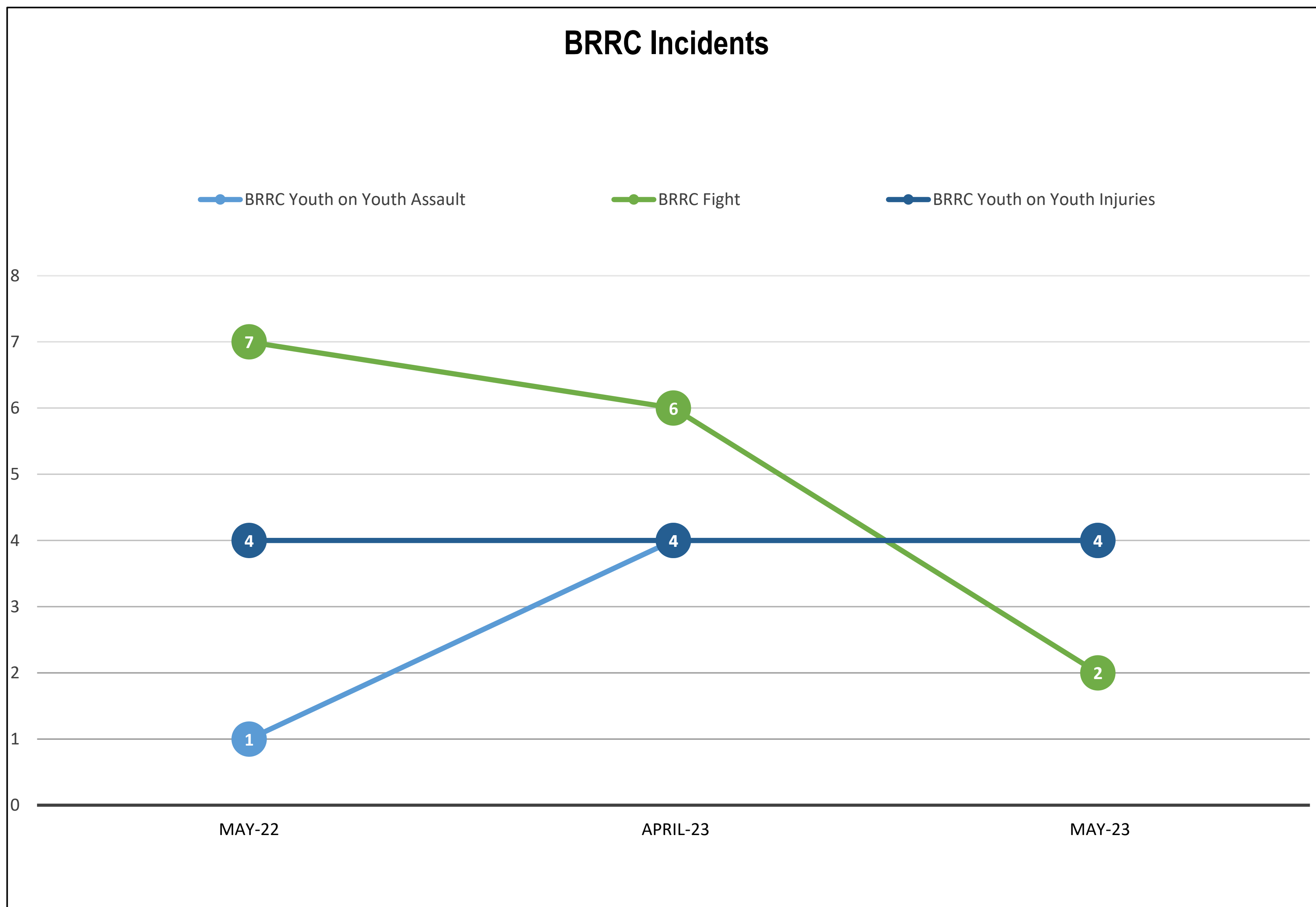
Attachment

PbS Monthly Report for Disability Rights South Carolina

For the Period May 2022, April 2023, May 2023

Niaja Kennedy
Standards Administrator

July 18, 2023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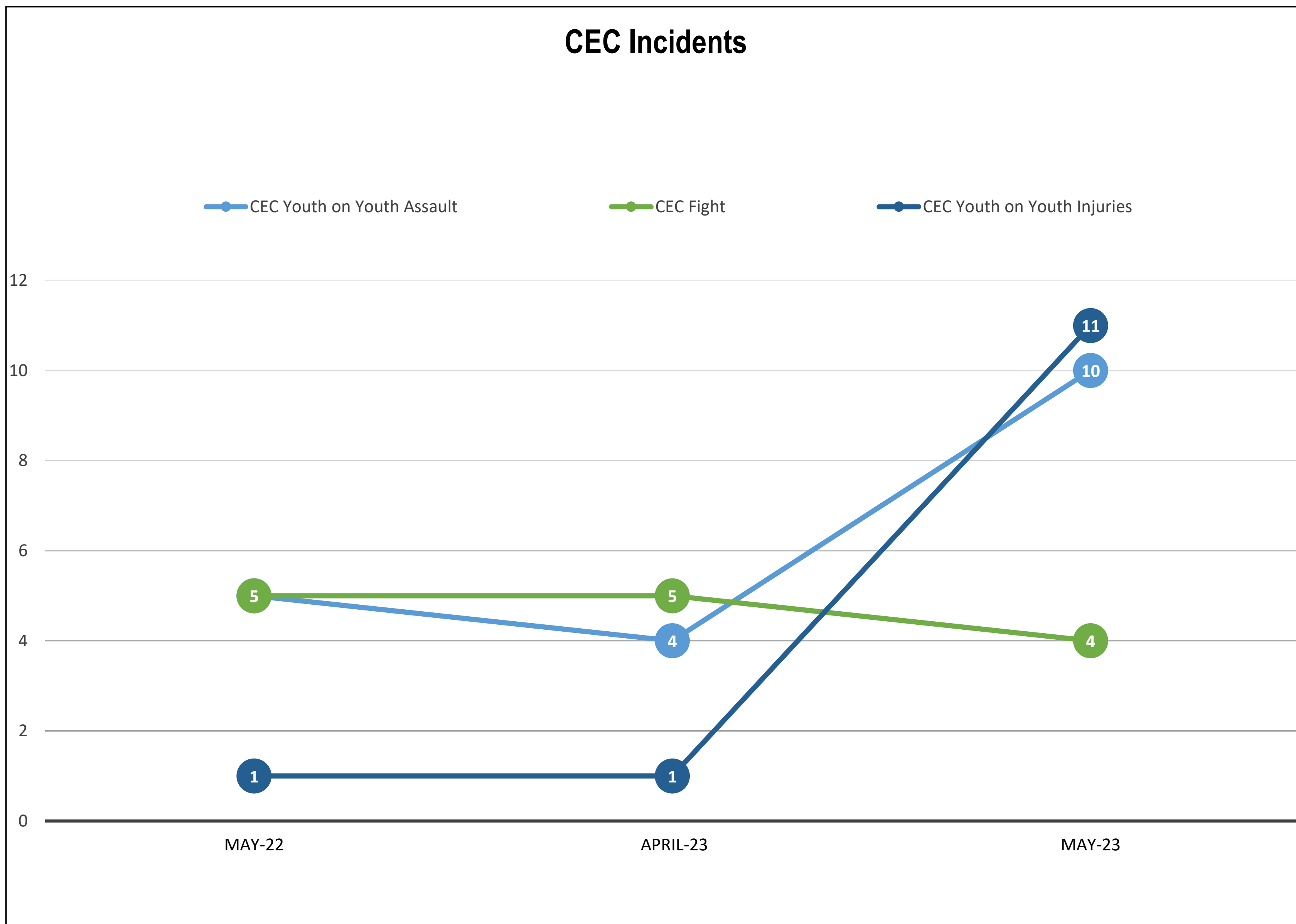
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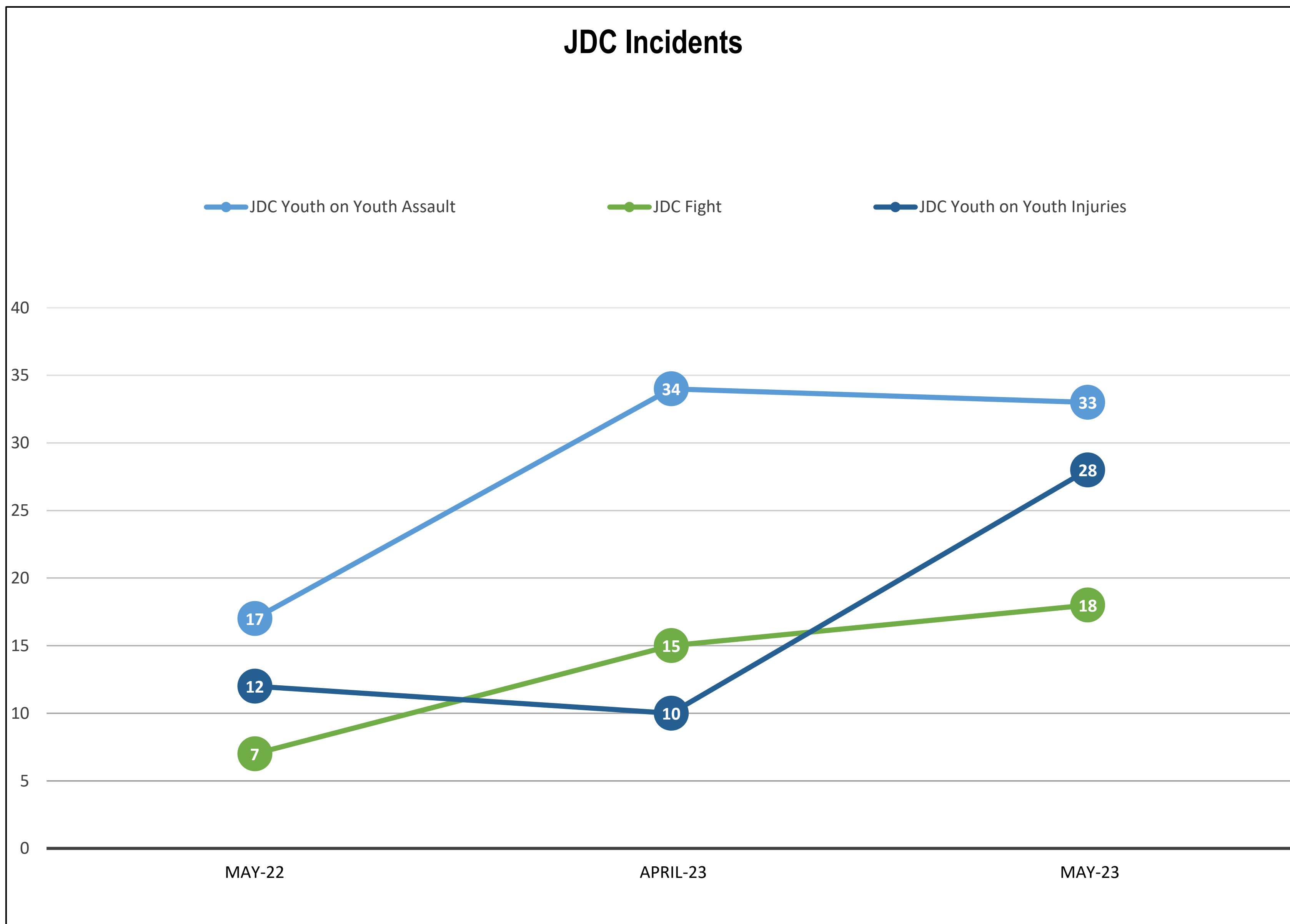
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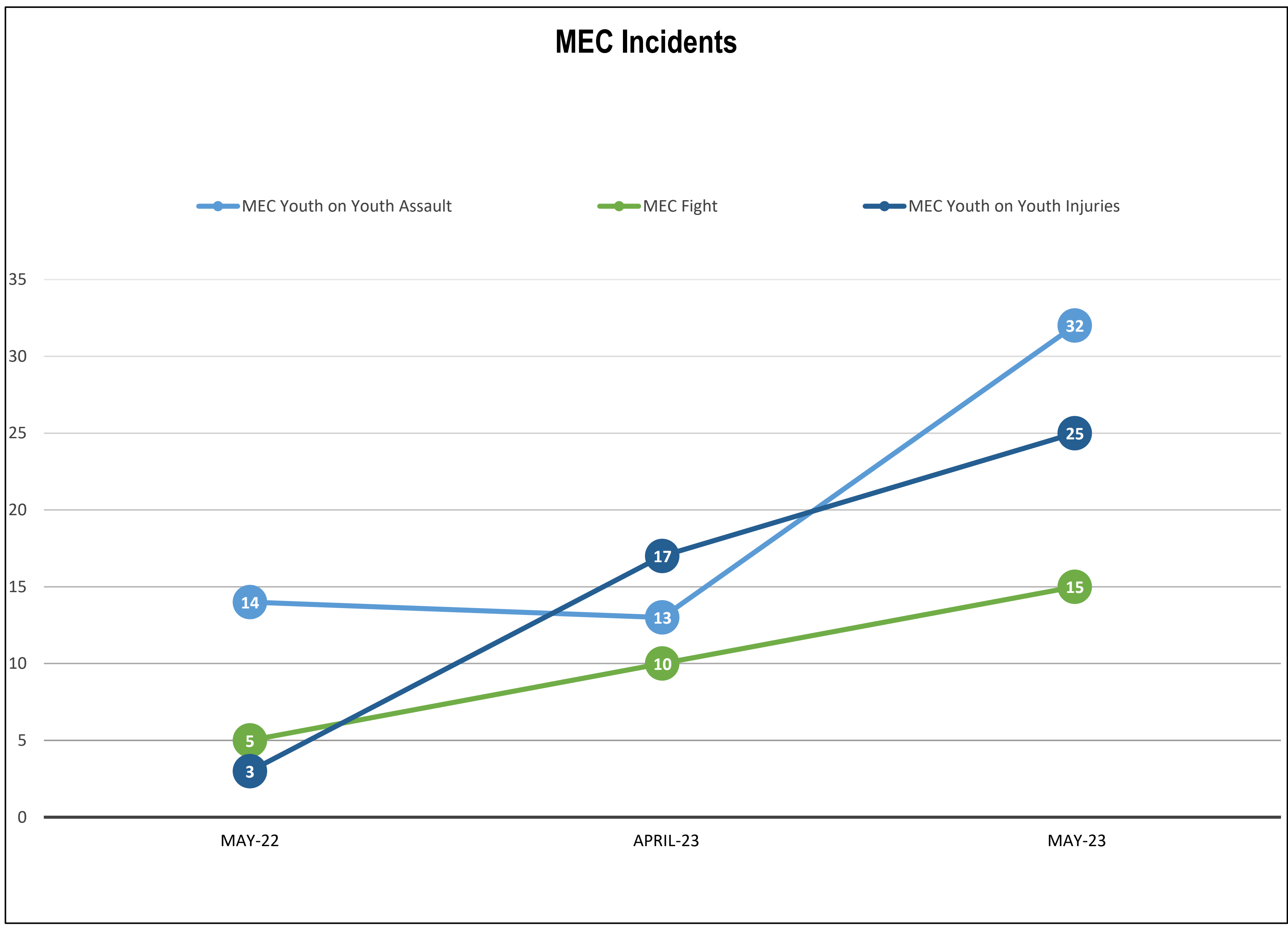
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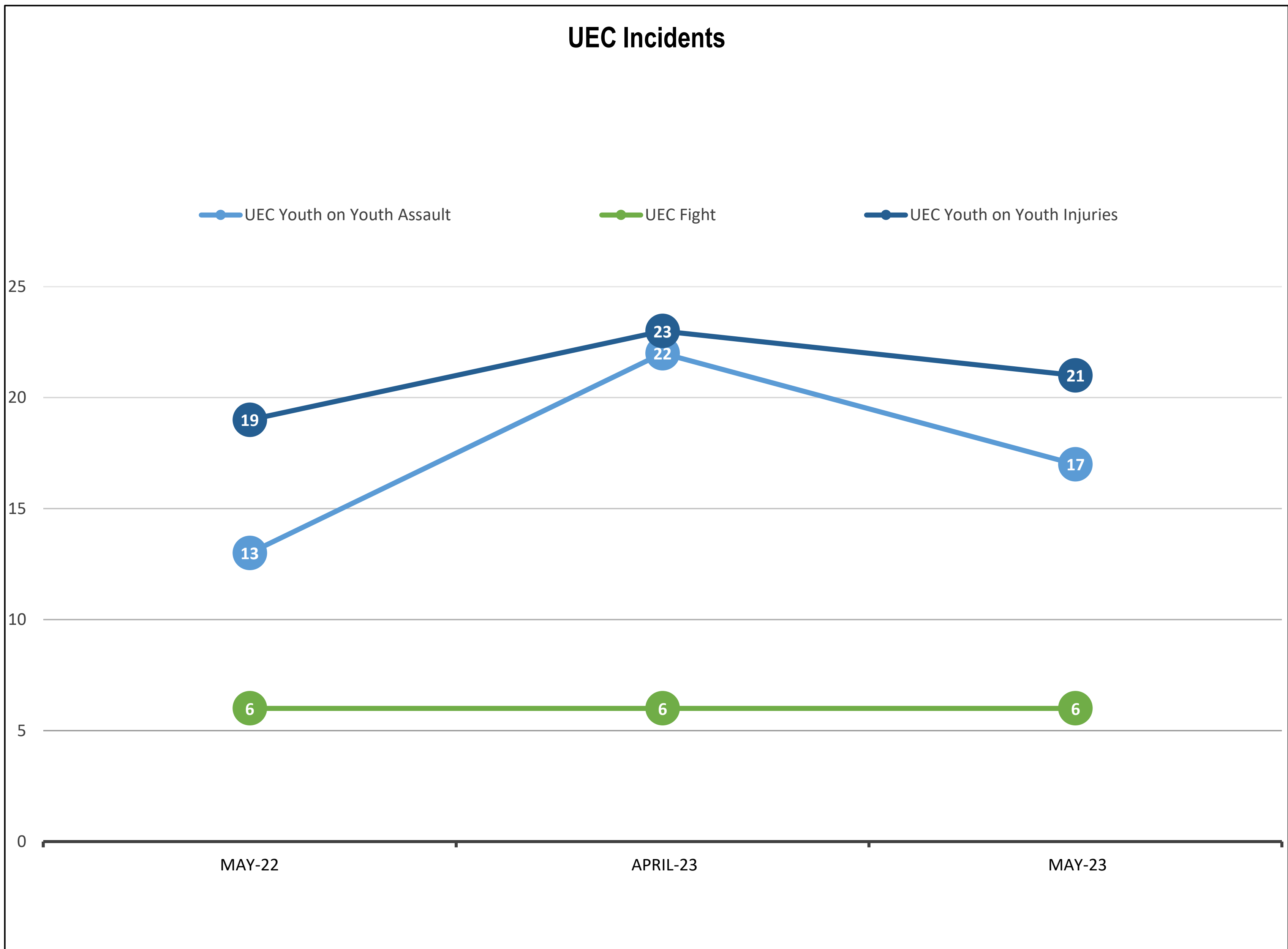
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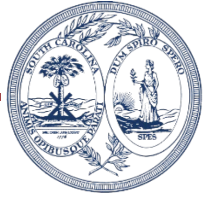


September 19, 2023

Via Email Only (franco@pandasc.org)
Beth Franco, Executive Director
Disability Rights South Carolina
3710 Landmark Drive, Suite 208
Columbia, South Carolina 29204

Re: June 2023 Youth Assault/Injury Data

Dear Ms. Franco:

Attached please find reports from each of the South Carolina Department of Juvenile Justice's (SCDJJ) secure evaluation, detention, and commitment facilities for the month of June 2023. These reports reflect Performance-based Standards (PbS) data regarding juvenile assaults/fights and juvenile-on-juvenile injuries in each facility.

Regarding injuries during the month of June as documented by SCDJJ Health Services, there were 648 sick call appointments for juvenile/juvenile aggression, 12 referrals to the emergency room due to an injury, and 4 hospitalizations due to an injury. Please refer to my letter dated November 8, 2018, to Gloria Prevost, a copy of which was previously provided, for an explanation as to why the number of incidents or injuries reported by PbS will differ from the number of sick call appointments for juvenile/juvenile aggression.

At the end of June, 132 committed youth were confined in SCDJJ's commitment facilities, 56 youth were temporarily committed to one of SCDJJ's three secure evaluation centers for evaluation, and 96 youth were detained in SCDJJ's Juvenile Detention Center for a total of 284 youth in secure custody. In addition, 201 youth were assigned to wilderness programs, marine institutes, mental health placements, or other community residence placements.

Please let me know if you have any questions about this data or if I can be of assistance.

With kindest personal regards, I am,

Sincerely,

Shannon A. Davis

Shannon A Davis
Staff Attorney

cc: L. Eden Hendrick, Executive Director
Mack McGhee, Deputy Director
David Ross, Deputy Director
Janette Chen-Rodriguez (chen@disabilityrightssc.org)

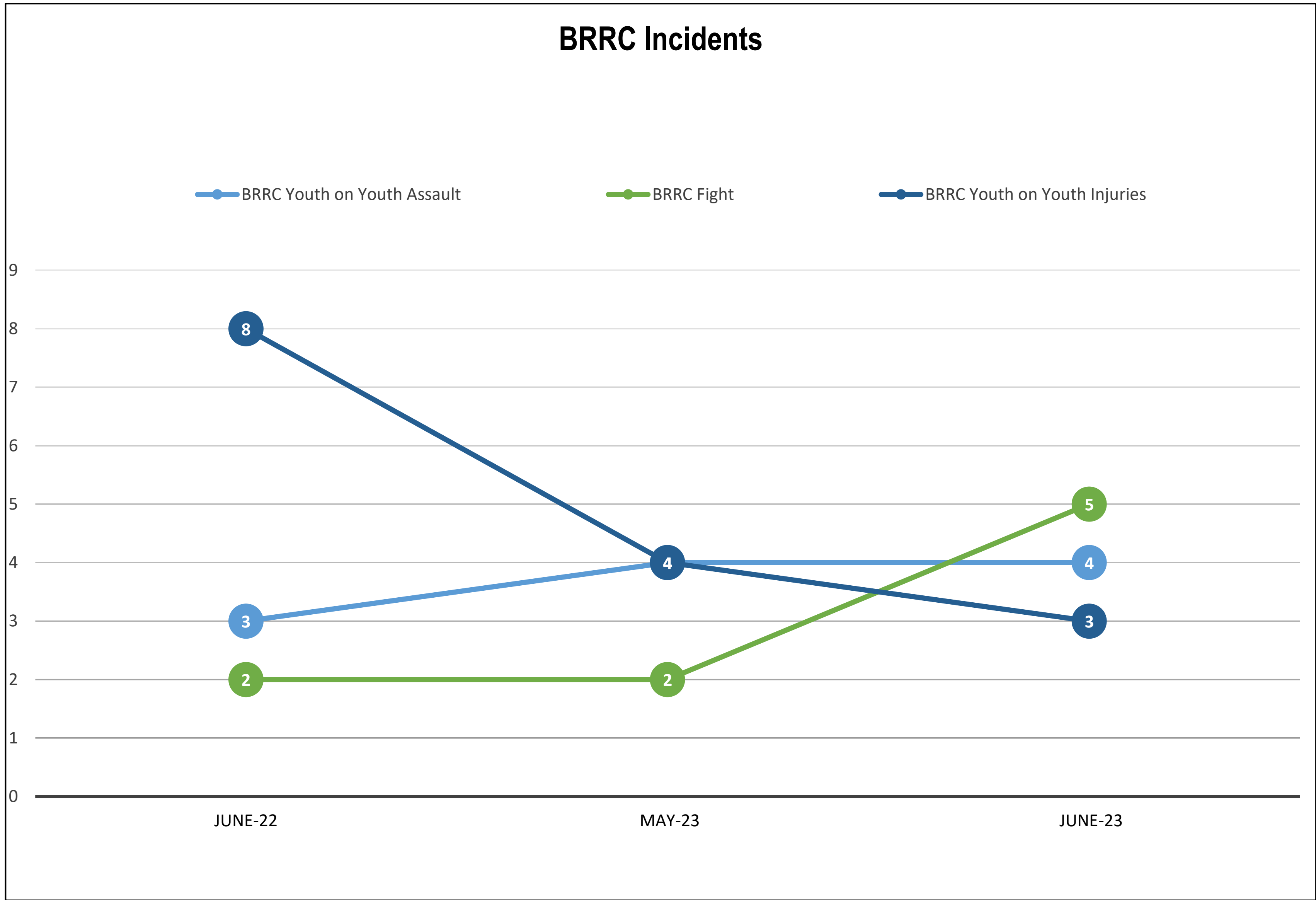
Attachment

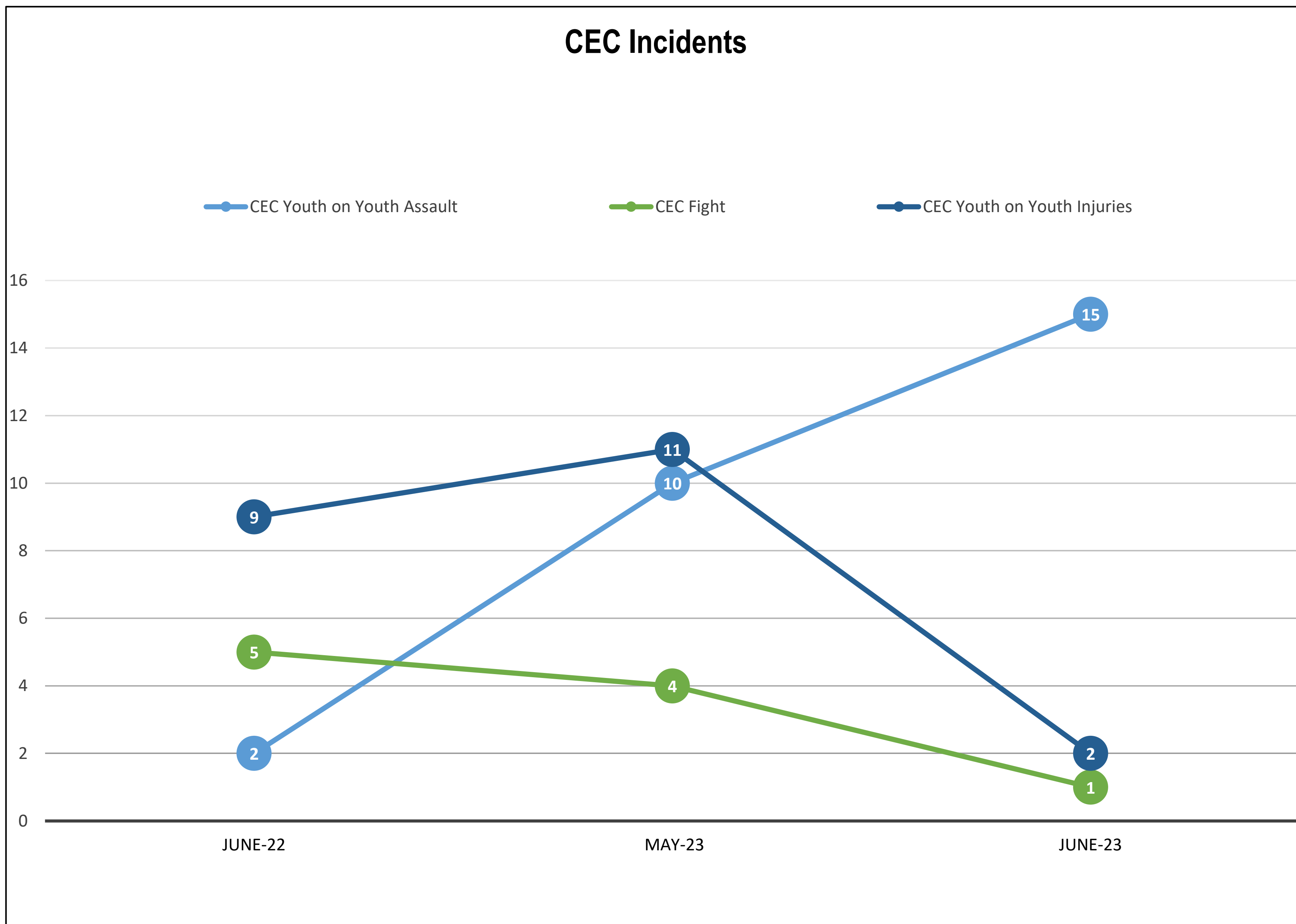
PbS Monthly Report for Disability Rights South Carolina

For the Period June 2022, May 2023, June 2023

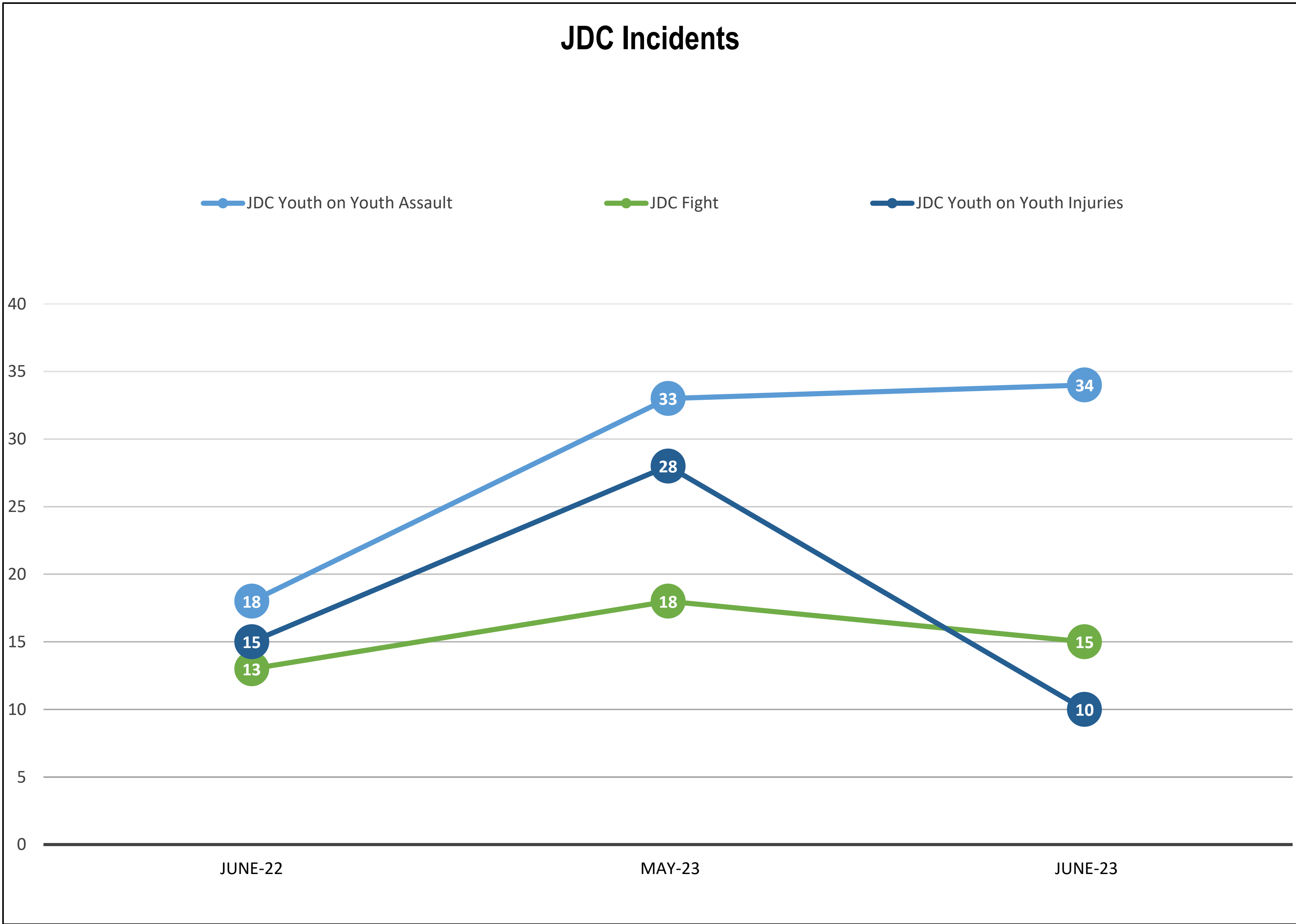
Niaja Kennedy
Standards Administrator

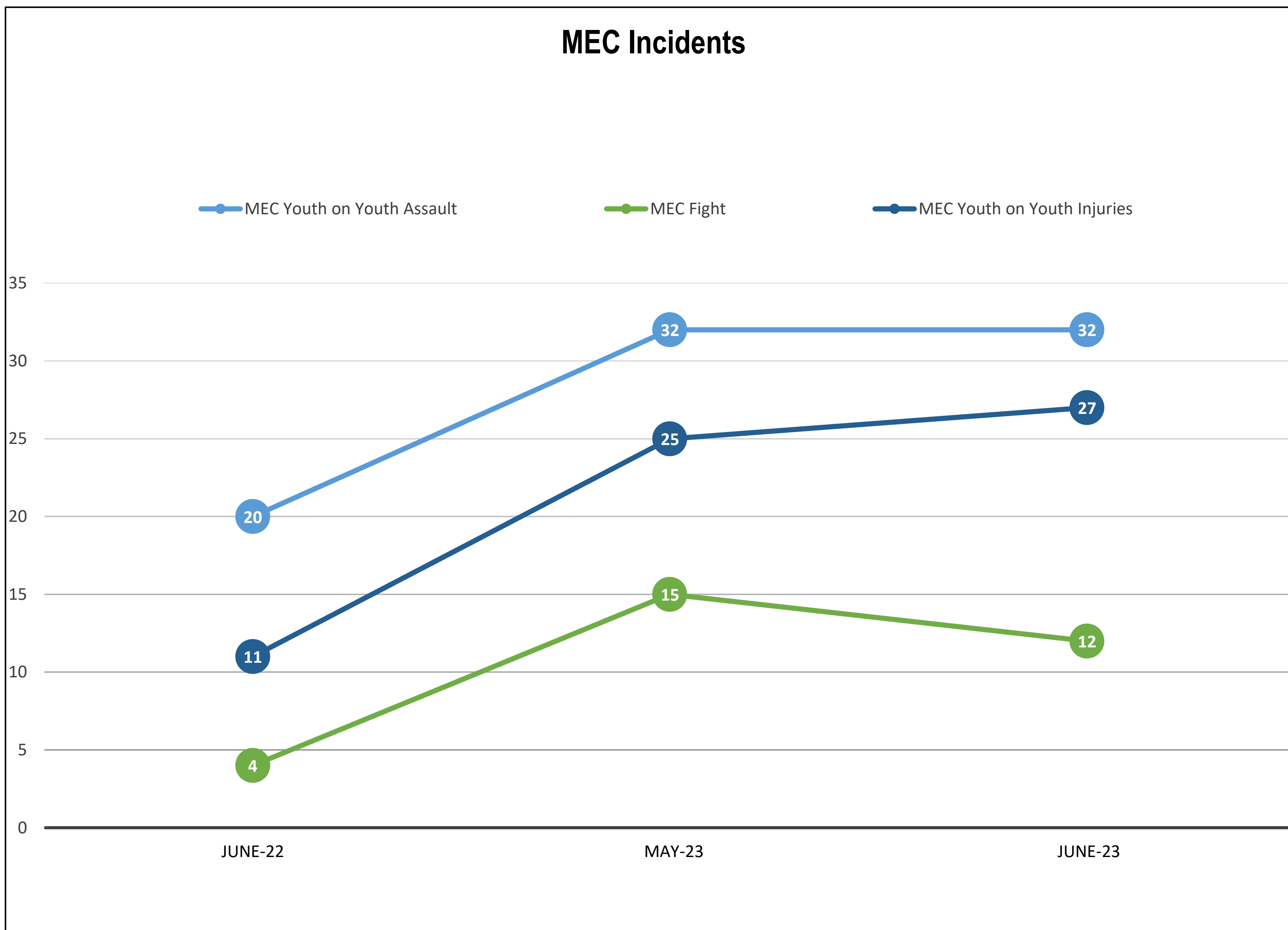
September 19, 2023


BRRC Incidents
BRRC Youth on Youth Assault
BRRC Fight
BRRC Youth on Youth Injuries
9
8
7
6
5
4
3
2
1
0
8
3
2
4
2
5
4
3
JUNE-22
MAY-23
JUNE-23

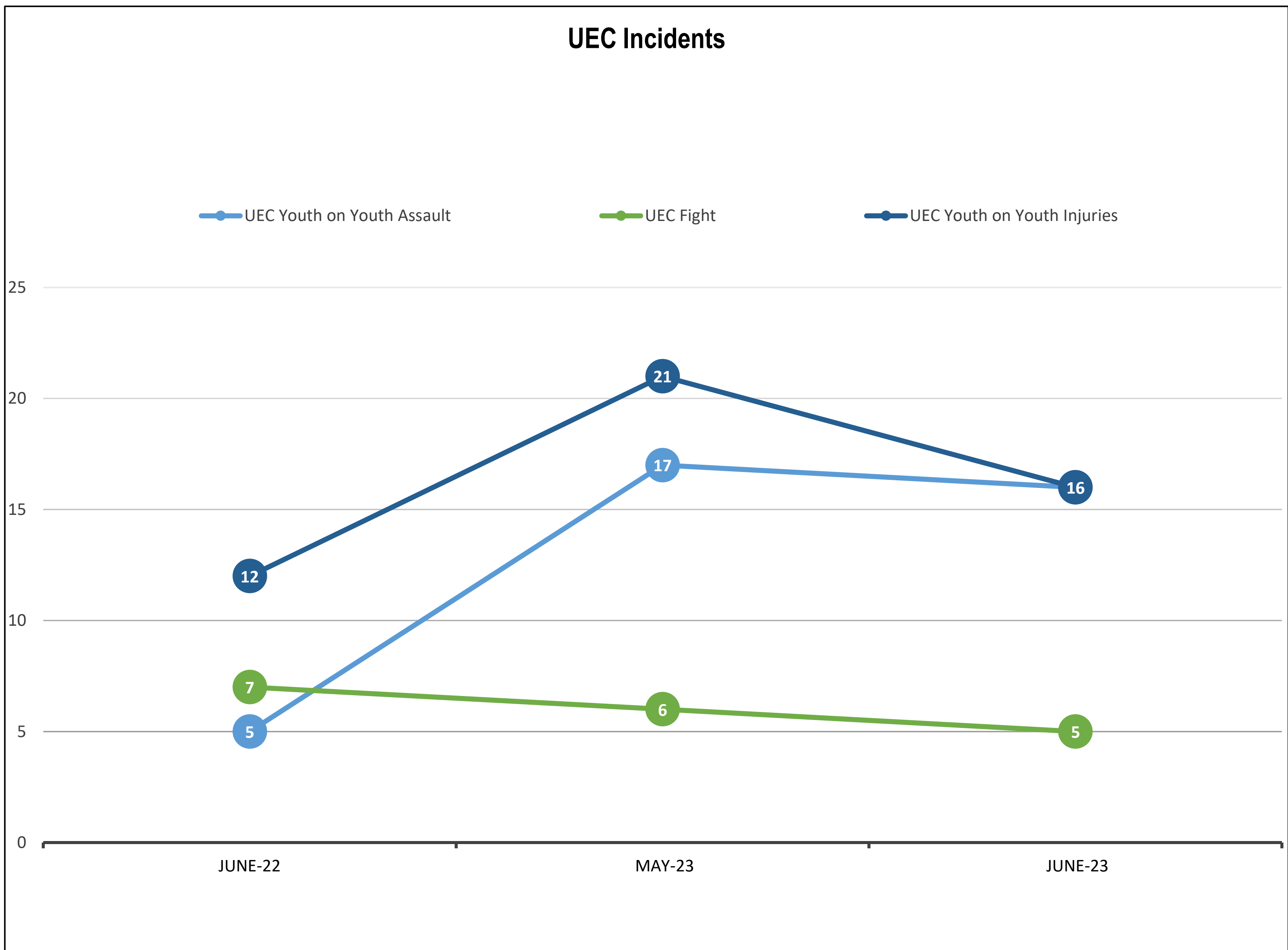


CEC Incidents
CEC Youth on Youth Assault
CEC Fight
CEC Youth on Youth Injuries
16
14
12
10
8
6
4
2
0
9
11
2
2
10
15
5
4
1
JUNE-22
MAY-23
JUNE-23


JDC Incidents
JDC Youth on Youth Assault
JDC Fight
JDC Youth on Youth Injuries
40
35
30
25
20
15
10
5
0
18
33
34
15
28
10
13
18
15
JUNE-22
MAY-23
JUNE-23



MEC Incidents
MEC Youth on Youth Assault
MEC Fight
MEC Youth on Youth Injuries
35
30
25
20
15
10
5
0
20
32
32
11
25
27
4
15
12
JUNE-22
MAY-23
JUNE-23


UEC Incidents
UEC Youth on Youth Assault
UEC Fight
UEC Youth on Youth Injuries
25
20
15
10
5
0
21
17
16
12
7
6
5
5
5
JUNE-22
MAY-23
JUNE-23

SUPPLEMENTAL DECLARATION OF QUANESHA BROWN

I, Quanesha Brown, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

I. BACKGROUND

1. I work with Disability Rights South Carolina ("DRSC") as an Abuse & Neglect Advocate-Criminal Justice. My work involves conducting monitoring visits to DJJ to investigate conditions in DJJ and ensure the safety and wellbeing of the children in DJJ's facilities. In particular, my work involves investigating violence in DJJ's facilities, including assaults and other threats to child safety.

2. DRSC is formally advocating on behalf of dozens of children across all 5 of DJJ's secure facilities. Children 5-13 are each detained in DJJ, each have qualifying disabilities that allow them to be DRSC constituents, and are each harmed by the endemic violence, overuse of isolation, and denial of rehabilitative services that are common to all children detained at DJJ. These children will be referenced in below paragraphs which offer details about specific injuries these children have suffered.

3. The legal guardians of Children 5-13 have each consented to DRSC taking formal action on their behalf.

4. As part of my role at DRSC, I engage in monitoring visits that are a vital part of DRSC's advocacy work.

5. Over the past 2 years, I have visited the Broad River Road Complex ("BRRC") and the Juvenile Detention Center ("JDC") a total of 14 times, and have visited Coastal Evaluation Center ("CEC"), Upstate Evaluation Center ("UEC"), and Midlands Evaluation Center ("MEC") a total of 19 times.

6. Throughout my monitoring of each of these facilities, I have observed all areas of the facilities, spoken with various children in DJJ's facilities, and communicated with a number of DJJ staff.

7. My most recent monitoring visit was on October 13, 2023, when I visited CEC. On September 27, 2023, I went to CEC and UEC for monitoring visits. I recently visited BRRC on September 26, 2023, MEC and JDC on September 25, 2023, and CEC on September 19, 2023. Prior to those dates, I have also recently visited each of these facilities a combined 20 times since March 2023. Based on my recent monitoring across DJJ's facilities, I have observed that the conditions at DJJ continue to be extremely dangerous. DJJ continues to subject children to isolation and consistently fails to provide rehabilitative services

8. Children in DJJ are unable to meaningfully resolve complaints of violence, assaults, unsanitary conditions, or abusive use of isolation through DJJ's grievance procedures. Multiple children across all DJJ facilities have reported that they either do not know how to fill out a grievance or, more commonly, that they know how to fill one out but do not do so because they know it will not be addressed. Several children have told me that DJJ staff will rip up a grievance instead of turning it in, especially if that staff member's name is mentioned on the grievance. Clinical staff have told children to bring grievances to them instead of to JCOs for this reason. When children in DJJ do fill out grievance forms, their grievances are rarely addressed or resolved. For example, as recently as October 13, 2023, a child at CEC informed me that while she has filed 3 grievances in the past, she never saw any results from those grievances.

II. DANGEROUS AND UNSANITARY CONDITIONS AT DJJ

9. From what I have seen and from my conversations with DJJ staff and children in DJJ custody, conditions at DJJ facilities are currently very dangerous, unsafe, and unsanitary.

Frequent Assaults and Dangerousness

10. Throughout my time monitoring DJJ facilities, I have consistently observed serious and regular occurrences of violence and dangerous conditions. In January of 2023, DJJ formed The Rapid Response Team ("RRT or RRTs"). DJJ hired for these positions from both internal DJJ employees and external law enforcement officers. The RRT is based at BRRC and is intended to respond to disturbances, violent occurrences, and other incidents at all of DJJs secure facilities. RRTs carry tasers, pepper spray, shields, and other gear that is regularly deployed against children in DJJ.

11. On September 25, 2023, I visited JDC and spoke to multiple children who have been frequently subjected to assaults and violence.

12. One child, Child 5, has experienced repeated incidents of physical violence. He has been assaulted 5 times since arriving at JDC. He has been hit in the back of the head by another child, assaulted by multiple juveniles at once on several occasions.

13. At this same monitoring visit, Child 6 informed me that he was hit with a lock in a sock during a riot. Another time, he was hit with one of the "boat beds".

14. Multiple children reported being assaulted and DJJ staff doing nothing to intervene in those attacks.

15. Recently, when attempting to schedule a visit to BRRC, I was unable to schedule the monitoring visit for my planned day and had to reschedule due to a riot in the Cypress dorm.

16. I most recently visited BRRC on October 16, 2023. During this monitoring visit, I spoke with Child 9 who had recently been moved from MEC (where he was when I visited MEC in September 2023) to BRRC.

17. Child 9 was being held by DJJ staff when he was hit in the face with a lock during a group disturbance on October 13, 2023. This assault resulted in his nose being broken. Child 9 was also assaulted by RRTs who hit him with a shield and threw him against a wall. Following this assault, Child 9 was transported to the hospital. Child 9 was not permitted to contact his mother to tell her what happened.

18. On October 15, 2023, Child 9 asked to speak with a member of DJJ staff when the RRTs said they would restrain him. Child 9 stopped, then RRTs came into the unit and hit him with a shield in the face. He reported that the infirmary said he may need to return to the hospital because his nose was worse than it was on October 13th.

19. At the time of my visit, I served that Child 9's eye was swollen. He stated that his vision was blurry and he could barely see out of his eye.

20. I spoke with clinical staff later that day to inform them that Child 9 had a grievance form that needed to be turned in. The member of the clinical staff told me that Child 9 is not expected to regain normal vision in his eye. During my October 16, 2023 visit to BRRC, I spoke with another child who informed me that RRTs carry tasers and pepper spray and that RRTs regularly threaten the children with them. This child also stated that RRTs deploy tasers and pepper spray against children even when the children are not causing any disturbances.

21. At my recent September 26, 2023 visit to BRRC, Child 10 told me he had been assaulted three times since arriving to BRRC, including one time when his head was slammed against a window by a member of DJJ staff.

22. Child 7 has been assaulted by DJJ staff at BRRC when he was slammed on the ground on his face while in shackles and handcuffs.

23. At my March 13, 2023 visit to JDC, I first learned that PSOs and the rapid response team have recently deployed tasers and pepper spray on children. Pepper spray and/or mace continues to be used on children. During my recent September and October visits to JDC, MEC, and BRRC, I confirmed that tasers are still being deployed on children.

24. Children reported to me that during disturbances, tasers and pepper spray are used on children.

25. On August 26, 2023, Child 9 was sprayed with mace by a PSO while he was having a seizure. After this occurred, he was not allowed to shower to wash the pepper spray off his body.

26. At my September 25, 2023 visit to MEC, I learned that Child 8 wrote a grievance about other children in his pod not liking him and was put in isolation for about a month. After he was released from isolation, he was put back in the same pod and was jumped again. Child 8 was tased after being jumped by other children in his pod, then placed in isolation.

27. At CEC and UEC, response times from the rapid response team often take two hours or longer. This creates additional risk of danger for children in these facilities, as the rapid response team is unable to intervene in disturbances or violent incidents for several hours. As a result, UEC calls Union County police when violent incidents or disturbances occur. If RRTs do respond to UEC, they respond hours after incidents have been de-escalated. From my observations and conversations, I have learned that RRTs are not effective in de-escalating disturbances, but instead respond in a manner that escalates situations further.

28. At my September 27, 2023 visit to UEC, I learned that on September 13 an officer who is part of the RRT told Child 12 to "come fight [him]" and another sprayed him with mace.

29. The following day, Child 12 was punched in the face and kicked by an officer. When he asked another member of the staff if he was going to stop him, he said, “No, do what you have to do to get control of him.” This child did not see medical until three days after this assault.

30. Throughout my time in this role, I have consistently observed unsafe conditions across all DJJ facilities. Earlier this year, I visited UEC to follow up on safety concerns after a riot and a fire occurred a couple of weeks prior. DJJ staff informed me that the incident started when children popped a wall socket and started a fire, which caused the fire alarm to go off and automatically open the doors. Once the doors were open, children went to other pods to attack some of the more vulnerable kids. One DJJ staffer informed me that one child had a panic attack during the riot and some children were trying to protect each other.

31. He also stated that there were security failures the night of the riot, as they remain extremely understaffed, and county police were called to the scene because the staff could not get the riot under control. He said it took the rapid response team two and a half hours to arrive the night of the riot.

32. During my visit to UEC, I spoke to one child was targeted during the riot. This child was injured during the riot both on his bottom and his hand. He told me he is afraid for his life because children threw a burning item under his door after he fled and tried to barricade himself in a room. He was especially fearful because one of the children who attacked him remained in the same unit as him. He told me he fears some of the other children are trying to kill him.

33. While I was visiting UEC that day, I learned from a DJJ staff member that MEC also had a fire on February 16, 2023. Fires occurred both at MEC and UEC within a few weeks of each other.

34. Structural problems with DJJ facilities also create dangers.

35. Across all facilities, there are security failures that lead to violent and dangerous conditions for children and staff. At JDC, the rooms are locked, but due to overcrowding many children are sleeping in “boat beds” in the common areas. This leaves children vulnerable to attacks.

36. At the evaluation centers, the doors to the rooms do not lock, leaving children vulnerable to attacks.

37. At my March 14, 2023 visit to UEC, I was trapped in a pod because the button to notify the control room that I needed to exit was broken. I had to rely on a child to go get a DJJ staffer to let me out of the pod. The children reported having to bang and kick the doors to get the attention of DJJ staff. This is the same button that the children must rely on to notify staff if they needed assistance.

38. In my recent visits in September 2023, I have confirmed that those buttons still do not work, which creates additional safety risks for the children in that unit. This unit is specifically designated for children who are in isolation due to being on suicide watch. When children are in isolation in this area, they are unable to use those buttons to call staff because they do not work.

39. These security failures across the board at DJJ facilities create dangerous conditions, leaving children and staff susceptible to violence.

Overcrowding and Understaffing

40. On March 13, 2023, I visited JDC, which was overcrowded and was holding 108 children in a facility built to hold only 75. Every pod except for one had children sleeping in "boat beds". DJJ staff informed me that they were understaffed that day.

41. As of September 25, 2023, JDC was even more overcrowded with 114 children in a facility build to hold only 75. This overcrowding exacerbates the fact that JDC is understaffed.

42. On a visit to CEC earlier this year, one DJJ staff member told me that they were so short staffed that they often only have 1 staff member for every 30 children. She informed me that the staff is placed in a very unsafe situation as a result of the understaffing.

43. On my two recent visits to CEC in September 2023, I observed that children are still sleeping on "boat beds". When children arrive at CEC, they are placed on "boat beds" until they are able to receive a permanent room assignment.

44. A DJJ staff member at BRRC informed me during my February 15, 2023 visit, that while he is on light duty, this staff member works 13-hour shifts. He reported that BRRC remains short staffed and struggles with retaining the new staff they hire.

45. BRRC remains short staffed and staff members continue to work long hours.

Unsanitary Conditions

46. At BRRC, the Laurel dorm is unsanitary and unclean.

47. At my September 26, 2023 visit to BRRC, I observed that Child 10, in isolation in the Laurel dorm, was living in a room with raw sewage that had seeped up through the drain in his room. Child 10 has been continually exposed to feces due to this leak. When he complained to DJJ staff about the unsanitary conditions, nothing was done.

48. At my recent September 25, 2023 visit to MEC, I learned that one child was urinated on by another juvenile and has not been permitted a shower. He has been sitting in urine for over 24 hours. When he asked DJJ staff if he could get a shower, he was told it was "not his problem." While I was speaking to this child, he addressed the urine incident with another DJJ staff member and asked to be moved. That officer did not provide any solution.

49. At one of my recent visits to JDC, I observed that the floor of the pod was flooded. Children reported being bitten by bugs in the night. I observed that none of the units had water fountains. Multiple children reported that there was mold, one saying it was making him sick at night. I have repeatedly observed issues with bugs and flooding since that visit and as recently as September 2023. I have observed that water comes up into some of the units through the drainage in the bathroom and the units themselves, resulting in repeated flooding of the dorms. Flooding is a regular occurrence in the bathrooms and units at JDC.

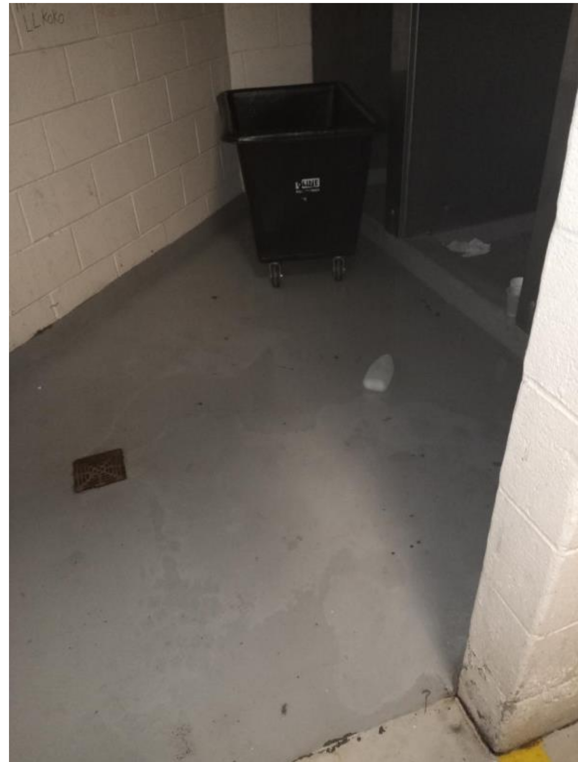
50. And in these unsanitary and dangerous conditions where children are living in rooms flooded, and in some cases flooded with raw sewage, those children are often denied showers for days.

51. At JDC, a child told me he is forced to drink water from the shower and that he is forced to urinate in the shower. Since he is not in an individual room, but is on a "boat bed", he does not have access to a toilet unless staff allow him to go to the bathrooms.

52. All the rooms in the B pod at JDC smell like urine because the toilets do not work properly. Pipes busted in one room because someone used the bathroom after the water was turned off.

53. At JDC, one child told me he has been getting sick for months due to the mold in the rooms and in the showers.

54. I observed graffiti all over the walls. The facility was extremely dirty, the shower was broken, there was water on the floor, and there was a sheet being used instead of a shower curtain. Children reported that they are unable to sleep due to excessive noise. I took photos at the facility. Below are true and accurate copies of those photos.



55. At a visit earlier this year, a child at BRRC showed me food he was served that was several weeks expired and informed me that they were served food the previous day that was more than a month past its expiration date. This same child informed us that the dorm needed several repairs and that the sink, water fountain, and a window were broken. I observed a window that was boarded up with plywood. He also said that the washing machine is stuck on cold water and the air conditioning does not work properly. Additional children also reported concerns about the food being expired and undercooked. One child showed me their breakfast, which looked raw. Another shared that they do not get the morning and evening snacks that they are supposed to receive. At more recent visits, a child complained that the milk he received was sour and, after smelling the milk, I agreed it was sour.

56. During a visit to JDC earlier this year, I received multiple reports from children that food was undercooked, cold, and even contained ice. One child also stated that they have

been served spoiled and expired milk and other food. Another child stated that when she requests water, she does not receive any and that there are no water fountains in the unit, which was consistent with my observations of the facility.

57. During more recent visits, I have observed that children continue to lack access to clean water. When children request water, they do not receive any. I have heard multiple reports from children that water from the sinks looks unclean and sometimes brown.

58. I have received multiple reports from children about issues with a broken sink, mold, and dirt at CEC. I have also personally observed these unsanitary conditions at CEC.

III. EXCESSIVE AND PUNITIVE USE OF ISOLATION

59. Across DJJ facilities, I have observed in recent visits that isolation is primarily and frequently used as a source of punishment for behaviors, rather than for protective purposes. I have talked to many children who have been in isolation for extended periods of time.

60. At JDC, children remain locked in their rooms for more than 20 hours per day and sometimes for as long as 23 hours per day. While children at JDC are supposed to receive recreation time every day, children do not always receive their recreation time as some JCOs do not allow the children to leave their rooms. Additionally, if there is any inclement weather or if it is too hot outside, the children do not get any recreation time and instead remain locked in their rooms all day. There is no indoor recreation space at JDC.

61. At JDC, multiple children reported that they are locked in their rooms when the night shift arrives. While staff will tell them they are only going into their room for a short period of time, they will remain locked there all night.

62. Children at JDC routinely experience isolation due to overcrowding. Due to overcrowding, the children are supposed to be released from their rooms in shifts, but children have reported to me that some children remain locked in their rooms all the time.

63. On September 25, 2023 at JDC, multiple children told me that when they were in isolation they were locked in their cells for 23 hours per day. During that period of isolation, they received no school work or recreation time.

64. Child 6 was in isolation for 23 hours per day for a month, during which he received no schoolwork or recreation. Several other children reported receiving no schoolwork while on "23:1."

65. On March 13, 2023, I visited JDC where one child reported being locked in his room for 2 straight weeks solely due to the fact that the facility was overcrowded and the staff did not want any movement. This child did not have access to any education or recreation during that time.

66. During my January 26, 2023 visit to JDC, one child informed me that he was put in extended isolation for 35 days. Another child reported being placed in extended isolation for several weeks.

67. During my recent visit to MEC, several children reported being placed in isolation in a "wet cell" for punitive purposes. "Wet cells" refer to cells used for isolation (because they have running water and toilets), and are approximately 9 feet by 9 feet in size.

68. At a September 25, 2023 visit to MEC, I learned that several children have spent weeks in isolation without any recreation, schoolwork, or access to basic hygiene requirements such as showers and toilet paper.

69. Child 9 has been repeatedly placed in a cell in isolation that leaks continually and has no functioning sink or toilet. During a two week stay in isolation, he was not permitted to take a shower.

70. At this visit, Child 8 had also been in isolation for over two weeks in protective custody. Throughout that time, he has not been permitted to take a shower and has not had any recreation time. He has received no schoolwork while in isolation. After this child filed a grievance that some of the children do not like him, he was put in a “wet cell” in protective custody for one month. After he was released from isolation, he was attacked by other children again. Despite his grievance and communications with officers about his lack of safety on that pod, he has not been moved to another pod.

71. At this same visit, I spoke with Child 7 who had also been in isolation for several days and has not been given a write-up or been permitted to take a shower. While he wrote a grievance, at the time of my visit, no one had responded to his grievance. While in isolation, he is in a cell with a toilet that does not work. At the time of my visit, he had only been permitted to leave his cell to go to the bathroom once over the course of several days.

72. Another child was in isolation for 4 weeks, was released from the “wet cell”, subsequently threatened by other children, and then placed back in the “wet cell”. He had been in the “wet cell” for several days when I visited and had not been allowed to shower. In isolation, his sink does not work, he has no toilet paper, and he was without a mattress for the first several days he was in isolation. This child is in a cell with no functioning sink. He has no toilet paper and DJJ staff has not provided it to him despite his requests. For days, he had no mattress. The only bed he had to sleep on consisted of a plastic bed frame.

73. At my January 12, 2023 visit to BRRC, a child informed me that children who are sent to isolation remain there for at least 5 days.

74. When I returned to BRRC on February 15, 2023, I spoke to one child in isolation who had been in extended isolation for three weeks. The previous day, that child had not been able to leave his cell at all. The children in isolation remain in their cells for 23 hours a day and are supposed to have 1 hour of recreation per day. This child also informed me that there are no DJJ staff present at night.

75. At my September 26, 2023 visit to BRRC, I learned that Child 10, who is in isolation, has been asking to call his parent, but has been denied this phone call. Throughout all his time in DJJ facilities, this child has spent more than *one year* in isolation (including two prolonged periods of isolation for 8 months and 4 months).

76. At this same visit, Child 11 had been in isolation for over 7 weeks and had been denied a shower for several days.

77. Another child at BRRC in the Laurel dorm told me that his longest period of isolation was 7 months at UEC. During that time, he was denied a shower for over one month. At BRRC, this child has been in isolation for over a month.

78. At my September 27, 2023 visit to UEC, one child told me he had been in isolation for three months. At BRRC, he spent over a year in isolation, during which he was not brought any school work. He spent more than 8 months in isolation at MEC, during which he was brought school work once or twice.

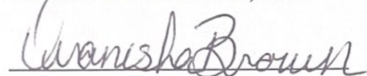
79. Child 13, who is at UEC has been in isolation for 5 months. During that time, he has often been denied showers for three to four days. He often receives meals an hour or two

after they are brought. He has been denied showers due to understaffing and often was refused medications because staff did not want to open the door.

80. I received a copy of a document describing DJJ's so-called "S.T.A.R." program, from a member of DJJ staff. **Attached as Exhibit A is a copy of that document.** While the program is supposed to divert children from isolation, I have not observed that the practice of using isolation for punishment has decreased. Instead, I have observed that children are routinely in isolation and often for lengthy periods of time.

81. Across all my monitoring visits throughout 2023, I have not observed any changes in isolation practices since the "S.T.A.R." program was initiated. Though the program is meant to minimize the use of isolation, I continue to see many of the same children in isolation for punitive purposes for prolonged periods of time. Many of the children have continued to remain in isolation for weeks, or months.

Executed October 25, 2023



Quanesha Brown

DECLARATION OF LINDSEY VANN

I, Lindsey S. Vann, certify under penalty of perjury that the following statements are true and correct pursuant to 28 U.S.C. § 1746.

1. My name is Lindsey S. Vann, and I am the Executive Director of Justice 360.

2. I joined Justice 360 in 2013 and have served as Executive Director since 2017.

3. Justice 360 is a nonprofit organization dedicated to promoting fairness, reliability, and transparency in the criminal justice system for individuals facing the death penalty and juveniles facing lengthy sentences in South Carolina.

4. Justice 360 is based in Columbia, South Carolina, and does business across the state of South Carolina.

5. In furtherance of its mission, Justice 360 engages in direct representation of incarcerated youth, including individuals that are or could be held at any of South Carolina's pre- and post-adjudication facilities. Justice 360 has represented children held pursuant to family court commitment orders and on adult criminal charges at Turbeville Correctional Institution, a facility operated by the South Carolina Department of Corrections.

6. At any given time, Justice 360 represents approximately four to six children in criminal and family court proceedings.

7. At present, Justice 360 represents four juvenile clients that are detained in DJJ facilities. Those children are currently detained at either BRRC or JDC, but they could be moved to any of DJJ's five secure facilities.

8. Although Justice 360's exact caseload fluctuates over time, we will continue to represent children detained in DJJ facilities and, therefore, will continue to suffer harm until conditions at each facility are improved.

9. In addition to direct representation, Justice 360 also provides legal resources to public defenders and other direct service providers. We provide model motions, pleadings, and other filings; consult on case strategy; and provide training on juvenile and death penalty defense.

10. Justice 360 also engages in extralegal advocacy on issues that impact our clients, including systemic racism in sentencing, the role of mental illness in the criminal justice system, and the impact of juvenile brain development on culpability and punishment.

11. Justice 360's direct representation of juveniles has been materially impeded by the horrific conditions that persist at facilities operated by the Division of Juvenile Justice.

12. At Justice 360, we have directly witnessed or been told of: overcrowding, lack of staff, risk of physical violence, gratuitous use of solitary confinement, lack of educational opportunity, lack of mental and physical healthcare, and other substandard conditions.

13. As a result of these conditions, our juvenile clients mentally, physically, and emotionally deteriorate during their time in custody at the Department of Juvenile Justice (DJJ). Our clients at DJJ are stuck in survival mode, which greatly impairs their ability to participate in their own defense.

14. An important component of juvenile defense is demonstrating to the judge that our clients are redeemable and not incorrigible. This is nearly impossible to do for our clients at DJJ because they—through no fault of their own—live at constant risk of physical violence from students and staff, are denied any meaningful access to education or counseling, and are routinely forced into isolation.

15. Conditions at DJJ disrupt the attorney-client relationship. Because of the litany of issues at DJJ, our clients are less trusting, less open, and less capable of understanding or focusing on their court case.

16. Conditions at DJJ impact our staff as well. At times, our attorneys are forced to spend entire client visits talking about conditions at DJJ rather than their client's criminal or family court case. Because of chronic sleep deprivation at DJJ, attorneys have almost entirely abandoned morning client visits. Because of the lack of counseling and educational opportunities, our attorneys must spend additional time ensuring that our juvenile clients understand their discovery and other legal documents.

17. Because of the negative impact these conditions have on our clients and our organizational purpose, Justice 360 has been forced to divert resources from other projects (such as death penalty representation) and into efforts to help our attorneys and clients overcome problems caused by DJJ in order to offer appropriate individual representation to clients who are detained in DJJ facilities.

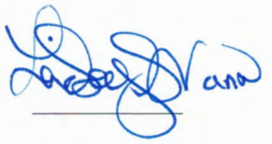
18. For example, an entire session of Justice 360's 2021 Virtual Summit was dedicated to training practitioners about how to deal with the challenges posed by conditions at DJJ.

19. We have also authored model family court pleadings that address conditions at DJJ.

20. I am aware that DJJ entered into a settlement with the United States Department of Justice in early 2022. The only change we have observed in the subsequent year is that DJJ appears to hold fewer children at BRRC and have opted instead to move those children to other secure facilities. To our knowledge, conditions across DJJ's facilities have otherwise remained dangerous, disruptive, and inhumane.

21. Juvenile detention reform is not a core purpose of Justice 360. We possess neither the capacity nor training to fight these issues head-on. But because of the impact the conditions at DJJ have on our ability to represent our clients, we have been forced to do what we can to help.

Date: October 26, 2023



Lindsey S. Vann

Executive Director, Justice 360

**FIRST SUPPLEMENTAL
DECLARATION OF ALLISON FRANZ**

I, Allison Franz, certify under penalty of perjury that the following statements are true and pursuant to 28 U.S.C. § 1746:

1. My name is Allison Franz. I am a staff attorney at Justice 360, a not-for-profit group whose mission is to promote fairness, reliability, and transparency in the criminal justice system for individuals facing the death penalty and juveniles facing lengthy sentences in South Carolina.

2. My work for Justice 360 involves direct representation of individuals on death row in South Carolina and juveniles facing death-in-prison sentences. I represent people at all stages of the criminal process: pre-trial, including juveniles whose cases originate in the family court system; direct appeals; and state and federal post-conviction or collateral relief cases.

3. In the past two years, I have directly represented juveniles and adults who, at the time of my representation or prior to my representation, were detained at South Carolina's Juvenile Detention Center ("JDC"), which is under South Carolina Department of Juvenile Justice's ("DJJ's") jurisdiction.

Overarching Issues and Standing

4. From my time representing juvenile clients, I have witnessed and been made aware of systemic problems at JDC, including, but not limited to: (1) constant youth-on-youth violence, which happens on a near-daily basis at JDC; (2) frequent use of short-term and long-term isolation; (3) failure to adequately identify or care for detained youth with mental illnesses and learning disabilities; (4) failure to provide appropriate educational services; (5) a general lack of nurturing conditions, including unsanitary conditions, including spoiled food and trash strewn everywhere, and a lack of access to sunlight or exercise; and (6) juvenile overcrowding, which amplifies other

problems by straining the facilities' limited resources and creating a chaotic environment.

5. DJJ's failures directly affect my ability to carry out my work. The conditions at DJJ make my direct representation of clients currently in DJJ custody more burdensome and time-consuming. As a result, I am limited in the number of juvenile and capital cases that I can take on at any given time. Because I must expend time compensating for DJJ's failures with my juvenile clients in order to represent them, these failures have impeded my ability to undertake the other tasks that my job requires. In every case in which I directly represent a juvenile housed at a DJJ facility, I am forced to spend a disproportionate amount of time working through the trauma the client is suffering from their living conditions before I am able to do what I am appointed to do: defend my client against criminal allegations.

Client-Specific Assertions

6. As an attorney with Justice 360, I work on behalf of Children 1, 2, and 3.

7. **Child 1** is 14 years old and has been detained at JDC since he was 12. Because he is so young, Child 1 has been routinely targeted for abuse by other children.

8. Staff at JDC cannot or will not protect Child 1 from physical harm. When Child 1 tries to defend himself, he is punished by JDC staff with isolation.

9. Child 1 displays symptoms of paranoia, depression, and post-traumatic stress disorder related to his underlying offense as well as incidents that have occurred at JDC. But to my knowledge, Child 1 has never been evaluated, diagnosed, or treated for these disorders.

10. A few months ago, for example, there was a large riot on Child 1's pod. During that riot, Child 1 witnessed another child's jaw get broken. The child tied a t-shirt around his face to hold his jaw in place. The riot—and the other child's injury—was extremely difficult for Child 1 to process. For the two attorney visits after that riot, it was the only thing Child 1 would speak to me about.

11. Because of the dangerous and traumatic conditions at JDC, Child 1 has physically and emotionally deteriorated during incarceration. He now demonstrates hypervigilance, sullenness, and deep suspicion of others.

12. I meet with Child 1 approximately twice per month, for between 30 minutes and 3 hours. The goal of these meetings is to advise Child 1 about any developments in his case and collect information from him that could be useful to show innocence, mitigation, or potential for rehabilitation.

13. Child 1's regular exposure to violence and isolation, all while being denied mental health treatment, has had a marked impact on his ability to communicate with me and participate in his own defense.

14. Despite my regular visits to meet with Child 1, he has become more and more guarded and resistant to sharing important information. Child 1 has shared with me that he cannot trust anyone, especially adults at JDC.

15. The use of isolation has had a particularly destructive impact on Child 1. When placed on early curfew (as is often the case at JDC), Child 1 is not able to speak to his family on the phone which makes him feel even more alienated and hopeless.

16. Virtually every time I meet with Child 1, he has new traumatic experiences that he needs to share about his detention at JDC. If I try to press past the stories about JDC and into case-specific conversations, Child 1 shuts down and the visit becomes unproductive.

17. Because helping Child 1 verbally process the violence, isolation, and inhumane conditions at JDC is an unavoidable prerequisite of any conversation about the substance of my representation, my visits must last much longer than they would otherwise. Approximately half of my attorney-visit time is now consumed by conditions-related discussions.

18. Over the course of his detention at JDC, Child 1 has grown less willing to communicate with me and less trusting of adults generally. As a result, I struggle to obtain accurate information about Child 1 which impedes my ability to represent him.

19. **Child 2** recently resolved his case and was transferred to BRRC, but my experience with Child 2 represents another example of how conditions at JDC materially impede my work on behalf of Justice 360.

20. Prior to his incarceration, Child 2 was protected and sheltered from harm. Because he has never been exposed to anything like the level of violence that is part and parcel of life at JDC, Child 2 became extremely anxious and afraid while detained at JDC.

21. The first month that Child 2 was held at JDC he was so afraid of being assaulted by other children that he chose to live in voluntary segregation—*i.e.*, isolation.

22. Child 2 dwells on the assaults, fights, and riots that occur at JDC and spends prolonged periods of time imagining how to avoid being a victim of the violence.

23. Child 2 is academically gifted but received very little educational instruction at JDC.

24. Child 2's academic prowess was a mitigating factor in his case, but it was eroding because of the lack of educational opportunities provided at JDC.

25. To preserve one of Child 2's most important arguments against waiver (his academic aptitude), I, and other Justice 360 staff, spent our own time providing educational instruction in math, English, and science to help him finish his Eighth-grade curriculum. Teaching Child 2 would be unnecessary if JDC provided Child 2 with adequate educational resources.

26. **Child 3** is another of my clients at DJJ.

27. Child 3 is regularly isolated, often due to the behavior of other children in his pod. While in isolation, Child 3 has been kept in his cell for 23 hours per day.

28. Child 3 has witnessed the deaths of several friends and displays symptoms of depression and PTSD. Child 3 also struggles with sporadic suicidal ideation. Despite that, Child 3 has not been evaluated, diagnosed, or treated for these disorders and has not received regular mental health treatment while at JDC.

29. Because Child 3's mental illness is untreated, he struggles to engage in discussions with me about his case. This means client visits take longer and my ability to provide effective representation in Child 3's waiver case is diminished.

30. Until June of 2023, there was one social worker that regularly visited Child 1, 2, and 3. But in June of 2023, that social worker left DJJ.

31. Since then, Child 1, 2, and 3, have not received meaningful counseling or evaluation from another social worker.

32. Through my work with children in DJJ facilities, and particularly JDC, I have also observed and learned about various systemic issues affecting the facilities, the children, and that further negatively impact my work for Justice 360, including overcrowding, excessive use of isolation, grossly inadequate education and healthcare services, and unhealth and unsanitary conditions.

Overcrowding

33. Overcrowding of children is rampant in DJJ facilities, and particularly within JDC. DJJ officials have told me that JDC is designed to hold up to 70 or 72 children. However, I have never been aware of a time at which JDC is housing fewer than 90 children. On at least one occasion, I was informed by staff that JDC was housing 130 children. Additionally, DJJ is comprised of six wings, or "pods," designed to hold 12 children each. Pods regularly house 20

children or more, and on one occasion, a client informed me that over 30 children were living in his 12-person pod. I have never been aware of a time at which a pod is housing 12 children or fewer.

Excessive Use of Isolation

34. At JDC, detained youth are frequently placed in solitary confinement for 23 hours per day for extended periods of time. This practice is known as "23-and-1," and when a juvenile is on 23-and-1, he is given only an hour each day outside his cell. In addition, as further discussed in the next section, staff sometimes use solitary confinement as a method of "treatment" for juveniles with physical health issues, confining them to their rooms for days at a time without letting them out even to shower, as a way to force them to rest.

35. Solitary confinement for juveniles has known deleterious effects, including permanent psychological damage and interference in normal childhood development.

36. Occasionally, instead of solitary confinement, staff may place juveniles on "early curfew," which means that they have only a few hours during the day in which they are allowed to be out of their rooms. Early curfew is a frequent punishment and it is not uncommon for staff to impose early curfew on entire units on which a fight involving multiple juveniles breaks out, even if some of the juveniles have done nothing wrong. My clients report that because the hours for phone access were recently reduced, being placed on early curfew means that there is not enough time for all the children to use the phone, and younger, smaller, more vulnerable children who are low in the pod pecking order may be unable to contact their families for weeks on end.

Education and Healthcare

37. All of my clients at JDC have serious mental health issues, and some of them are people with undiagnosed intellectual disabilities. The problems at JDC have exacerbated the issues that my clients face.

38. Detained youth at JDC are not provided with adequate mental health treatment, placing them at heightened risk for worsening mental illness and suicidality. Social workers at JDC typically carry caseloads of more than 30 children, and often carry over 40. On one occasion, I was informed by staff that one social worker had a caseload of 48 children, and another a caseload of 45. Because JDC is so overcrowded, and through no fault of the providers themselves, the necessity of taking on large caseloads means that mental healthcare providers are not able to adequately serve the considerable mental health needs of every juvenile.

39. If JDC were operating at capacity—that is, if the facility housed no more than 72 children—the mental health program is designed for social workers to meet with the children approximately once every two weeks to check in on their mental health and offer services, with treatment increasing as needed. Recently, however, JDC has been forced to take in acutely mentally ill, sometimes psychotic, children who are referred to JDC by the Department of Social Services or other mental health facilities. Consequently, staff spend a large amount of time completing intake procedures, and mental health staff spend the majority of their time working with the most severely mentally ill children. As a result, if the children in JDC are not engaging in self-harm or expressing suicidal ideation, their social worker likely will not be able to meet with them at all. One of my clients reported having met with their social worker no more than a handful of times in nearly a year at JDC, despite needing mental health treatment.

40. Detained youth at JDC are also not provided appropriate physical healthcare. If a child has a physical health issue, they may be confined to their cell to force them to rest. For example, one of my clients reported injuring his foot while on recreation, and to keep him off of his foot, staff locked him in his room for days, not even allowing him out of the room to shower.

Unsanitary and Unhealthy Conditions

41. In addition to the DJJ's abject failure to protect youth, punitive overuse of solitary confinement, violence against detained youth by staff, and failure to provide adequate services for detained youth with intellectual disabilities and severe mental illness, detained youth in the DJJ's custody suffer from unsanitary and unhealthy conditions.

42. Youth detained in JDC do not receive meals with adequate caloric content or nutritional value, and are often hungry due to the lack of adequate meals. The lack of nutritious food creates incentives for children to steal other children's snacks to ensure that they have enough to eat, and, as in any food-scarce environment, the children fiercely guard their food. In some pods, the children who have been at JDC the longest "charge rent" to more vulnerable newcomers in the form of food. Being "put on rent" means that the child who owes rent must give all of their snacks to the "landlord" child.

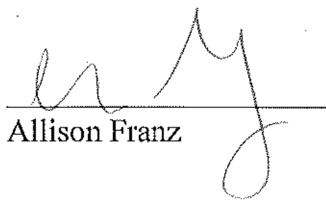
43. The facilities at JDC are unsanitary. My clients report that trash regularly piles up on their units, and that rat and bug sightings on the pods are common occurrences. The facility itself has an unpleasant odor and my clients often appear disheveled, with unkempt hair, long fingernails, and dirty clothes. One of my clients reported that staff took nearly a month to get him toothpaste and deodorant after he requested them. In addition, sinks and toilets are frequently broken, and the water to children's rooms is sometimes turned off by guards in retaliation for children's misbehavior. According to my clients, for a period of several weeks, there was only one working toilet on a pod that housed between 20 and 30 children. When the plumbing system

is not working properly and the drains are backed up, dirty water and fecal matter bubble up through the drains into the pod and the children's rooms.

44. Staff do not provide youth at JDC with sufficient clothing to enable the children to keep themselves and their clothes clean. My clients report that showering often depends on whether clean clothes will be available after the shower because JDC assigns each juvenile only one pair of pants, one shirt, and one sweatshirt. If clean clothes are not available, the children cannot shower because they will not have anything to wear afterward.

45. Finally, because JDC is a centrally located facility, many juveniles housed there are hours away from their homes and from the communities in which they received juvenile petitions. This is especially problematic for juveniles at JDC whose cases have not yet been adjudicated in the Family Court—many, many lawyers are unwilling or unable to drive across the state to meet with their clients before even initial court appearances, to meet with their clients in person to discuss discovery, or to prepare their clients for trials or hearings in Family Court. Similarly, their families are often unable to make a lengthy drive to the facility on Wednesday afternoons, the only time at which JDC allows family visitation. Consequently, the juveniles rarely, if ever, see or interact with adults who are not DJJ staff. These young people become institutionalized and lose their ability to engage in healthy, age-appropriate interactions with adults.

Date: 10/25/2023



Allison Franz

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

SOUTH CAROLINA STATE CONFERENCE OF NAACP; DISABILITY RIGHTS SOUTH CAROLINA; JUSTICE 360,

Plaintiffs,

vs.

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE; EDEN HENDRICK, individually and in her official capacity as Executive Director of the South Carolina Department of Juvenile Justice;

Defendants.

CASE NO. 0:22-CV-01338-MGL-PJG

DECLARATION OF PHYLLIS BECKER

QUALIFICATIONS

1. I have 26 years of service with the Missouri Division of Youth Services ("DYS"). I began my career with DYS as a frontline staff in the NW Region and since then have worked in a variety of capacities for DYS, including as treatment staff, regional manager, supervisor, professional development coordinator, deputy director, and most recently, director. In 1993, I left to do nonprofit work and started my business before returning to DYS in 2008.

2. During my tenure, DYS employed what is commonly known as the "Missouri Approach" to juvenile justice, which emphasizes moving beyond the symptoms of juvenile delinquency (i.e., the specific acts that got youth into DYS) that were traditionally dealt with by using punitive, prison-style means, and instead focuses on the root causes of their behavior, which often were family struggles or other trauma that the youth may have experienced. The Missouri Approach focuses on positive youth development through comprehensive daily programming—with an

emphasis on family and community engagement—to prepare youth to return and contribute positively to their respective communities.

3. Prior to and during my tenure at DYS, the agency underwent a series of reforms. Those reforms included the closure of large, centralized institutions in favor of a regionally- based continuum of care through regional facilities that, in particular, allowed youth within DYS to remain closer to their families and communities. The reforms also included fundamental shifts in how staff roles were defined—consistent with the implementation of the Missouri Approach—from correctional officer-type roles to youth specialist roles, and the implementation of a rigorous staff training program.

4. I had personal involvement in many of these reforms. As a regional professional development staff, I was involved in creating training programs for frontline staff in what is known in the juvenile justice field as strengths-based and positive youth development principles. I then participated in developing a program to train staff in those principles statewide across all DYS regions.

5. From 2005 to 2007, as a part of my consulting business, I was the Senior Training Coordinator for the Missouri Youth Services Institute ("MYSI"). In that role, I facilitated staff training to leadership and staff from MYSI client organizations (for example, state and national juvenile justice systems) to further the reform of those organizations and create effective, humane juvenile justice systems for youth and their families. In particular, I developed leadership and staff development curricula to help MYSI client organizations shift from traditional correctional practices to rehabilitative practices in juvenile justice and was the lead trainer.

6. From 2008 to 2009, I served as the Coordinator of Leadership Development & Quality Improvement at DYS, where I developed resources and programs to build leadership capacity,

enhance planning processes, and improve statewide professional development. This included coordinating and co-creating resources and programs for DYS executive and regional leadership.

7. The leadership programs took place over a two-year period with the first year covering the statewide leadership team and the second covering regional leadership teams. These programs included training covering:

a. the shift from traditional correctional to rehabilitative approaches in juvenile justice,

b. integrated treatment approaches such as individualized and integrated educational approaches, daily group meetings, ongoing treatment activities, regular engagement with family and community, leadership, youth development, and recreational opportunities,

c. fundamental practices such as ensuring healthy boundaries, respectful communication, professional behavior, maintaining clean, neat, and organized offices and facilities, accounting for youth at all times, providing a respectful and informative environment for families, and preserving the rights of youth to live in a safe environment,

d. leadership and management including how leaders provide a vision, set direction, and motivate, and how managers plan, organize, and problem-solve,

e. leadership and operating principles including leadership integrity, flexibility, being outcome-focused, operating philosophies such as humane and least restrictive environment, developmental and system approaches, family and community engagement, and diversity, and

f. models of accountability including understanding healthy culture versus blame culture, and components of staying accountable.

8. In addition to the foregoing curricula, which were targeted to leadership, I also oversaw and co-created training and upgrading curricula for frontline staff in the following areas:

a. professional boundaries,

b. facilitating for change (developing skills and tools to help youth understand their behavior and help prepare them for change and personal growth),

c. Five Domains of Wellbeing,[1] which is a framework Missouri Division of Youth Services used "to support youth in the juvenile justice system to successfully transition back to community and make lasting positive change,"[2] and

d. forming and developing community partnerships.

9. I was Deputy Director of DYS from 2009 to 2013. In that role, I supervised the Southwest region oversaw and also worked with DYS leaders and staff in the development of the redesign and enhancement of the DYS treatment planning process. The redesigned treatment planning process focused on youth wellbeing, where youth and families are the core drivers of the plan. My responsibilities in the redesign and co-development included:

a. Leading the statewide process for planning to implement the redesign;

b. Reviewing existing policies and procedures to align with the redesigned treatment process;

c. Revising the individualized youth treatment plan template and other core documents;

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[1] The Five Domains of Wellbeing framework was developed by the Full Frame Initiative. *See The Five Domains of Wellbeing for Youth and Youth Involved in the Juvenile Justice System,* Full Frame Initiative, https://fullframeinitiative.org/wp-content/uploads/2020/12/Five-Domains-of- Wellbeing-Overview.pdf (last visited May 20, 2022). It has been adopted by multiple youth services agencies, *see, e.g.*, *Trauma Informed Pathways to the Five Domains of Wellbeing*, Missouri Dep't of Social Services Children's Division & The Full Frame Initiative (Sept. 2016), https://dmh.mo.gov/sites/dmh/files/media/file/2019/01/mhc-meeting-trauma-informed-five- domains-of-wellbeing-10132016.pdf.

[2] *The Five Domains of Wellbeing for Youth*, *supra* note 1.

d. Developing a training curriculum;

e. Rolling out the training statewide for all DYS staff; and

f. Quality Assurance, which included monthly regional calls to assess the state of implementation addressing any issues that may have surfaced.

10. While Deputy Director of DYS, I also served as a subject matter expert ("SME") in the field of juvenile justice on a national level, including at the Georgetown University's Public Policy Institute's Youth In Custody Certificate Program,

11. I was the statewide Director of DYS from 2014 to 2019. In that role, I strengthened DYS family engagement resources and services and improved educational and youth law-abiding rates from 65% rate in 2010 to a rate of 72% in 2018. This recidivism statistic measures the percentage of youth that remain law-abiding citizens three years after discharge. I also oversaw DYS hosting numerous site visits from agencies, organizations, and other entities seeking to observe and learn about the Missouri Approach. Visitors included representatives from other state-level systems, national organizations, and international contingencies.

12. While Director of DYS, I presented to master's students studying Social Policy with Dr. Julie Boatwright at the Harvard Kennedy School to discuss the Missouri Approach. I brought in students and their families to discuss their experiences with DYS. I was also a member of the Council of Juvenile Justice Administrators ("CJJA"), a national membership association comprised of directors or administrators of state and local juvenile justice agencies. I served as chair of the CJJA Midwest committee and the CJJA national board. I was also a featured panelist and presenter at two bi-annual CJJA Business meetings. In addition, I was a member of the Juvenile Justice Leadership Network ("JJLN") at Georgetown University. JJLN is a part of Georgetown University's Center for Juvenile Justice Reform ("CJJR") and was created to support state and local juvenile justice and probation leaders who are engaged in significant reform efforts in their jurisdictions.

13. Currently, in my work as director and founder of PEB Consulting, LLC, I provide consulting services based on my knowledge and experience in juvenile justice reform and working with vulnerable populations. My work focuses on building awareness and capacity of organizations, leaders, and staff to improve outcomes for children and young people involved in the juvenile justice system and other systems or services. In past engagements, I have assessed conditions of confinement, and provided guidance and formal training on optimal and best practices to further juvenile justice reform in California, Florida, New Mexico, the District of Columbia, Louisiana, and Wisconsin.

14. In addition, I am on the steering committee for the Youth Correctional Leaders for Justice ("YCLJ"). YCLJ brings together current and former juvenile justice administrators who support shifting juvenile justice away from the traditional corrections-based approach that relies on punitive sanctions and incarceration, in favor of a focus on a youth, family, and a community-oriented vision of juvenile justice. I also serve on the CJJA associate's committee, which is composed of former directors of juvenile justice systems. In this role, I provide coaching to facility directors and juvenile justice facilities across the country regarding optimal reentry and transition practices.

15. I am a Senior Fellow with the Midwest Center for Nonprofit Leadership at the University of Missouri of Kansas City, whose mission is to improve effectiveness in the nonprofit community through education, research, and service. I have provided leadership and staff development to nonprofits and government agencies in this role.

16. I am currently a Senior Fellow with the Full Frame Initiative ("FFI"). FFI partners with organizations, systems, and communities to move away from focusing on surface- level problems to instead addressing deeper systemic issues by engaging with partners to change systems by shifting policies, structures, culture, and practice to support the universal need for wellbeing and tackle structural access to wellbeing. My work as an FFI Fellow involves introducing a wellbeing

orientation to the juvenile justice system to support the wellbeing of young people, their families, and communities and move away from punitive, biased, and harmful practices.

17. For more on my background, my CV is attached as Appendix A.

ASSIGNMENT AND BASIS OF OPINIONS

18. I was retained by Jenner & Block LLP on behalf of the South Carolina State Conference for the NAACP, Disability Rights South Carolina, and Justice 360, to perform professional services as an expert in connection with litigation challenging the conditions of confinement for youth at the five secure detention facilities operated by the South Carolina Department of Juvenile Justice ("DJJ").

19. My rate of compensation for this case is $200 per hour subject to a cap on compensation of $30,000.

20. My opinions in this declaration are based on my extensive training and experience in the field of juvenile justice, along with specific documents and materials, including relevant literature, and materials counsel in this case provided to me. In my prior declarations filed in this case on May 24, 2022 and March 17, 2023, I relied on, among other things, certain audits and legislative reports attached as exhibits to the Complaint and referenced hereinafter as "Ex." Based on recent information I reviewed, it appears that the issues identified in these reports remain largely unresolved, and as such, I am still relying on them to form my opinion.

21. Since I submitted my last declaration, limited discovery of DJJ's internal records has taken place in this litigation. I have reviewed this evidence and I relied on it to form my opinions in this declaration. I also reviewed the latest declaration from Quanesha Brown, a youth advocate who spends considerable time at DJJ. As detailed below, this new evidence confirms that the problems at DJJ are rampant and worsening, and must be addressed immediately.

FOUNDATIONS OF SAFETY

22. It is my opinion that the DJJ services substantially deviate from accepted operational practices in managing safety at juvenile facilities, resulting in a dangerous and harmful environment in gross violation of a juvenile facility's standard of care. These include increased incidents of violence,[3] unsafe cultures contributing to the overuse of isolation,[4] excessive use of force,[5] and unhealthy conditions of confinement.[6]

23. During my time and through my work at DYS in Missouri, DYS viewed facility and program safety through the lens of what is known as the "treatment circle." DYS adapted this concept from a U.S. Department of Health and Human Services publication called *Preventing Child Abuse and Neglect: A Guide for Staff in Residential Care*.[7] That seminal publication has withstood the test of time in outlining a hierarchy of assessment for residential care programs, where program operations can range from "harmful" to "optimal." Under this touchstone federal guidance, if a program is harmful to children, it cannot be appropriate, much less optimal.

24. Juvenile justice professionals must create pre-requisite conditions for youth to have a safe environment and a meaningful chance at rehabilitation. This is the core of professional practice in this space. In my work, we identified and emphasized specific safety building blocks, including:

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[3] "The average number of incidents recorded per month increased 124% when comparing 2020 to 2017 data. . .Incidents categorized as assault on a peer and fights between youth also increased 31% over this time period, with significant increases in MEC, UEC, and BRRC. Ex. 2 at 22. "Recorded incidents at DJJ secure facilities have more than doubled since 2017, including a 42% increase in incidents involving juvenile-on-juvenile or juvenile-on-staff violence." Ex. 2 at 22. DJJ's internal statistics show that these rates of violence are only worsening. *See infra* ¶ 35.

[4] "The findings in the DOJ's February 5, 2020 report also suggest that the agency relies excessively on isolation as a consequence for misbehavior…" Ex. 2 at 27. DJJ's internal documents show that its excessive isolation practices remain unresolved. *See infra* ¶ 82.

[5] *See, e.g.*, ECF No. 117 at ¶¶ 52, 112; Ex. 8 at 5.

[6] *See, e.g.*, ECF No. 117 at ¶¶ 174-187.

[7] Sharon A. Harrell, Reginald Calvert Orem, *Preventing Child Abuse and Neglect: A Guide for Staff in Residential Care*, (U.S. Dep't Health & Human Servs. 1960).

a. youths' basic needs being met, including access to nutritional food, adequate clothing and appropriate hygiene products, emotional and physical safety, a humane environment, and family involvement;

b. a focus on youth strengths, such as what they do well, and acknowledging their efforts and unidentified skills and talents;

c. clean, neat, and organized environments that are conducive to learning;

d. engaged staff supervision with diligent awareness of youth at all times including appropriate staff-to-student ratios;

e. predictability, structure and balance in the daily schedule including educational and recreational activities, as well as physical and mental health treatments,

f. healthy boundaries; and

g. clear, respectful staff-to-youth, staff-to-staff, and youth-to-youth communication that is the result of developing trust and a culture of caring.

25. These are common sense basics of juvenile detention, and a professional standard. In my opinion, such building blocks are necessary for there to be any meaningful chance at rehabilitation, and also vital in achieving a safe and secure environment. However, the evidence that I have reviewed indicates that DJJ fails to develop these conditions.

26. Indeed, the limited staff in place at DJJ are not equipped to facilitate basic safety building blocks and a rehabilitative environment.[8] For example, DJJ staff are required to maintain current certifications in topics such as trauma awareness, emergency procedures, and suicide

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[8] *See* ECF No. 97-9 at DJJ001835-DJJ001836; ECF No. 97-6 at DJJ001764; ECF 117 ¶ 62; Ex. 2 at 29, 33, 88, 97.

prevention, intervention, and security,[9] which are essential to facilitate a safe and healthy environment for youth and staff.[10]

27. The Juvenile Detention Alternatives Initiative ("JDAI"), a project of the Annie E. Casey Foundation, developed a guide to monitor conditions in juvenile detention facilities which can be applied to other residential care programs.[11] According to the JDAI standards, and after reviewing the audits, inspections, accounts from youth advocates, and other materials, I believe DJJ fails to meet many accepted standards for conditions of care. The JDAI standard on staff training requires that "facility staff receive regular training in conflict management, de-escalation of confrontations, crisis intervention techniques, management of assaultive behavior, minimizing trauma involved in the use of physical force and mechanical restraints and the facility's continuum of methods of control."[12] Yet many of these staff are behind in their certifications which can leave them unequipped when working with detained youth.[13] Similarly, an analysis of quality assurance reviews from 2017 to 2019 of DJJ secure facilities found that "[a]ll reviews identified standards which were in limited or failed compliance."[14] One youth advocate working at DJJ traced this lack of training directly to poor outcomes for detained youth, who suffer when those around them do not understand how to deal with traumatized populations, or when staff turn to violence as a way of managing situations.[15]

28. DJJ also falls below professional standards of practice in operational safety. For example, both the JDAI standard and Prison Rape Elimination Act ("PREA") standard on staffing

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[9] Ex. 2 at 100.

[10] Ex. 2 at 100.

[11] *Juvenile Detention Facility Assessment Standards Instrument 2014 Update: A Guide to Juvenile Detention Reform*, Juvenile Detention Alternative Initiative, 1 (2014), *available at* https://cclp.org/wp-content/uploads/2016/06/JDAI-Detention-Facility-Assessment-Standards.pdf [hereinafter *JDAI Standards*].

[12] *JDAI Standards*, *supra* note 11, at 93.

[13] Ex. 2 at 100. For instance, at JDC, 63% of officers who graduated from the Criminal Justice Academy did not complete their training within one year of their date, as required by state law to work as a detention officer. Ex. 2 at 97.

[14] Ex. 2 at 32.

[15] *See* ECF No. 82-7 ¶¶ 18, 25.

require that "[t]here is at least a 1:8 ratio of direct care staff to youth during the hours that youth are awake. There are sufficient available staff (on-site or on-call) beyond the 1:8 ratio to provide safe and appropriate supervision for youth with special needs or special security concerns."[16] Yet a recent independent audit of a DJJ facility, the Juvenile Detention Center ("JDC"), found an insufficient staff-to-student ratio across the facility,[17] resulting in inadequate supervision of youth.[18]

29. DJJ's internal documents, produced in discovery, show that severe understaffing at DJJ has persisted since that audit. The staffing rates for security posts at DJJ are inadequate in all five of its facilities: just 58% at BRRC, 47% at CEC, 68.5% at JDC, 62% at MEC, and 52% at UEC.[19] An internal staffing study at BRRC concluded that, "[a]t the present time, a 1:8 staffing ratio is not possible."[20]

30. Exacerbating the inadequate staffing is the fact that the facilities appear to be housing more youth than they are designed to house. For example, in April 2023, JDC was holding approximately 130 children, nearly double its capacity.[21]

31. Understaffing and overcapacity lead to a lack of adequate supervision. This is a danger to youth and staff alike. It also seriously undermines DJJ's ability to accomplish core responsibilities toward the children in its care, including education, development, and rehabilitation.

32. Youth and staff injuries showing insufficient safety have been frequent and pervasive.[22] The 2021 audit revealed multiple allegations of sexual assault that occurred in part

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[16] *JDAI Standards* at 68; *see also* PREA Standard § 115.313(c).

[17] "During the facility tour, the auditor noted that the facility was not compliant with the 1:8 ratios," and had ratios between 1:11 and 1:15 in each JDC wing. Ex. 4 at 23-24.

[18] *See* ECF No. 82-7 ⁋⁋ 19-20.

[19] ECF No. 97-7 at DJJ001183; *see also* ECF No. 97-9 at DJJ001835-DJJ001836 (at JDC on April 6, 2023, 7 staff members were responsible for daytime supervision of 130 children).

[20] ECF No. 97-14 at DJJ001254-1261.

[21] ECF 117 ¶ 62. *See also* Declaration of Quanesha Brown ("Brown Decl.") ⁋ 41 ("On a visit to CEC earlier this year, one DJJ staff member told me that they were so short staffed that they often only have 1 staff member for every 30 children."); ECF No. 82-7 ⁋ 15; ECF No. 82-3 ⁋ 11.

[22] Ex. 2 at 22.

because supervisory security staff were occupied with "assisting with regular juvenile transport, and were therefore unaware of the current locations of other juveniles in the facility."[23] This is one of the problems a 1:8 staff-to-child ratio is designed to avoid.

33. DJJ staff have at times resorted to using mace on youth, which resulted in chemical burns and at least one lawsuit.[24] Recent reports suggest that DJJ's use of mace is increasing, including during routine operations.[25] Using mace violates one of the JDAI standards on safety, which requires that "[f]he facility develops and implements written policies, procedures, and actual practices to prohibit . . . [u]se of chemical agents, including pepper spray, tear gas and mace."[26] Using a chemical agent as a way of restraining children is harmful and does not lead to a safe environment.

34. I have also reviewed reports that Public Safety Officers have used tasers on youth within DJJ facilities,[27] as well as further reports that the use of tasers at DJJ is increasing.[28] This is far outside of professional standards for safety. Tasers are not even mentioned within the JDAI standards on safety. In my opinion, tasers should not be used on youth. I also believe their use at DJJ suggests inadequate staffing, lack of supervision, and ineffective skills and experience to maintain control of the facility. Indeed, news reports have indicated that there have been "multiple riots in recent years" at BRRC, confirming an inability to maintain control over the facility.[29]

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[23] Ex. 2 at 23; ECF No. 117 ¶¶ 52, 112.

[24] Brown Decl. ¶ 22-24 ("On August 26, 2023, Child 9 was sprayed with mace by a PSO while he was having a seizure."); ECF No. 82-19 ¶¶ 6–7; Mandy Matney, *SC Boy Sexually Assaulted, Choked By Staff at Teen Detention Center, Lawsuit Says*, FITS News, July 30, 2021, https://www.fitsnews.com/2021/07/30/sc-boy-sexually-assaulted-and-choked-by-staff-at-teen- detention-center-lawsuit-says/.

[25] ECF No. 82-19 ¶¶ 6-7.

[26] *JDAI Standards*, *supra* note 11, at 94.

[27] ECF No. 82-19 ¶¶ 6–8; ECF No. 82-18 ¶ 5.

[28] ECF No. 82-19 ¶¶ 6-7; ECF No. 117 ¶¶ 52, 112; *see also* Chris Joseph, *Department of Juvenile Justice whistleblower calls out post-riot policy choices*, WIS10, August 22, 2023, https://www.wistv.com/2023/08/22/department-juvenile-justice-whistleblower-calls-out-post-riot-policy-choices/.

[29] Will Folks, *Another Riot At South Carolina Juvenile Justice Facility*, FITS News, October 28, 2022, https://www.fitsnews.com/2022/10/18/another-riot-at-south-carolina-juvenile-justice- facility/; Chris Joseph, *DJJ security*

35. Individual youth accounts that I have reviewed are consistent with a lack of physical and emotional safety. One youth, for example, reported major fights occurring at his DJJ facility on at least a weekly basis over a period of years, and representatives of youth at DJJ who are frequently in DJJ facilities report that attacks on youth occur regularly.[30] I have reviewed DJJ's most recent self-reported violence data (PbS data), and there continues to be high rates of violence in DJJ facilities. In May and June 2023, DJJ reported 197 youth-on-youth assaults, 83 fights, and 148 youth injuries across DJJ's five secure facilities.[31] Moreover, DJJ's internal records report that there are staff who regularly "do[] not… try[] to mitigate or de-escalate" when violence occurs, which allows violence to "escalate[] into a full-blown incident where an emergency develops."[32] Further, in a DOJ review of use of force report, which "often described staff responses to youth fights," most "did not describe de-escalation efforts by staff."[33] Staff that fail to effectively deescalate conflict create a lack of trust between youth and staff, which prevents the ability to create a foundation of emotional and physical safety.

36. In the material provided to me, there is evidence that DJJ staff or contractors are directly participating in and/or instigating acts of violence. That is directly contrary to a juvenile facility's mandate and a substantial departure from professional judgment in caring for detained children. The JDAI standard on use of force requires that staff "avoid the use of physical force or mechanical restraints, employ a range of interventions or actions before using physical force or restraints and permit only the least restrictive measures in order to prevent physical harm to the youth

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left a teacher alone with juveniles and tools despite pleas, attack followed, WIS News, February 16, 2023, https://www.wistv.com/2023/02/16/djj-security- left-teacher-alone-with-juveniles-tools-despite-pleas-attack-followed/.; *see also* Brown Decl. ⁋⁋ 10, 29-31.

[30] *See, e.g.*, Brown Decl. ⁋⁋ 12-13, 16, 20; ECF No. 82-7 ⁋⁋ 19-25; ECF No. 82-18 ⁋⁋ 22-23.

[31] *See* Declaration of Beth Franco, Exhibit A.

[32] ECF 97-14 at DJJ001254-1261; *see also* Brown Decl. ⁋ 26.

[33] Ex. 6 at 12.

or others."[34] At DJJ, reports indicate that staff use physical force not as a limited intervention, but as a tool for control and punishment, again leading to exposure to trauma. This is harmful because research shows that "traumatic stress can interfere with a child's ability to think and learn, and can disrupt the course of healthy physical, emotional, and intellectual development," and "is associated with increased utilization of health and mental health services" for youth.[35]

37. In my opinion, the lack of physical safety in the DJJ program directly undercuts DJJ's ability to provide a safe environment to the children it houses and is responsible for. A safe environment is an essential element for creating a rehabilitative program for youth. The ongoing incidents of violence at DJJ are evidence of a lack of a strong rehabilitative foundation. DJJ's lack of a strong foundation leads to the harm and endangerment of the youth it is tasked with protecting. This is a substantial departure from professional standards.

REHABILITATIVE/TREATMENT APPROACHES

38. In my experience, the regular violence that youth at DJJ experience is a strong indication that DJJ's culture is not effectively implementing strategies focused on rehabilitating and treating youth. The inverse is also true: the rampant violence at DJJ prevents it from effectively implementing strategies focused on the rehabilitation and treatment of the children in its care.

39. Research on adolescent development, brain development, and Adverse Childhood Experiences ("ACEs") has significantly informed what is effective in rehabilitating youth.[36]

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[34] *JDAI Standards*, *supra* note 11, at 93.

[35] Julian D. Ford et al., *Trauma Among Youth in the Juvenile Justice System: Critical Issues and New Directions*, Nat'l Center for Mental Health & Juvenile Justice, 1 (2007), *available at* https://www.courts.ca.gov/documents/BTB25-1G-02.pdf.

[36] *See, e.g.*, Abigail Novak & Vitoria De Francisco Lopes, *Child Delinquency, ACEs, and the Juvenile Justice System: Does Exposure to ACEs Affect Justice System Experiences for Children?*, 20 Youth Violence & Juvenile Justice 83; Christopher Edward Branson et al., *Trauma-informed Juvenile Justice Systems: A Systematic Review of Definitions and Core Components. Psychological Trauma: Theory, Research, Practice, and Policy*, 9 Psychol. Trauma 635 (2017); Melissa A. Kowalski, *Adverse Childhood Experiences and Justice-Involved Youth: The Effect of Trauma and Programming on Different Recidivistic Outcomes*, 17 Youth Violence & Juvenile Justice 354 (2019).

40. ACEs refer to childhood experiences that have been identified as risk factors for chronic disease and other challenges in life and adulthood.[37] These include: emotional abuse, physical abuse, sexual abuse, emotional neglect, physical neglect, violent treatment towards the mother, household substance abuse, household mental illness, parental separation or divorce, and having an incarcerated household member. Compared to youth in the general population, juvenile-justice-involved youth have roughly three times more ACEs.[38] Understanding a youth's history of adverse childhood experience is necessary to provide appropriate treatment to the young people in care and to avoid re-traumatizing them.

41. Successful juvenile justice facilities are therapeutic environments as opposed to correctional environments. Central to establishing therapeutic environments is developing customized youth plans and program roadmaps for youth success, engagement with the youths' families, rigorous staff training and ongoing learning, and, as noted above, appropriate staff-to-student ratios.[39]

42. In my professional experience, a rehabilitative culture is based on creating conditions where young people can experience both physical safety as described above, and emotional safety. Emotional safety includes being respected and acknowledged for their strengths and opportunities to deal with their issues, family dynamics, and any history of adverse childhood experiences and other societal impacts such as poverty and racial inequities. Keeping youth involved and engaged in

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[37] *See* Vincent J. Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14 Am. J. Preventative Medicine 245 (1998).

[38] *See* Michael T. Baglivio et al., *The Prevalence of Adverse Childhood Experiences (ACE) in the Lives of Juvenile Offenders*, 3 J. Juv. Just. 1 (2014).

[39] Many of these elements are included in "Eight Principles to Transform Care for Young People in the Justice System," published by the Annie E. Casey Foundation. *See* Eight Principles to Transform Care for Young People in the Justice System, Annie E. Casey Found. (2019), *available at* https://www.aecf.org/resources/eight-principles-to-transform-care-for-young- people-in-the-justice-system.

treatment, educational, and recreational activities is critical to positive youth development and wellbeing.

43. Ongoing and persistent violence in programs creates a lack of physical and emotional safety, stability, and access to programming—the presence of which are necessary for young people to learn and grow. What can be even more detrimental is when violence results in such programming becoming unavailable, as appears to be the case at DJJ facilities.[40] The lack of such programming will lead to, rather than prevent, violence.

44. The foundational elements of safety apply to all levels of care in juvenile justice, including detention, community-based services, and secure care programs. Overcrowding and staff shortages across DJJ's facilities,[41] and issues with exceeding length-of-stay guidelines at the temporary evaluation centers,[42] indicate the need to ensure appropriate programming is occurring for young people in these programs. The system's responsibility is to maintain and sustain environments supporting all youth programming, educational, and health and safety needs.

45. My first-hand experience at DYS and my work in the field has shown that a robust daily schedule that includes education, recreation, individual, group, and family engagement, fosters youth's growth, skill development, and behavior change, and decreases critical incidents and violence.

46. DJJ does not appear to create a rehabilitative environment for its youth. For example, a recent audit showed that nine youths reported prior sexual victimization, but that there was no

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[40] *See* ECF No. 82-18 ¶¶ 37-38; ECF No. 82-7 ¶ 40.

[41] *See* ECF No. 97-7; ECF No. 97-8; ECF No. 97-14.

[42] Ex 1. at 78. "According to an agency wait list report from October 2016, 31 juveniles were awaiting placement [at evaluation centers] with the longest wait period of 83 days. Five of the juveniles had been waiting in excess of 70 days." *Id.*

evidence of DJJ addressing issues resulting from that prior sexual victimization or that the youth were offered follow-up care.[43]

47. In one instance, a youth was placed in isolation for 13 days under suicide watch. During this time, his mental health condition worsened, yet "DJJ did not provide this youth with any additional intervention and did not provide psychiatric care."[44]

48. In my experience, this lack of follow up is deeply harmful and can further trauma. It is the responsibility of the juvenile justice program to help youth heal rather than inflict or allow harm to happen to them. These accounts and reports indicate to me that DJJ is not creating a humane and therapeutic approach and environment.

TREATMENT & PROGRAM PLANS

49. Behavioral management systems are strategies and techniques related to the structure and environment of juvenile justice programs that seek to elicit positive behavior from resident youth. Behavior management systems focus on maintaining positive behavior and reducing negative behavior. As one researcher put it:

> "Ensuring appropriate youth behavior is a never-ending task that requires constant attention from staff; behavior management is not a one-time response to a troubling incident . . . behavior management is about more than the immediate response to aggressive or inappropriate behavior. It involves creating a therapeutic culture within the facility that supports the development of positive relationships between youth and staff, that ensures the safe and humane treatment of the youth, that provides youth with the treatment and programs they need to learn problem-solving skills and overcome thinking errors and past traumas, and that ensures a consistent and clear message about behavioral expectations for both youth and staff."[45]

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[43] Ex. 4 at 82.

[44] Ex. 6 at 16.

[45] Michele Dietch, Establishing a Therapeutic Culture that Supports Behavior Management, *in* Desktop Guide to Quality Practice for Working with Youth in Confinement, National Partnership for Juvenile Services and Office of Juvenile Justice and Delinquency Prevention, *available at* https://info.nicic.gov/dtg/node/21.

50. Behavioral management systems can take many forms. Often, a behavior management system will involve creating a system of rewards or responses (like toys, fun activities, or verbal praise) to support positive behavior, or it may be a points-based system in which the recipient gets to choose the form of the reward. Behavior management systems can also include sanctions to deter negative behavior. An effective behavior management system must result in consistent responses to youth behavior that encourage positive behavior and discourage negative behavior.[46]

51. DJJ has its own behavior management system policy in place.[47] That policy states that DJJ "will use a formal system of rewards and incentives in juvenile residential facilities that provides for planned therapeutic interventions to reward responsible juvenile behavior, and discourage negative juvenile behavior. The [DJJ] philosophy is that adolescents favorably respond to developmentally appropriate rewards and sanctions and [DJJ] will reinforce responses by rewarding appropriate behavior while giving sanctions for inappropriate behavior."[48]

52. Behavior management systems can quickly become punitive when, as appears is the case at DJJ, safety building blocks are not taken into consideration. In cases like these, staff punish children for inappropriate behavior—for instance, if a child reacted by hitting someone in response to a nonconsensual touch—instead of understanding that the behavior might be the result of trauma, like sexual or physical abuse, for example. A better approach would be to understand that the child was reacting to trauma, and the child needs help understanding why he had that reaction, instead of simple punishment.

53. In my experience, if basic rehabilitative practices and a foundation of safety are not in place, behavioral management systems can become ineffective and end up being applied in punitive

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[46] *Id.*

[47] Juvenile Behavior Management: Incentive System and Progressive Discipline, State of South Carolina Dep't of Juvenile Justice: Policy and Procedures (Feb. 3, 2020).

[48] *Id.* at 1.

ways, contributing to unsafe and unhealthy cultures. This can be particularly true in the application of sanctions and incentives, which are a part of the behavior management system DJJ employs.[49] Effective implementation of behavior management plans or similar systems help youth and staff understand key benchmarks of success and create structure and stability in programming.

54. In my opinion, the unsafe environments plagued by violence as described above, and the fact that "DJJ isolates youth frequently for minor misbehaviors"[50] indicates the unsuccessful implementation of behavioral management system under DJJ's own policy.

55. Another core component of engaging youth on a productive, rehabilitative path is the development of treatment plans customized to address and meet the needs of the individual youth. According to the National Institute of Corrections, "[a] written, individual treatment plan is a must for every youth. A one-program-fits-all approach to treatment is unacceptable and destined for failure…"[51] Treatment plans are critical because they are the tool for identifying what services will best meet the youth's needs.

56. Treatment plans provide a map for positive youth development. Individual treatment plans outline youth strengths, needs, goals, and strategies and provide a path for youth to build skills/mastery, track progress, and successfully move through a juvenile justice system's program.

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[49] "Juvenile facilities in many jurisdictions employ punitive disciplinary systems that take away points for various programmatic deficiencies or rule breaking, followed by imposition of solitary confinement. Sometimes the punishments are out of proportion to the offense. This kind of disciplinary system cries out for trauma-informed analysis, because it heaps additional disapproval on youth who already feel rejected, abandoned, and unfairly treated. Also, as we have discussed, the behavior that prompts discipline may itself be a product of untreated trauma." Sue Barrell, *Trauma and the Environment of Care in Juvenile Institutions*, Youth Law Center, National Child Traumatic Stress Network, 4-5 (2013).

[50] Ex. 6 at 13. For example, the DOJ Report states that "a number of youth were isolated for minor misbehaviors that posed no threat to safety and did not . . . create a risk of harm to the youth or others." *Id.* at 14. Some youth were placed in isolation for behaviors like having playing cards, drawing on each other with ink pens, and for simply being "out of place." *Id.*

[51] Nelson Griffis et al., *Service and Treatment Plans*, *in* Desktop Guide to Quality Practice for Working with Youth in Confinement, National Partnership for Juvenile Services and Office of Juvenile Justice and Delinquency Prevention, *available at* https://info.nicic.gov/dtg/node/20.

Effective implementation of the plans contributes to safety and youth engagement in pro-social behavior.

57. A treatment plan should include a safety component that identifies youth's triggers, warning signs, and coping skills and is used to determine intervention strategies and safety procedures to defuse problematic behaviors. The most effective plans are co-created with youth and families and developed collaboratively with educational personnel, clinical staff, juvenile justice leaders, and direct care staff.

58. The materials I have reviewed indicate that DJJ does not succeed in creating effective treatment plans for each youth.[52] Without a treatment plan that includes all of the relevant people who need to be involved, youth will not have the proper guidance, support, and help necessary for progress in a juvenile justice system and upon reentry into their community.

59. The lack of effective treatment plans and their ineffective implementation, as well as the ineffective implementation of DJJ's behavior management policy, in my opinion, show that DJJ does not adequately provide the necessary treatment to youth.

60. A comprehensive approach to rehabilitation and treatment includes non-punitive behavior management strategies, effective education and treatment plans, family engagement, and youth involvement in educational, treatment, recreational activities. After reviewing the materials, it is my opinion that DJJ has not put into practice an effective rehabilitative approach and is compromised in its ability to do this due to the harmful methods that have been used with young people in their system.

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[52] *See* ECF No. 82-7 ⁋ 41; ECF No. 82-18 ⁋ 36-39.

61. DJJ cannot successfully provide an effective rehabilitation and treatment plan for the children in its charge without maintaining adequate staff-to-child ratios and curbing its excessive use of isolation of children.[53]

STAFFING AND STAFF CAPACITY & SKILLS DEVELOPMENT

62. Physical and emotional safety in juvenile justice programs is directly impacted by staffing, staff training, and the efficacy of staff skills. Staff shortages and inadequate staffing ratios[54] are severely impacting the safety of youth and staff in DJJ facilities.[55]

63. As noted above, one recent audit shows that the required staff-to-youth ratio of 1:8 during waking hours was not being met.[56] Another recent audit found that "[c]urrent staffing does not meet the minimal staffing patterns set forth in the staffing plans."[57] One DJJ staff reported that the staff-to-youth ratio was 1:30, resulting in "a very unsafe situation."[58] A 30-1 staffing ratio is far outside the bounds of what is manageable for control of a facility.

64. As mentioned above, DJJ's internal documentation has confirmed its failure to maintain adequate staff-to-youth ratios. In April 2023, JDC was operating at nearly double its capacity. At BRRC, a staffing study concluded that a 1:8 staff-to-youth ratios was "not possible."[59]

65. This negatively impacts the effective supervision and engagement of youth. Attending to the myriad and complex needs of youth requires an appropriate staff to student ratio, so that staff are aware of all youth and can maintain safety and prevent critical incidents.

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[53] *See, e.g.*, Brown Decl. ⁋ 62.
[54] *See* ECF No. 97-7; ECF No. 97-8; ECF No. 97-14; Ex. 4 at 23-25; Ex. 2 at 14-16.
[55] Ex. 2 at 20 ("Low staffing levels lead to multiple negative outcomes that prevent the agency from meeting its goals.").
[56] Ex. 4 at 23-25.
[57] Ex. 2 at 14.
[58] ECF No. 82-19 ⁋ 20.
[59] *See supra* ⁋⁋ 29-30.

66. Staffing shortages have manifested themselves in multiple ways based on the materials I have reviewed. For example, incidents of sexual assault reported in a 2021 audit were due to insufficient staff supervision and coverage, resulting in staff not having line-of-sight supervision.[60]

67. Other incidents of harm to youth due to not having line-of-sight supervision are detailed in the U.S. Department of Justice's investigation of another DJJ facility, the Broad River Road Complex ("BRRC").[61] Because of the lack of staff at BRRC to provide oversight to youth, the DOJ "identified multiple instances where youth harmed other youth in this supervision gap."[62] One incident involved two youth following another youth into a shower where they assaulted him. The officer did not reach the shower until it was too late and the "youth's towel was filled with blood."[63]

68. In my experience, staff shortages also contribute to staff's inability to keep to the daily schedule, including getting youth to school, treatment activities, and recreational programs.

69. At DJJ, recreational activities, which are integral to child development, are often cancelled because of the lack of staffing.[64] Children are not allowed out of their unit unless accompanied by a staff member. Because there are insufficient staff members to monitor the youth outside and supervise the ones who remain indoors, children get "very limited time outside" of their cell.[65]

70. Moreover, children miss critical medication and treatment due to the lack of staffing. According to one youth advocate, "there are not sufficient nurses to staff the facilities, so there are

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[60] Ex. 2 at 20.
[61] Ex. 6 at 11-12.
[62] Ex. 6 at 11.
[63] Ex. 6 at 11; *see also, e.g.*, Brown Decl. ⁋ 26.
[64] ECF No. 82-18 ⁋⁋ 9, 38.
[65] *Id.*at ⁋ 34; Brown Decl. ⁋ 59.

periods during which no child receives medication. The lack of staff also means that children "don't get medication or medical care when they're supposed to."[66]

71. At DJJ, staff shortages also result in the overutilization and misuse of isolation and room confinement—sometimes for extensive periods, even though DJJ Policy 323 states that isolation is only "a last resort, when measures of protection are not available."[67]

72. In order to ensure that youth and youth group's treatment goals are realized, and in order to maintain and sustain a culture of caring and safety, it is vital that an institution effectively utilize staff resources to adhere to recommended staffing ratios; leverage staff experience and capacity; and develop and maintain a viable plan to address staff shortages and staffing during a crisis.

73. These elements are also necessary to create program structures that support staff to work as a team and remain accountable. In my professional opinion and experience, unaddressed staff shortages also contribute to staff fatigue, ability to maintain awareness, burn- out, and turnover.

74. Multiple sources conclude that DJJ facilities are not sufficiently staffed, and based on my knowledge and experience, I agree with that conclusion.

TRAINING

75. Effective staff training, coaching, on-the-job training, and follow-up is the "arm" of leadership and management. These are necessary for a juvenile justice system to shift from being punitive to rehabilitative.

76. Training and coaching, when done well, are the mechanisms by which staff acquire the skills necessary to support young people's development, skills acquisition, and ability to address

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[66] *Id.* at ⁋ 9.

[67] Application of the PREA Standards, State of South Carolina Department of Juvenile Justice: Policy and Procedures, 5 (May 6, 2021).

conflicts and problem situations as they occur. Training and coaching that focus on building positive relationships with youth and support non-punitive methods of shaping behavior teach staff how to engage, guide, and support young people. "The effectiveness of child-serving programs, practices, and policies is determined first and foremost by whether they strengthen or weaken developmental relationships…. When developmental relationships are prevalent, development is promoted, and when this type of relationship is not available or diluted, interventions show limited effects."[68] The ability to foster positive, healthy relationships with youth impacts staff's ability to de-escalate conflict and decrease violence.

77. It has been my experience that in-class training is not sufficient to build staff skills. Effective training also requires observation of experienced staff, on-the-job coaching, access to supervisors, mentors, and trainers, and a focus on efficacy in implementing the training. When these components are not in place, the competency and capacity to build a physically and emotionally safe environment can be compromised. During my tenure, Missouri Division staff were trained in positive youth development approaches and practices, de-escalation training, group dynamics, professional boundaries, and facilitating for change. The use of de-escalation techniques and positive youth development strategies were some of the primary tools to reshape youth behavior and prevent violence.

78. DJJ's training does not appear to be sufficient. In particular, according to a 2021 legislative audit, DJJ "has not ensured that security staff assigned to secure facilities are receiving adequate training to maintain a safe environment for juveniles and staff."[69]

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[68] Junlei Li & Megan M. Julian, *Developmental Relationships as the Active Ingredient: A Unifying Working Hypothesis of "What Works" Across Intervention Settings*, 82 Am. J. Orthopsychiatry 157 (2012).

[69] Ex. 2 at 99.

79. The same audit revealed many Juvenile Corrections Officers ("JCOs") did not meet certification and retraining requirements.[70] Each year, JCOs are required to complete courses on topics like trauma awareness, emergency procedures, and other topics integral to their job. However, the audit found that the percentage of JCOs who met these recertification requirements ranged from 60% at Coastal Evaluation Center ("CEC") to only 14% at BRRC.[71] The 2017 General Assembly Legislative Audit report concluded that DJJ staff were "unfamiliar with basic security procedures."[72]

80. These reports make clear, in my opinion, that DJJ staff are inadequately trained to create conditions of a physically and emotionally safe rehabilitative environment.

ISOLATION

81. Materials I have reviewed show that DJJ has used isolation as both punishment and purportedly for safety purposes.[73] Independent audits[74] and individual accounts[75] indicate that DJJ uses isolation even for minor infractions, and for very lengthy periods of time.[76]

82. Further, DJJ's own records show that it uses isolation excessively for inappropriate reasons. For example, DJJ continues to use isolation as a punishment for misbehavior.[77] Other records show prolonged isolation for no stated reason at all: in February 2023, MEC alone reported isolations of children for 3, 6, 7, and 9 days, all for "unknown" reasons.[78] Further, DJJ's own records show copious use of isolation as a tool to compensate for its understaffing issues.[79] In February 2023,

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[70] *Id.*
[71] *Id.*
[72] Ex. 1 at 27.
[73] *See* Ex. 6 at 14 (DJJ "uses isolation mainly as a tool to punish youth and to enforce compliance with its rules.").
[74] "[A] large number of youth were isolated for minor misbehaviors that posed no threat to safety. . . meaning youth were being isolated for conduct that does not create a risk of harm to the youth or others." Ex. 6 at 14; Ex. 8 at 13.
[75] *See* Brown Decl. ⁋⁋ 58-80; ECF No. 82-7 ⁋⁋ 35-36; ECF No. 82-18 ⁋ 32-34.
[76] *See, e.g.*, Brown Decl. ⁋ 25 ("Child 8 wrote a grievance about other children in his pod not liking him and was put in isolation for about a month.")
[77] ECF No. 97-10.
[78] ECF No. 97-12.
[79] Brown Decl. ⁋ 61 ("Children at JDC routinely experience isolation due to overcrowding.").

across its facilities, DJJ recorded over 170 instances of the use of isolation to enforce an "early curfew."[80]

83. I agree with the legislative audits and Department of Justice's conclusions that DJJ's practices are overly restrictive and punitive.[81]

84. Based on the materials I have reviewed, it is my opinion that DJJ's excessive use of isolation, as well as the conditions of confinement in isolation, fall below the widely accepted professional standards and practices in the field.

85. In the past several decades, there has been a growing consensus and understanding that adult correctional tactics, and punitive and coercive practices in general, are ineffective and harmful in the treatment of young people in the juvenile justice system.[82]

86. In my experience, punitive practices also contribute to increased acting out and violence. The effects of the use of such punitive practices in juvenile justice systems are evident at DJJ.[83]

87. Based on my experience and knowledge in the field, punitive practices and interventions, such as inappropriate isolation, have not been shown to improve safety for youth and staff compared to positive youth development and rehabilitation-based approaches. For example, the 2015 Council of Juvenile Correctional Administrators Toolkit on Reducing the Use of Isolation

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[80] ECF No. 97-11 at DJJ001190-DJJ001215.

[81] *See* Ex. 6 at 8-10.

[82] "Recent research on adolescent development has underscored important behavioral differences between adults and adolescence with direct bearing on the design and operation of the justice system …" Richard J. Bonnie et al., *Reforming Juvenile Justice: A Developmental Approach*, National Research Council 1 (Nat'l Academies Press, 2013).

[83] For example, a recent Department of Justice investigation found that between July 2018 and May 2019—a less than one-year period—at BRRC, there were "134 fights and 71 assaults that resulted in 99 injuries to youth in a facility with an average daily population of just over 100." Ex. 6 at 9.

states, "research has shown that facilities that minimally use isolation are more safe – fewer injuries to youth and staff, less suicidal behavior and overall violence."[84] I agree with that conclusion.

88. Not only does isolation, or solitary confinement, make youth in facilities such as DJJ less safe, it is widely known to negatively impact youths' mental health, particularly when it is used excessively as it is in DJJ. Negative mental health impacts manifest especially strongly in young people with disabilities.

89. "Solitary confinement—also known as room confinement, seclusion, isolation or segregation—can include physical and social isolation in a cell for 22 to 24 hours a day" and "can lead to depression, anxiety, psychosis and psychological and developmental harm."[85] Moreover, there is a strong association between room confinement and suicide.[86] Accounts from youth advocates relaying experiences of youth with mental health issues who are placed in isolation are consistent with that conclusion.[87]

90. In addition to negatively impacting physical safety and mental health, DJJ's use of isolation is ineffective in supporting behavioral change because it disrupts youth programming and educational services. Isolation's negative impact on youth's access to education and other programming is, once again, confirmed by the individual accounts I have reviewed, where youth, at best, get some worksheets (which, oftentimes are not graded) and go several days or weeks without any in-person instruction.[88]

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[84] Council of Juvenile Correctional Administrators Toolkit: Reducing the Use of Isolation (2015), *available at* https://dcfs.nv.gov/uploadedFiles/dcfsnvgov/content/Programs/JJS/CJCA%20Toolkit%20Reduci ng%20the%20use%20of%20Isolation.pdf.

[85] Anne Teigen & Sarah Brown, *Rethinking Solitary Confinement for Juveniles*, Nat'l Conf. State Legisl., May 2016, *available at* https://www.ncsl.org/research/civil-and-criminal- justice/rethinking-solitary-confinement-for-juveniles.aspx.

[86] Lindsay M. Hayes, *Juvenile Suicide in Confinement: A National Survey*, OJJDP Report, National Center on Institutions and Alternatives vii, ix 2009.

[87] *See* ECF No. 82-7 ⁋ 35-36.

[88] *See* ECF No. 82-7 ⁋ 40; ECF No. 82-18 ⁋ 37; Ex. 5 at 3.

91. Thus, the use of isolation purportedly to protect youth from harm is known to do the exact opposite,[89] and in my opinion, DJJ's misuse of isolation harms youth. Formal DJJ policy appears to acknowledge the limitations and risks of isolation, stating that isolation is to be used only as a "last resort."[90] Even by the terms of its own policy, DJJ is misusing and overusing isolation.

92. By 2015, many states and jurisdictions had significantly limited or eliminated entirely the use of isolation,[91] and that trend has continued through today.[92] Those jurisdictions that have revised their policies on isolation (and successfully implemented those revised policies) have seen positive results.[93]

93. Indeed, there is widespread national support for eliminating the use of isolation in juvenile justice programs. The Center for Juvenile Justice Reform ("CJJR") at Georgetown University has created a certificate program that trains agencies in best practices related to the elimination of solitary confinement. CJJR has partnered with the Center for Children's Law and Policy, the Justice Policy Institute, the Council of Juvenile Justice Administrators, and Arnold Ventures to provide this program. This program builds on the "Stop Solitary for Kids" campaign to end the isolation of youth on the national level. The Council for Juvenile Justice Administrators' Code of Practice also recommends "reducing or eliminating the need for the use of isolation as a safety response technique."[94]

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[89] "More than half of all suicides in juvenile facilities occurred while young people were held in isolation." Ex. 3 at 22-23.

[90] *See* Application of the PREA Standards, *supra* note 57, at 5.

[91] *See* Council of Juvenile Correctional Administrators Toolkit, *supra* note 2.

[92] *See, e.g.*, *State and Local Action*, Stop the Solitary For Kids, *available at* https://stopsolitaryforkids.org/state-or-local-policies-and-bans/ (documenting state and local movements in multiple states to end the use of solitary confinement for children).

[93] *See* Council of Juvenile Correctional Administrators Toolkit, *supra* note 2 ("Indiana DYS . . . reduced the use of isolation with positive outcomes as a result," *id.* at 9").

[94] *Code of Practice for Harm and Violence Prevention and Comprehensive Intervention Strategies for Juvenile Justice Systems*, Council of Juvenile Justice Administrators (2019), *available at* https://www.cjja.net/wp-content/uploads/2022/04/CJJA-Position-Paper-Code-of- Practice.pdf.

94. During my tenure with the DYS, we did not employ any form of isolation as a general practice, nor did we utilize isolation rooms. Instead, our default practice was the effective use of de-escalation techniques. These included conflict resolution, youth group and staff discussion and problem solving, and work with individual and/or family counselors. We also utilized Dialectical Behavior Therapy ("DBT") techniques, which are a type of cognitive behavioral therapy designed to help regulate emotions and are particularly effective for at-risk youth.[95] Finally, as noted, we placed a longer-term emphasis on a positive youth development framework in order to effectively manage youth behavior.

95. In the limited circumstances where it was necessary to separate youth from other youth to prevent physical harm to self or others, staff physically remained with the separated youth at all times, and the youth was closely monitored. Stringent accountability measures were put in place to ensure youth and staff's safety and ensure minimal disruption of programming and educational services for the youth. These included the notification of supervisors and parents, the use of incident reports, planning for staffing, and planning for returning youth to their group and regular programming. In addition, debriefings were held promptly with leadership and staff to discuss critical incidents, ensure accountability, identify the needs of staff and young people to move forward, and determine what steps needed to be implemented to prevent future similar incidents that would necessitate separation.

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[95] Joan Rosenbaum Asarnow et al., *Dialectical Behavior Therapy for Suicidal Self-Harming Youth: Emotion Regulation, Mechanisms, and Mediators*, 60 J. Am. Acad. Child Adolesc. Psychiatry 1105 (2021). "Dialectical behavior therapy (DBT) has emerged as a promising treatment for this high-risk population. With adolescents, this multi-component treatment includes individual psychotherapy, multi−family group skills training, availability of telephone coaching 24 hours daily, and therapist consultation teams . . . DBT aims to strengthen skills that lead to improved emotion regulation, as difficulties in emotion regulation are viewed as a driver of suicidal and self-harm behaviors, which are viewed as attempts to regulate intense and/or painful emotions."

USE OF EXCESSIVE FORCE

96. In my experience, the use of excessive force with youth creates an atmosphere of distrust, increases the likelihood of injuries, can re-traumatize youth, and creates an unhealthy culture for youth to live and staff to work.

97. I have reviewed several individual accounts showing excessive use of force at DJJ that resulted in injury and emotional harm. These include lack of staff intervention in instances of youth-on-youth violence, as well as incidents of violence perpetrated directly by staff.

98. In addition to instances where staff purposefully instigate violence with and among youth,[96] I have reviewed reports that DJJ has increased its use of tasers and pepper spray, not only in response to an uptick in facility-wide riots, but also during regular operations.[97]

99. In my opinion, such use of excessive force and neglect are harmful, violate professional boundaries, and are counter to accepted professional standards. The 2019 CJJA position paper entitled *Code of Practice for Harm and Violence Prevention and Comprehensive Intervention Strategies for Juvenile Justice Systems*, offers what I believe is useful and effective guidance for juvenile justice administrators:

a. Service organizations must actively pursue the reduction of the use of restrictive interventions through a variety of training and skill development programs that focus on awareness, early intervention and de-escalation skills/techniques;

b. When restrictive interventions are employed, they should only be used to prevent an imminent risk of injury to someone and be discontinued when that risk is diminished, and safety is established;

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[96] *See, e.g.*, Ex. 8 at 4; Ex. 6 at 10-11; ECF No. 82-7 ⁋⁋ 26-28; ECF No. 82-18 ⁋ 25.
[97] *See* ECF No. 82-19 ⁋⁋ 6-7; ECF No. 117 ⁋ 112.

c. When restrictive interventions are necessary, they should be done in the least restrictive manner possible that can address the presenting dangerous behavior;

d. When restrictive interventions are necessary, data and debriefing regarding these incidents need the inclusion of restorative practices and focus on preventing their reoccurrence.[98]

100. In my opinion, DJJ's use of isolation and excessive use of force to control behavior harms youth. Evidence has shown safe program cultures are not built around such practices to control behavior, but are instead, as I discuss above, built around positive youth development and an emphasis on rehabilitation.[99] The methods that DJJ employs not only have negative physical, mental, and social development impacts on youth, they hinder youth engagement in positive programming, treatment, and educational services that are critical to any developing young person's physical, mental, and emotional growth.

CONCLUSION

101. Youth in juvenile justice programs benefit and enjoy positive outcomes when they have access to services and treatment centered around positive youth development, when their basic treatment and educational needs are being met, when all the adults in the system believe in the youth's strengths and ability to change, and when staff capacity needs are met. When those factors are absent it can result in physical and mental harm to youth, and drive up recidivism.[100]

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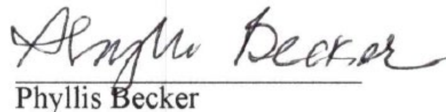
[98] *See Code of Practice, supra* note 95.

[99] "[D]eterrence-oriented programs that focus on discipline, surveillance, or threat of punitive consequences (e.g., prison visitation Scared Straight–type programs, boot camps, and intensive probation supervision) on average have no effect on recidivism and may actually increase it." Mark W. Lipsey et al., *Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice*, Center for Juvenile Justice Reform, 12 (2010), *available at* https://njjn.org/uploads/digital-library/CJJR_Lipsey_Improving-Effectiveness-of- Juvenile-Justice_2010.pdf.

[100] "[T]herapeutic programs oriented toward facilitating constructive behavior change have shown very positive effects—even for serious offenders." *Id.*

102. Based on my review of the materials provided to me by counsel, together with my decades of experience in juvenile justice and literature from other recognized authorities in the field, I believe that DJJ does not meet the professional standards applicable to juvenile justice organizations at least because it (1) fails to provide environments where youth's basic needs for physical safety, nutrition, and education are met, (2) fails to maintain adequately trained staff in adequate numbers, (3) follows outdated corrections-/prison-style models of juvenile detention centers rather than demonstrably more effective positive youth development-focused models, and (4) misuses and overuses isolation despite the fact that isolation, particularly when used to the extent that the materials I reviewed suggests, causes significant and lasting mental and physical harm to youth and actually makes facilities less safe.

Date: October 26, 2023



Phyllis Becker

Appendix A

Phyllis Becker

PEB Consulting, LLC | Kansas City, MO 64110 | 816.914.1032 | pebecker@swbell.net

Professional Summary

Results-oriented human services leader with broad experience in overseeing, developing, and optimizing programs in juvenile justice reform and work with vulnerable youth and families. Engaging facilitator and skilled analyst adept at reviewing initiatives to ensure that available services align to organizational values and achieve intended results. A proactive team player with an aptitude for motivating diverse teams of project stakeholders to work together to create action plans that make a positive difference in the lives of people in the greater community.

Areas of Expertise

- Workshop Facilitation
- Technical Support
- Collective Inquiry
- Stakeholder Communication
- Project Management
- Evaluation Tools
- Continuous Improvement
- Community Engagement
- Juvenile Justice Reform
- Leadership Development
- Implementation Fidelity
- Team Building & Development

Current Consultancy Work

FULL FRAME INITIATIVE (FFI) Senior Fellow, Current
Partner with organizations, systems and communities across the country to shift focus from fixing problems to fostering wellbeing and equity.

UNIVERSITY OF MISSOURI KANSAS CITY (UMKC), Current
Midwest for Nonprofit Leadership (MCNL) Senior Fellow
Partner with UMKC MCNL to teach programs and provide organization development support for partners and clients in leadership development, and optimal organizational practices.
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COUNCIL OF JUVENILE JUSTICE ADMINISTRATORS, CJJA – 2019 – Present
Leadership Coaching
Provide coaching to Juvenile Justice leaders on a new vision for re-entry for youth exiting juvenile justice programs. This is a part of CJJA Superintend training.

Professional Experience

MISSOURI DIVISION OF YOUTH SERVICES, Kansas City, MO

Director, 2014 – 2019

Provided leadership for the state agency charged with delivering services to youth committed to custody of DYS. Oversaw operations of 30 residential programs and seven-day treatment programs while managing a budget of $61M+ and a staff of 12K+. Worked closely with Department of Social Services, the Missouri's General Assembly, and statewide advisory board to optimize service, programs, and results. Sustained open lines of communication with community stakeholders to identify opportunities for collaboration, engagement, and reform.

Key Accomplishments:

- Oversaw the increased academic achievement of program participants by 6% over course of tenure.
- Expanded and strengthened family involvement and an evidenced-based family strengthening and engagement program (FAST) that improved parental/guardian skills, connections, and communication.
- Oversaw and contributed to the improvement of youth law-abiding rates from a 65% rate in 2010 to a rate of 72% of youth being law-abiding citizens three years after discharge (2018).

- Ensured PREA standards for juvenile programs were maintained since post-establishment by the federal government in 2013.
- Strengthened the Missouri Approach that organizations throughout the nation and internationally came to observe.
- Selected to serve as a subject matter expert (SME) in the field of juvenile justice on a national level including the Georgetown University's Public Policy Institute, Youth In Custody Certificate Program and for the masters programs with the Harvard Harry Kahn Senior Lecturer in Social Policy.
- Featured as a panelist at meetings hosted by the Council of Juvenile Correctional Administrators, the Department of Justice and others.

Deputy Director, 2009 – 2014

Promoted to position to oversee statewide professional development, supervise the southwest region, and co-facilitate the redesign of the division's treatment planning process to enable Medicaid compliance, optimal treatment plans, effective transition services, and improve youth outcomes.

Key Accomplishments:

- Co- created and provided oversight of the redesign and development of training curriculum and materials to address youths needs, build resilience, and support youth and family wellbeing.
- Strengthened best practices in treatment programs, empowered leadership to optimize staffing coverage to reduce critical incidents and significantly decreased youth detention stays in the southwest region.
- Created informative and engaging presentation and tools that helped visitors to understand the Missouri Approach

Coordinator of Leadership Development & Quality Improvement, 2007 – 2009

Identified standards and co-developed quality improvement process using best practices. Coordinated opportunities to build leadership capacity, enhance planning processes, and deliver statewide professional development. Coordinated and co-created an executive and regional leadership track.

Consultancy Work

COUNCIL OF JUVENILE JUSTICE ADMINISTRATORS, CJJA – 2019 – 2021
Subject Matter Expert (SME)
Provided capacity building as a subject matter expert for CJJA and Georgetown's Youth In Custody Practice Model with Wisconsin state juvenile justice system on optimal practices in moving from correctional to developmental approaches with young people.

Midwest for Nonprofit Leadership (MCNL) Senior Fellow, 2000 – 2007

Coordinated capacity building work for the Midwest Community Leadership Resource Center. Oversaw planning and delivering of comprehensive, integrated services at the neighborhood and local community levels. Helped to identify partner goals and needs to build connections between partner resources and assets to better meet customer needs.

MISSOURI YOUTH SERVICES INSTITUTE (MYSI), 2005 - 2007

Senior Training Consultant
Facilitated all aspects of MYSI staff development / training initiatives with client organizations. Worked with local, state and national juvenile justice systems and programs to reform organizations and create effective and humane systems for youth and families.

COMMUNITIES IN SCHOOLS (CIS), 1995– 2004
Master Trainer/Consultant
Provided training and technical assistance to partners, staff, and local programs through the creation of training curriculum, activities, resource packets and other materials for the delivery of learning sessions in the community schools movement. Developed partnership agreements to support school-linked services.

A-2

Other Work

LOCAL INVESTMENT COMMISSION Committee Executive, , 1993-1995
Staffed and coordinated committees of area business and civic leaders, human services providers, neighborhood organizations and recipients of human services in the areas of child welfare reform and quality services, and neighborhood involvement. Facilitated partnerships and connections between citizens, state agencies and other social serving providers to improve and reform services.

Project Director, Grant Management - Master Trainer Communities in School

Boards, Education, Credentials, Awards

Youth Correction Leaders for Justice (YCLJ)
Serve on the steering committee for YCLJ. Youth Correctional Leaders for Justice unites current and former youth correctional administrators to build a national movement, one that aims to shift systems away from the use of punitive sanctions and incarceration and focus instead on a youth, family, and youth and community-oriented vision of youth justice.

Bachelor of Science in Psychology
Howard University, Washington DC

Professional Training
Adolescent Child Care Package – Results-Based Accountability – Transformational Coaching – Family Counseling

Public Administrator of the Year Award 2017
The Greater Kansas City Chapter of the American Society for Public Administration

Nefertiti Honoree
Members of Societas Docta, Inc., *Honoring African-American women in education, social services, religion, arts, and other fields*

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

SOUTH CAROLINA STATE CONFERENCE OF NAACP; DISABILITY RIGHTS OF SOUTH CAROLINA; JUSTICE 360; *Plaintiffs*, v. SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE; EDEN HENDRICK, individually and in her official capacity as executive director of the South Carolina Department of Juvenile Justice; *Defendants*.	Case No.: 0:22-cv-01338-MGL-PJG

THIRD DECLARATION OF LOUIS J. KRAUS, M.D

QUALIFICATIONS

1. I am currently Professor and Chief of Child and Adolescent Psychiatry at Rush University Medical Center in Chicago, Illinois. I am also currently the Psychiatric Director at the Sonia Shankman Orthogenic School, a residential treatment program for children and adolescents in need of support for profound emotional issues; the Founding Director of the Autism Assessment, Research, Treatment and Services Center at Rush University Medical Center; and the Medical Director of the Chicago Metropolitan Easter Seals Therapeutic School, a school providing a continuum of services for children with autism. I also have a private practice where I assess and treat children and adolescents and provide therapy and psychopharmacological services.

2. I have worked with youth in correctional settings for the past 30 years, including for nine years from 1990 to 1999 as the treating psychiatrist at the Illinois Maximum Security Youth Center in Joliet, Illinois. From 2003 to 2004, I was a consultant to the Civil Rights Division of the United States Department of Justice on a Civil Rights of Institutionalized Persons (CRIPA) investigation in Maryland. I also consulted with the American Civil Liberties Union of Illinois in a case challenging conditions in the Cook County Juvenile Temporary Detention Center which resulted in system-wide restructuring of mental health services for youth held in pre-trial detention. I have served as a consultant on various other correctional and juvenile justice matters.

3. I recently worked as an expert on cases in Palm Beach County, Florida, New York, and in several cases in Seattle, Washington.

4. I have been appointed to serve as a monitor in consent decrees involving the reform of juvenile justice systems in Arizona and Illinois, both of which included reform to the use of solitary confinement of youth in those systems. In my role in Illinois, which is currently ongoing, I am assessing and restructuring the mental health programming of the Illinois Department of Juvenile Justice. *See R.J. v. Bishop*, No. 1:12-cv-07289 (N.D. Ill.). In the Arizona case, I assisted the Department of Justice from 2005 to 2008 in restructuring the mental health, medical services, and dental services in two state facilities. *See United States v. Arizona*, No. 2:04-cv-01926-EHC (D. Ariz.).

5. I have also been involved in special education consulting and development of Individualized Education Programs and Plans (IEPs) for the past twenty-seven years. I am currently a consultant on special education issues to over fifteen school districts in Illinois. I typically complete one educational evaluation every week, assist with developing IEPs, and attend

IEP meetings. I have testified regarding special education issues in due process hearings under the Individuals with Disabilities Education Act ("IDEA") as well as in other civil cases.

6. I have authored a number of publications on treatment of youth in correctional settings. I am the primary author of the American Academy of Child and Adolescent Psychiatry's (AACAP) Policy Statement on Solitary Confinement. I assisted in the completion of the American Psychiatric Association policy statement on Solitary Confinement of Youth, I co-edited two monographs on juvenile justice reform for the AACAP, I co-edited a book through Cambridge University Press entitled *The Mental Health Needs of Young Offenders*, and I also edited a book through the Child and Adolescent Psychiatric Clinics of North America entitled *Adjudicated Youth*, published in January 2016. I wrote the Practice Parameter for Child and Adolescent Forensic Evaluations for child and adolescent psychiatry, which was published in the Journal of Child and Adolescent Psychiatry.

7. I have served in a number of professional appointments in my field. From June 2014 to 2015, I served as the chair-elect of the American Medical Association's Council on Science and Public Health, and from 2015 to 2016, I served as chair. From May 2012 to May 2015, I was the chair of the American Psychiatric Association's Council on Children, Adolescents and their Families, which I had served in for 18 years. From October 2000 to October 2015, I was the chair of the AACAP's Juvenile Justice Reform Committee, and from 2011 to 2013, I was chair of the AACAP Assembly.

8. I served on the Board of Directors of the National Commission of Correctional Health Care (NCCHC) from 1997 to 2003. I was appointed chairman of the NCCHC Committee on Juvenile Health Care from 1999 to 2003 and served as vice-chairman of the same committee in 1998.

9. I obtained my medical degree, M.D., from the Chicago Medical School in 1987 and my Bachelor of Science degree, B.S., from Syracuse University in 1983.

10. I attach a copy of my Curriculum Vitae to this report which includes all publications that I have authored in the previous ten years. *See* Appendix A. I also include a list of the cases that I have testified in as an expert at trial or deposition during the past four years. *See* Appendix B.

INVOLVEMENT IN THIS CASE

11. In the present case, I was retained by Jenner & Block LLP on behalf of the South Carolina State Conference for the NAACP, Disability Rights South Carolina, and Justice 360, to perform professional services as an expert in connection with litigation challenging the conditions of confinement for youth at the five secure detention facilities operated by the South Carolina Department of Juvenile Justice (DJJ).

12. My rate of compensation for this case is $350 per hour or $3,000 per full day of work, including deposition and trial testimony.

BASIS OF OPINIONS

13. For the purpose of preparing this declaration, I reviewed a number of documents regarding DJJ's secure detention facilities, including South Carolina Legislative Audit Committee reports from 2017 and 2021, the United States Department of Justice ("DOJ") Notice Regarding Investigation of the DJJ, the declarations of Phyllis Ross, Hannah Freedman, Quanesha Brown Jennifer Coyle, Karen Hamrick, and M. O'Bryan Martin, Plaintiffs' complaint, data on the use of solitary confinement, .

14. In forming my opinions, I also relied on my clinical experience and an extensive review of literature regarding the psychiatric effects of solitary confinement, and cognitive and

behavioral development in adults, adolescents, and youth in correctional settings. The literature I relied on is cited in this opinion.

EXPERT OPINIONS

I. DJJ'S POLICY AND PRACTICE OF USING SOLITARY CONFINEMENT HARMS YOUTH AND DIMINISHES PUBLIC SAFETY

15. DJJ has a policy and practice of subjecting youth in its custody to solitary confinement for a variety of improper purposes including punishment, protective custody, and to manage youth mental health challenges. This practice of solitary confinement harms youth's social, psychological, and emotional development. Consequences include paranoia, anxiety, depression, and suicidal ideation. DJJ's use of solitary confinement also undermines public safety because solitary confinement renders youth more prone to misbehavior and aggression upon their release from confinement.

A. THE DJJ HAS A POLICY AND PRACTICE OF USING SOLITARY CONFINEMENT FOR IMPROPER PURPOSES

16. Although the term "solitary confinement" does not appear in the DJJ's policies, the policy and practice of isolation used by DJJ constitutes "solitary confinement" as the term is commonly used by professional organizations in the field. For example, the American Academy of Child and Adolescent Psychiatry (AACAP) defines solitary confinement as a form of discipline or punishment that places an incarcerated individual "in a locked room or cell with minimal or no contact with people other than staff of the correctional facility."[1] Similarly, the National Commission on Correctional Health Care (NCCHC) defines "segregated youth" or "isolation" as

[1] American Academy of Child & Adolescent Psychiatry, Solitary Confinement of Juvenile Offenders, (April 2012), https://www.aacap.org/aacap/policy statements/2012/solitary confinement of juvenile offenders.aspx

"those isolated from the general population who receive services and activities apart from other youth" and refers to this practice as "solitary confinement."[2]

17. DJJ's use of isolation falls within the AACAP and NCCHC's definitions of solitary confinement. DJJ isolates children for punishment or, ostensibly, to keep children in protective custody safe.[3]

18. DJJ's policy and practice of behavioral confinement isolates children alone, often repeatedly, in a locked cell for undetermined and extended periods of time, with little to no meaningful contact with anyone.[4]

19. At the JDC, children in isolation are placed in 9 feet by 9 feet cells wherein the only furniture is a thin cement mattress, a small desk, and a combined toilet and sink. The cells only have one small window that looks into the unit's common area.[5]

20. At the BRRC, children in isolation were until recently placed in the Laurel Building's Crisis Management Unit (CMU).[6] The CMU consists of 3 units with 8 feet by 8 feet rooms, each with a concrete bed, a thin mattress, and a toilet.[7] Each room has a small window that is painted over.[8] Youth were given food through an envelope slot in the door.[9] CMU cells that

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[2] Nat'l Comm'n on Corr. Health Care, Restrictive Housing in Juvenile Correctional Settings, (Feb. 3, 2021), https://www.ncchc.org/restrictive-housing-in-juvenile-correctional-settings

[3] May 20, 2022 Declaration of Phyliss Ross (Ross Declaration I) ¶¶ 38-40.

[4] Ross Declaration ¶¶ 39-44; Declaration of Hannah Freedman (Freedman Declaration) ¶¶ 30-33.

[5] Freedman Declaration ¶ 33.

[6] Ross Declaration I ¶ 41.

[7] United States Department of Justice Notice Regarding Investigation of the DJJ (DOJ Notice) at 6.

[8] *Id.*

[9] *Id.*

were used for youth on suicide watch are similar but with even less furniture.[10] The cells have no sink, bathroom, or bed.[11] The youth would receive a blanket and were told to sleep on the floor in a suicide mock.[12] The Laurel Building remains in use for isolation at BRRC, despite DJJ acknowledging that the building should be vacated.[13]

21. Youth detained in solitary confinement spend 23 hours per day in their cells, during which they have no meaningful contact with any other individual.[14] The children must sleep, eat, pace, defecate, and urinate in their 8 feet by 8 feet rooms.[15] During the one-hour break, youth are purportedly allowed to shower, change, and take care of their hygiene.[16] However, I have reviewed multiple reports of children being denied access to a shower for extended periods of time—days, or even weeks—while in isolation.[17]

22. During isolation, children receive no recreation time and there is no large motor activity.[18] The children also do not participate in school, and they receive few, if any, mental health services.[19]

23. DJJ staff use solitary confinement to punish youth for minor and, at times, vague infractions such as showing disrespect, masturbating, not complying with officers' directions or

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[10] *Id*. at 16.

[11] *Id*.

[12] *Id*.

[13] Dkt. 97-14 at 4.

[14] DOJ Notice at 16; Freedman Declaration ¶ 30; [FIRST] Declaration of Quanesha Brown (Brown Declaration I) ¶ 38.

[15] DOJ Notice at 16; Freedman Declaration ¶ 30

[16] *Id*.

[17] Oct. 26, 2023 Declaration of Quanesha Brown (Brown Declaration II) ¶¶ 67–71, 75–76.

[18] *Id*.

[19] DOJ Notice at 16; Freedman Declaration ¶¶ 30-31, 35; Ross Declaration I ¶ 44; Brown Declaration I ¶ 30.

using profanity.[20] Youth have been placed in solitary confinement for playing cards, being unable to urinate to complete a drug test and for tattooing.[21] Many of the youth that are placed in isolation have not participated in any dangerous behaviors and are placed in isolation solely due to inadequate staffing.[22]

24. DJJ clearly overuses isolation despite any purported initiatives to reduce its use. As described in more detail below, the medical consensus is that youth should not be placed in solitary confinement for *any* period of time unless there are exceptional circumstances which render the solitary confinement necessary for a youth to receive medical or mental health treatment. In such limited instances, often referred to as "time outs," the children should be speaking with mental health and security staff with the aim to help them understand why they were placed in solitary confinement, to stabilize them, and then to reintegrate them back into the general population. By contrast, there is no justification for placing a child, who more likely than not has an underlying mental health issue, in solitary confinement. Based on the information I have reviewed, it is clear that DJJ does not use solitary confinement in a limited scope, and its use of solitary confinement seems to stem in part from its inability to maintain a safe general population for youth.

25. For example, a table prepared by the DOJ in February of 2020, showed that youth were kept in isolation at BRRC for hundreds of days over the course of time they were detained between 2015 and 2017.[23] There were numerous youth at BRRC that were placed in isolation dozens of times while in custody. For example, over the span of two years, one child was placed

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[20] DOJ Notice at 14; Brown Declaration I ¶ 29.

[21] DOJ Notice at 17; Brown Declaration I ¶¶ 30-32; Ross Declaration II ¶ 34.

[22] DOJ Notice at 16-17.

[23] DOJ Notice at 16.

in isolation 24 times and spent a total of 301 days in isolation.[24] This was 41% of his time in custody. DJJ used isolation an average of around 94 times each month at BRRC alone.[25]

26. Moreover, DJJ has continued to use solitary confinement extensively since the DOJ report, including by forcing children to stay in their cells for days and weeks at a time.[26] For example, one child was placed in solitary confinement for half of the three years that he was detained at JDC in 2021.[27] This child was only allowed to leave his cell for one hour per day and he did not receive any educational materials. Similarly, another child has been detained off and on at JDC for two years.[28] During this time, the child was frequently placed in solitary confinement, usually for one to two weeks at a time.[29] The use of isolation does not appear to have changed materially over the past year despite, for example, DJJ's purported efforts to reduce the use of isolation at BRRC through the "S.T.A.R." program.[30] While, on its face, the S.T.A.R. program's documentation might suggest positive changes in connection with isolation,[31] in practice, DJJ's use of isolation remains frequent.[32] I have seen reports of children being in isolation for weeks at a time from this year.[33]

27. Data and first-hand accounts I have reviewed since my March 16, 2023 declaration confirms that isolation remains overused in DJJ facilities today. At UEC in February 2023,

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[24] *Id.*

[25] *Id.*

[26] Ross Declaration I ¶¶ 38-43.

[27] Freedman Declaration ¶ 36

[28] Freedman Declaration ¶ 37

[29] *Id.*

[30] Brown Declaration I ¶ 39.

[31] *Id.* Ex. A.

[32] *Id.* ¶ 39. March 16, 2023 Declaration of Phyllis Ross (Ross Declaration II) ¶ 30-34.

[33] Brown Declaration I ¶¶ 30, 36, 38.

isolation was used in fourteen separate instances, with the time in isolation ranging from a minimum of two days, to a maximum of over one month.[34] The reporting indicates that the purported reason for isolation in all but once instance was for violence-related reasons, though in my experience and for the reasons discussed below, days or weeks long isolation serves no purpose and is counterproductive.[35] The reporting from MEC is similar, where isolation was used 15 times, 12 of which were for over 24 hours and many were for a week or more.[36] The documented reason for many of these prolonged usas of isolation is"Other" and "Unknown," which, in my view, increases the likelihood that those uses of isolation in particular were for reasons other than as an absolute last resort.[37]

28. In addition to DJJ's formal reporting on isolation, I have reviewed multiple informal reports of children spending weeks, if not months, at a time in isolation.[38] And beyond those instances of isolation, I have reviewed reports of *de facto* isolation from children, where staff lock children in their dorms for extended periods of time, simply because of inadequate staffing or overcrowding.[39] They are told to go into their rooms for a short time but end up spending the entire night instead.[40]

B. DJJ'S USE OF SOLITARY CONFINEMENT PUTS YOUTH AT A SUBSTANTIAL RISK OF SERIOUS HARM

29. It is my opinion, within a reasonable degree of certainty, that all youth subjected to solitary confinement by DJJ as described above are at substantial risk of serious harm to their social, psychological, and emotional development.

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[34] Dkt. 97-10.
[35] *Id.*
[36] Dkt. 97-12.
[37] *Id.*
[38] Brown Declaration II ¶¶ 58–78.
[39] *Id.* ¶¶ 59–61.
[40] *Id.*

1. Youth in Detention Are, As a Group, Extremely Vulnerable to the Risk of Serious Harm from Solitary Confinement

30. Solitary confinement is uniquely dangerous for youth. Youth are still developing socially, psychologically, and neurologically, which makes them especially susceptible to psychological harm when they are isolated from other people. Youth also benefit from regular routines including school, social interaction, and activities—such as sports—that involve gross motor activity. Research discussed herein suggests that removing youth from their regular routines, school, activities involving large motor activity, mental health treatment, and opportunities for interaction with peers can result in significant pathology.

31. Solitary confinement negatively impacts youth by perpetuating, worsening, or precipitating mental health concerns, including but not limited to post-traumatic stress disorders, psychosis, anxiety disorders, major depression, hypervigilance, agitation, general lack of trust, suicidal ideation, suicidal intent, self-mutilation, and suicidal behavior.[41] Solitary confinement has a high likelihood of bringing on acute symptomatology, even if the symptomatology is not already present in the individual. For the estimated 60 percent[42] of youth in correctional settings who already have this symptomatology, the incidence of presenting it again after solitary confinement is much higher.[43]

32. In my experience, youth that are arbitrarily placed in solitary confinement as a punishment also exhibit fear, dissociative episodes, and anxiety, as well as increased levels of

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[41] *See* Lindsay Hayes, Juvenile Suicide in Confinement, A National Survey, Office of Juvenile Justice Delinquency and Prevention, (2009),

[42] *See* Abram, *supra* note 5; Nat'l Comm'n on Corr. Health Care, Position Statement, *Solitary Confinement (Isolation)*, (Apr. 2016), https://www.ncchc.org/filebin/Positions/Solitary-Confinement-Isolation.pdf

[43] Linda A. Teplin, et al., Psychiatric Disorders in Youth in Juvenile Detention, 59 Archives Gen. Psychiatry 1133, 1133-43 (2002).

hopelessness, paranoia, and lack of trust in others. Even when these youth are not in solitary confinement, they experience anxiety and fear as they are unable to anticipate which behaviors will result in them being placed in solitary confinement again. Furthermore, the open-ended and repeated solitary confinement experienced by many of the youth in detention exacerbates mental health conditions, as they can perceive they are subjected to seemingly endless amounts of time in isolation. Children experience time differently – a day to a child feels longer than a day to an adult – and have a greater need for social stimulation.[44]

33. There is a high correlation between juvenile suicide and the use of solitary confinement in detention, even when isolation is used for short periods of time.[45] A national study by DOJ's Office of Juvenile Justice and Prevention found that half of youth who committed suicide in juvenile facilities were in isolation at the time of their death and more than half of young people who committed suicide in detention had a history of being held in isolation. Of the children held in detention centers, 40% of those suicides occurred within the first 72 hours. This evidence demonstrates a substantial risk of serious harm that can be fatal for children exposed to solitary confinement. Because solitary confinement can be immensely traumatizing for children even in short periods, it creates this risk of serious and fatal harm when used for short periods as well.

34. Solitary confinement can also cause long-term harm, including chronic conditions like depression and anxiety, which can persist or recur even after children are released from solitary confinement.[46] These consequences can be deadly—depression is generally associated with a 10-15% mortality rate for suicide, and solitary confinement increases the risk of depression and

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[44] Nat'l Comm'n on Corr. Health Care, Position Statement

[45] Lindsay Hayes, *Juvenile Suicide in Confinement, A National Survey*, *Office of Juvenile Justice Delinquency and Prevention*, (2009), at vii., https://www.ncjrs.gov/pdffiles1/ojjdp/213691.pdf

[46] *See* Nat'l Comm'n on Corr. Health Care, Position Statement

suicide substantially compared to the general population.[47] In addition to depression and anxiety, solitary confinement can cause long-standing harmful symptoms including low self-esteem, vegetative features, and hopelessness.[48]

35. Solitary confinement of youth can also lead to long-term trust issues with adults, including paranoia, anger, and hatred directed at others.[49] This makes it difficult to create a trusting, therapeutic relationship. It can also lead to noncompliance with treatment in the future, making it hard for people to get the help that they need to address mental health concerns resulting from solitary confinement.

36. Medical research on adolescent brains explains why youth are more vulnerable to the risk of long-term harm from solitary confinement.[50] In the adolescent and young adult brain,

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[47] *See* Lindsay Hayes, Juvenile Suicide in Confinement, A National Survey, Office of Juvenile Justice Delinquency and Prevention, (2009), at vii., https://www.ncjrs.gov/pdffiles1/ojjdp/213691.pdf; *see also* Stuart Grassian, Psychopathological Effects of Solitary Confinement, 140 AM. J. PSYCHIATRY 1450 (1983), https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1362&context=law journal law policy

[48] *See* Andrew Clark, Juvenile Solitary Confinement as a Form of Child Abuse, The Journal of the American Academy of Psychiatry and the Law, 45 (3) 350-357 (2017), http://jaapl.org/content/45/3/350.long; *see also* Stuart Grassian, Psychiatric Effects of Solitary Confinement, 22 WASH. U. J. L. & POL'Y 325 (2006),

https://openscholarship.wustl.edu/law journal law policy/vol22/iss1/24; Stuart Grassian, Psychopathological Effects of Solitary Confinement, 140 AM. J. PSYCHIATRY 1450 (1983), https://www.nmlegis.gov/handouts/CCJ%20102716%20Item%203%20Dr%20Grassian%20Psychopathol ogical%20Effects%20of%20Solitary%20Confinement.pdf

[49] *See* Nat'l Comm'n on Corr. Health Care, Position Statement

[50] There is no research to show that the negative impact of the developing brain is any different in 17 year olds as compared to 18, 19, or 20 year olds. *See* Sara B. Johnson, et al., Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy, J Adolesc. Health. 2009 September , 45(3): 216– 221, doi:10.1016/j.jadohealth.2009.05.016;; see also American Psychological Association, Brain research advances help elucidate teen behavior, July/August 2004, https://www.apa.org/monitor/julaug04/brain

the connections between the frontal lobe and the mid-brain have not fully developed.[51] The mid-brain, which is the part of the brain responsible for the flight-or-fight response, is firing away. If an adolescent is traumatized in certain ways, it can cause permanent changes in brain development and create a higher risk of developing permanent psychiatric symptoms like paranoia and anxiety.[52] This trauma in the developing brain can likely lead to changes in brain structure for these youth.[53] Trauma, such as what is induced by solitary confinement, has a high likelihood of causing these permanent changes.[54]

37. There is a disproportionately high incidence of preexisting mental illness among children involved in the juvenile justice system.[55] The prevalence rate for mental illness for these youth is estimated to be between 60-75%.[56] Youth in detention are more likely than the general population to have not only diagnosed mental illness, but also learning disabilities and a high incidence of trauma.[57] Females are identified as having an even higher incidence of mental illness and are at increased risk for victimization.[58]

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[51] Jay N. Giedd, et al., Quantitative magnetic resonance imaging of human brain development: ages 4-18, 6 Cerebral cortex 551, 551-59, (1996); Jay N. Giedd, et al., Brain development during childhood and adolescence: a longitudinal MRI study, 2 Nature Neuroscience 861, 861-63 (1999).

[52] Child Welfare Information Gateway, Understanding the Effects of Maltreatment on Brain Development, (2015), https://www.childwelfare.gov/pubs/issue-briefs/brain-development/

[53] *Id.*

[54] Nat'l Comm'n on Corr. Health Care, Position Statement

[55] Linda A. Teplin, et al., Psychiatric Disorders in Youth in Juvenile Detention, 59 Archives Gen. Psychiatry 1133, 1133-43 (2002); Karen M. Abram, Linda A. Teplin, et al., Posttraumatic Stress Disorder and Trauma in Youth in Juvenile Detention, 61 Archives Gen. Psychiatry 403, 403-10 (2004).

[56] *See* Teplin, supra note 5.

[57] *Id.*

[58] *Id.*

38. There is a clear medical consensus that, for youth with mental illness, the risk of serious harm from solitary confinement is especially great.[59] People with mental illnesses already have deficits in their brain structure or biochemistry. They have weakened defensive mechanisms, making them less resilient than the general population. They are more susceptible to significant and long-lasting trauma from social isolation than those without a mental illness.[60]

2. Youth at DJJ Facilities Are Experiencing Serious Harm and Are Exposed to a Substantial Risk of Serious Harm Due to DJJ's Use of Solitary Confinement

39. Children at DJJ who are subjected to solitary confinement suffer from, or are at substantial risk of suffering from, the types of serious harm noted above.

40. As discussed, DJJ's statewide policy and practice is to isolate children in solitary confinement—often the same child repeatedly, for days at a time—in locked cells alone. These children are deprived of meaningful social interaction, environmental stimulation, outdoor recreation, educational instruction, access to personal property, and adequate sanitation.

41. The children who have been placed in solitary confinement by DJJ, particularly those who are detained there for an extended period of time, are at a high risk of developing trauma-based pathology.

42. Although an in-person psychiatric evaluation is necessary for me to reach conclusions with medical certainty, it is my opinion that the prolonged and repeated use of solitary confinement on youth in DJJ custody is highly likely to cause them to suffer from long-term

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[59] *See* Nat'l Comm'n on Corr. Health Care, Position Statement, Solitary Confinement (Isolation), (Apr. 2016), https://www.ncchc.org/filebin/Positions/Solitary-Confinement-Isolation.pdf ; see also American Psychological Association, Position Statement on Solitary Confinement (Restricted Housing) of Juveniles, (May 2018), https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents- Policies/Policies/Position-2018-Solitary-Confinement-Restricted-Housing-of-Juveniles.pdf

[60] *Id*.

symptomology. For example, one child (discussed above) spent over 75 weeks in solitary confinement during the three years that he was detained at JDC.[61] While in isolation, this child reported that his mood was unstable.[62] He also reported having difficulty sleeping, and feeling paranoid and anxious.[63] This child continues to suffer these symptoms even after leaving the JDC.[64]

43. Another child (also discussed above) has spent much of his two years at JDC in isolation for one to two weeks at a time.[65] This child reports suffering from ongoing anxiety and other mental health symptoms from spending so much of his time isolated from others.[66]

44. Reports of children in isolation engaging in self-harm while in isolation continue to emerge from DJJ facilities.[67]

45. It is my opinion that the prolonged and repeated use of solitary confinement on these two children is highly likely to have led to the presentation of their lingering symptoms.

46. DJJ places youth with known mental illnesses into solitary confinement[68], which worsens their mental health and results in increased thoughts of suicide and self-harming behavior. DJJ has no documentation showing that the use of solitary confinement results in improving the behavioral struggles of these youth.

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[61] Freedman Declaration ¶ 36.

[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] Freedman Declaration ¶ 37.

[66] *Id.*

[67] Brown Declaration I ¶ 34; Ross Declaration II ¶ 39.

[68] DOJ Notice at 15; Freedman Declaration ¶ 35.

47. DJJ also places youth that are on suicide watch in solitary confinement.[69] This is ineffective for the same reasons—solitary confinement exacerbates mental illness and worsens rather than mitigates suicidality. DJJ will sometimes require youth to sign a contract saying that they will not kill themselves.[70] However, research has shown that suicide contracts are ineffective in decreasing the risk of suicide.[71]

48. The inefficacy of DJJ's use of solitary confinement for suicidal youth is demonstrated by the fact that at least three children tried to hang themselves by tying sheets around their necks while in solitary confinement at BRRC.[72] None of these youth had follow up psychiatric care or (more appropriately) acute interventions at the time.[73]

C. DJJ'S USE OF SOLITARY CONFINEMENT VIOLATES THE CONSENSUS OF PROFESSIONAL ORGANIZATIONS IN THE FIELD

49. Because of the immense psychiatric risks associated with the solitary confinement of youth, a number of health, medical, corrections, and professional organizations have condemned the practice. Accordingly, mental health professionals and courts have formed a consensus that solitary confinement is deeply problematic and that correctional systems must find better ways to manage prisoners.

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[69] DOJ Notice at 15.

[70] DOJ Notice at 16-17.

[71] *See* Andrew Clark, Juvenile Solitary Confinement as a Form of Child Abuse, The Journal of the American Academy of Psychiatry and the Law, 45 (3) 350-357 (2017), http://jaapl.org/content/45/3/350.long; *See*, *also*., Stuart Grassian, Psychiatric Effects of Solitary Confinement, 22 WASH. U. J. L. & POL'Y 325 (2006), https://openscholarship.wustl.edu/law journal law policy/vol22/iss1/24

[72] DOJ Notice at 16.

[73] *Id*.

50. The American Academy of Child and Adolescent Psychiatry opposes the use of solitary confinement for youth in correctional facilities, recognizing the damaging impacts it has on adolescents' developmental vulnerabilities and recognizing that the majority of suicides in juvenile correctional facilities occur when individuals are isolated or in solitary confinement.[74]

51. The National Commission on Correctional Health Care, a major accrediting agency, takes the position that youth should be excluded from solitary confinement.[75]

52. The American Medical Association has called for correctional facilities to halt the isolation of youth in solitary confinement for disciplinary purposes.[76] The American Psychiatric Association has supported this position statement.[77]

53. The United Nations Rules for the Protection of Youth Deprived of their Liberty specifically prohibit the solitary confinement of juvenile offenders.[78]

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[74] See American Academy of Child & Adolescent Psychiatry. Solitary Confinement of Juvenile Offenders, (2012),https://www.aacap.org/aacap/policy statements/2012/solitary confinement of juvenile offenders. aspx#:~:text=Solitary%20confinement%20is%20defined%20as,form%20of%20discipline%20or%20punishment.&text=They%20specifically%20prohibit%20the%20solitary%20confinement%20of%20juvenile%20off enders

[75] *See* Nat'l Comm'n on Corr. Health Care, Position Statement

[76] *See* American Medical Association, Solitary Confinement of Juveniles in Legal Custody H-60.922, https://policysearch.ama-assn.org/policyfinder/detail/solitary%20confinement?uri=%2FAMADoc%2FHOD.xml-0-5016.xml

[77] *See* American Psychiatric Association, *Position Statement on Solitary Confinement*

[78] *See* U.N. Convention on the Rights of the Child, opened for signature Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) ("CRC"); U.N. Guidelines for the Prevention of Juvenile Delinquency, G.A. Res. 45/112, Annex, 45 U.N. GAOR Supp. (No. 49A), U.N. Doc. A/45/49, at 201 (Dec. 14, 1990) ("The Riyadh Guidelines"); U.N. Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res. 45/113, Annex, 45 U.N. GAOR Supp. (No. 49A), U.N. Doc. A/45/49, ¶ 67 (Dec. 14, 1990) ("The Beijing Rules").

54. The American Psychiatric Association position is that solitary confinement of youth should be avoided.[79]

55. The World Health Organization has recognized that the United Nations and other international treaties call for a complete ban on solitary confinement for youth and young people, noting the particular vulnerabilities of children, who are developing physically, mentally and socially, and the high rates of mental illness and suicide among young people.[80]

56. The Council of Juvenile Correctional Administrators opposes the use of solitary confinement for youth based on research that shows that placing detained youth in isolation has "negative public safety consequences, does not reduce violence and likely increases recidivism" and that the practice can cause permanent psychological damage and is highly correlated with suicide.[81]

57. In 2016, DOJ ended the practice of using solitary confinement for youth in all federal prisons because of the growing consensus of the risk of harm for children.[82]

D. DJJ'S USE OF SOLITARY CONFINEMENT DEPRIVES YOUTH WITH DISABILITIES OF SPECIAL EDUCATION AND RELATED SERVICES

58. As discussed, research demonstrates that 60 to 70 percent of youth within detention facilities have an underlying mental illness. In addition to significant mental health issues, these

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[79] *See* American Psychiatric Association, *Position Statement on Solitary Confinement (Restricted Housing) of Juveniles*

[80] *See* S. Enggist, et al., Prisons and Health, The World Health Organization, Ch. 5, (2014), http://www.euro.who.int/data/assets/pdf file/0005/249188/Prisons-and-Health.pdf?ua=1

[81] *See* Council of Juvenile Correctional Administrators, Toolkit: Reducing the Use of Isolation, (March 2015),http://dcfs.nv.gov/uploadedFiles/dcfsnvgov/content/Programs/JJS/CJCA%20Toolkit%20Reducing%20th e%20use%20of%20Isolation.pdf

[82] Report of the Attorney General's Task Force on Children Exposed to Violence, at 178 (Dec. 12, 2012), https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf

juveniles also often have underlying learning disabilities and other educational struggles. As a result, a large percentage of juveniles require special education interventions and IEPs.

59. DJJ does not consistently provide special education to youth who need such interventions.[83]

60. Based on my review of declarations from fact witnesses, youth in solitary confinement at DJJ are not permitted to attend any educational programming at all—special or otherwise.[84] Instead, they are at most given worksheets to review by themselves in their cells.[85] The worksheets are rarely collected by DJJ staff, and children almost never receive guidance or feedback on their responses.[86]

61. I have seen no indication that the worksheets are individualized to the needs of each student or set up for students receiving special education services.[87]

62. It is my opinion that DJJ's practice of providing youth with special needs with worksheets during solitary confinement does not comply with any reasonably and adequately written IEP of special needs students. These students require specialized instruction and accommodations in order to access education. In addition, worksheets do not make education more accessible to students who have difficulties with reading. Worksheets hardly count as education, much less special education.

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[83] Ross Declaration I ¶ 54; Ross Declaration II ¶ 39; Freedman Declaration ¶ 42; Brown Declaration I¶ 30, 49.

[84] *Id.*; DOJ Notice at 6.

[85] *Id.*

[86] Freedman Declaration ¶ 41; Ross Declaration I ¶ 55.

[87] Ross Declaration I ¶¶ 55-56; Freedman Declaration ¶¶ 41-42.

E. DJJ'S USE OF SOLITARY CONFINEMENT IS COUNTERPRODUCTIVE TO PUBLIC SAFETY

63. Based on my 23 years of academic and professional experience, including my experience serving as a federal monitor of correctional facilities in Illinois and Arizona, and based on my review of academic research and documents provided by Plaintiffs' counsel regarding DJJ, my opinion is that the use of solitary confinement at DJJ is counterproductive to public safety.

64. Solitary confinement inhibits children's' ability to cope with stressful situations and leaves them angrier and more disturbed, therefore leading to more misbehavior and rule infractions.[88] Youth often suffer from increased anger, aggression, depression, anxiety, and vindictiveness correlated to being in solitary confinement.[89] Youth often feel victimized by being placed in solitary confinement and this leads to an increased desire for retribution.[90]

65. A more appropriate way of handling misbehavior in youth is through the engagement of appropriate de-escalation techniques, mental health interventions, and clear structures for imposing discipline. Examples of these sorts of treatments include time outs (discussed above) and trauma informed programs (discussed below).

II. THE UNACCEPTABLE VIOLENCE AT DJJ FACILITIES HARMS YOUTH IN DJJ CUSTODY

66. Youth in DJJ custody are subjected to unacceptable amounts of youth-on-youth violence and staff-on-youth violence. In addition to the direct physical harms caused by this

[88] *See* Andrew Clark, Juvenile Solitary Confinement as a Form of Child Abuse, The Journal of the American Academy of Psychiatry and the Law, 45 (3) 350-357 (2017), http://jaapl.org/content/45/3/350.long; *see also* Stuart Grassian, Psychiatric Effects of Solitary Confinement, 22 WASH. U. J. L. & POL'Y 325 (2006),

[89] *Id.*

[90] *Id.*

violence, youth subjected to violence or the threat of violence are at high risk of developing trauma, and specifically Post Traumatic Stress Disorder (PTSD).

A. YOUTH IN DJJ CUSTODY SUFFER FROM AN UNACCEPTABLE AMOUNT OF VIOLENCE

67. Based on my review of the South Carolina Legislative Reports of 2017 and 2021, the DOJ notice to BRRC, and numerous declarations, it is clear that youth at DJJ suffer from a significant amount of violence across DJJ's detention facilities. The reports document instances where youth were beaten with fists and other weapons, with some youth being beaten on multiple occasions. The violence at DJJ includes youth-on-youth and staff-on-youth violence. The violence persists and has included a riot and a stabbing earlier this month, along with the use of tasers and pepper spray by DJJ staff.[91]

68. Although some degree of violence is inevitable in youth correctional facilities, the degree of violence in DJJ facilities is unacceptable and falls well below the norm. Incidents of violence at juvenile facilities should be isolated, and correctional staff should work diligently to minimize the frequency of such incidents. By contrast, the violence at DJJ is caused by DJJ's failures including understaffing and inadequate surveillance infrastructure such as faulty cameras and blind spots.

69. The youth-on-youth violence at DJJ is also caused by staff inciting violence by giving youth special privileges or food in exchange for inciting fights, or by issuing "hits" whereby

[91] Ross Declaration I ¶¶ 22-23; Ross Declaration II ¶¶ 11-29; Declaration of Jennifer Coyle (Coyle Declaration) ¶¶4-13, 17-20, 26-40; Declaration of Karen Hamrick (Hamrick Declaration) ¶¶ 4-12; Declaration of M. O'Bryan Martin (Martin Declaration) ¶¶ 4-13.

staff solicit some youth to assault other youth.[92] Sometimes, DJJ staff directly assault youth as well.[93]

70. In my professional opinion, there is no excuse for staff-on-youth violence and no justifiable rationale for a constantly high level of youth-on-youth violence. When children are placed in a juvenile corrections facility, there is an expectation that all attempts will be made to keep the youth safe. To the extent DJJ has made such attempts, which seems limited, they have clearly been unsatisfactory and unsuccessful.

B. YOUTH IN DJJ CUSTODY SUFFER TRAUMA DUE TO VIOLENCE

71. The detention of a child in a juvenile facility does not necessarily need to be traumatic. In an appropriate juvenile correctional facility run according to professional standards, youth are offered consistent schooling, mental health interventions, safety, and three meals a day. But detention risks being traumatic, and potentially exceptionally traumatic, when youth—such as those detained by DJJ—are subject to violence or the threat of violence during their detention. These youth can be traumatized at two levels: 1) the youth live in consistent fear for their safety because of their understanding that violence could occur at any point; and 2) the youth are traumatized by the violence itself.

72. The trauma from the threat of violence or violence puts youth at significant risk of developing PTSD. PTSD is a Trauma-end Stressor Related Disorder, which results after directly experiencing or observing a traumatic event.[94] Youth at DJJ who witness or experience violence are at a high risk of presenting the diagnostic criteria of PTSD which include involuntary and

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[92] Ross Declaration I ¶¶ 29-32.

[93] Ross Declaration I ¶ 30.

[94] DSM 5, 2013.

intrusive distressing memories of the traumatic event, recurrent distressing dreams in which the content or effect of the dream are related to the traumatic event, dissociative reactions such as flashbacks wherein the individual feels or acts as if the traumatic event is recurring, intense or prolonged psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event, and marked psychological reactions to internal or external ques that symbolize or resemble an aspect of the traumatic event.

73. Youth suffering from these symptoms may try to avoid distressing memories, thoughts, or feelings that are closely associated with the traumatic event. They may also try to avoid certain people, conversations, activities, or situations that arouse distrusting memories, thoughts, or feelings related to the event.

74. Youth may also suffer from negative alterations in their cognition such as not being able to remember key parts of the traumatic event due to dissociative amnesia, persistent and exaggerated negative beliefs or expectations about themselves, persistent and distorted cognitions about the cause or consequences of the traumatic event, persistent negative emotional states (such as fear, anger, guilt, and shame), markedly diminished interest in participation in significant activities, feelings of detachment or estrangement from others, and a persistent inability to experience positive emotions.

75. Youth may also suffer from hypervigilance—a marked level of arousal—that can manifest in the affected youth having exaggerated startled responses, problems concentrating, sleep disturbance, and irritable behavior.[95]

[95] For a diagnosis of PTSD, the symptoms described in ¶¶ 67-70 must last for more than one month and cannot be attributable to other factors.

76. Youth who suffer from PTSD are at the added risk of developing symptomatology that could be viewed as the youth acting out behaviorally and inappropriately. This is particularly dangerous for youth in DJJ facilities because, given the DJJ's lack of adequate mental health care and treatment,[96] it is unlikely that youth affected with PTSD will be properly diagnosed. Instead, it is far more likely that the youth will be punished with other traumatizing interventions such as solitary confinement without a formal mental health assessment.

III. DJJ DOES NOT PROVIDE ADEQUATE TREATMENT TO YOUTH IN ITS CUSTODY

77. Upon reviewing the documents made available to me, it appears that DJJ is unable to implement treatment plans for youth in its custody.[97] A treatment plan typically includes background information on a youth that is used to support medical diagnoses and interventions, including for mental health and psychiatric challenges such as disruptive mood, disregulation disorder, PTSD, major depressive disorder, or anxiety disorder. Treatment plans should be individualized for each youth, and should include a diagnosis, treatment goals, and a clear plan on how to achieve those goals. The plans should also include documentation of any additional treatment a young person may need, such as substance abuse education or group work.

78. When an institution is unable to implement treatment plans for youth in its custody, it puts those youth at high risk of suffering significant health damage. Specifically, the youth are at risk of having psychological disorders go undiagnosed and untreated, which risks negatively impacting their behavior during their time in custody as well.

79. To adequately address youth mental health concerns, DJJ must implement a trauma-informed treatment program. As discussed above, most of the youth that are placed in

[96] Ross Declaration I ¶ 57.
[97] Ross Declaration I ¶ 60.

juvenile facilities across the country have been impacted by trauma and have significant mental health illnesses. These youth require a trauma-informed program that is based on three core principles: 1) the recognition that trauma is prevalent among youth in detention; 2) an understanding of how trauma impacts youth; 3) the organization of a treatment plan that helps improve the symptoms of the youth's trauma.

80. Trauma informed treatment programs are used to treat youth with PTSD and a range of other trauma induced symptomology including depression and anxiety. The goal of these programs is to use a restorative treatment approach that enables youth to be more functional and productive, and that reduces recidivism. The treatment can help youth with improving affect regulation, which is one of the more significant difficulties that youth in detention suffer from.

81. Trauma informed treatment programs are used in various juvenile justice programs across the country, including by Illinois's Department of Juvenile Justice. I am currently involved in assisting Rush University Medical Center with developing a trauma informed treatment clinic in West Chicago.

82. Trauma informed treatment may use a variety of evidence-based practices and modalities to treat specific youth. For instance, some forms of cognitive behavioral therapy incorporate aspects of trauma informed treatment. Trauma informed treatment programs can also use a range of both short-term—8 to 16 weeks—and long-term treatment protocols for youth. The versatility of these programs and protocols ensures that DJJ can develop interventions for almost all youth in its custody, including those who are only held by DJJ briefly. While a variety of protocols are available and can be (and are) employed by institutions, that flexibility does not change the basic fact that every juvenile institution must address youth trauma in some manner. It

is professionally unacceptable to simply ignore the trauma of youth in custody; doing so would fatally undermine the rehabilitative mission of a juvenile institution.

83. From my review of the documents made available to me, it appears that DJJ does not use trauma informed treatment programs for youth in its custody. To the contrary, DJJ subjects the youth to additional trauma through its use of solitary confinement and its inability to protect youth from violence. This creates a high risk that the youth will have worse psycho-social outcomes due to unaddressed and increased trauma.

CONCLUSION

84. It is my opinion, within a reasonable degree of medical certainty, that all juveniles in secure detention who are subject to the Defendants' policy and practice of solitary confinement, as well all youth in Defendants' custody that are subject to violence or the risk of violence, are at a substantial risk of serious harm to their social, psychological, and emotional development. From my review of the information in this case, it appears that DJJ is minimizing mental health concerns, including by subjecting a high percentage of children with mental illness who are also at risk for suicide to solitary confinement and refusing to protect children from endemic violence in DJJ facilities. DJJ's use of solitary confinement at such a high rate shows a focus on punishment, rather than use of evidence-based systems and techniques that are based on positive developmental models to change and treat behavior that focus on helping children through education, mental health treatment, and rehabilitative services to foster children's development. A more comprehensive focus on evidence-based, trauma informed, and effective mental health interventions and de-escalation interventions can also minimize the need for DJJ's punitive use of solitary confinement and the risks of harm to children in its custody.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration is executed on October 26, 2023, in Chicago, Illinois.

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Louis J. Kraus, M.D.

APPENDIX A

APPENDIX A

LOUIS JAMES KRAUS, M.D., DFAPA, FAACAP

Woman's Board Professor of Child and Adolescent Psychiatry
Chief, Section of Child and Adolescent Psychiatry
Rush University Medical Center
910 Skokie Boulevard, Suite 230
Northbrook, IL 60062
Office Telephone: (847) 559-0560
Cell: (847) 217-7755
Email: rkraus9@mac.com

PERSONAL DATA:	Louis James Kraus, MD DOB: 12-3-1960 USA
EDUCATION:	
1987	M.D., University of Health Sciences, The Chicago Medical School
1983	B.S., Syracuse University
POSTGRADUATE TRAINING:	
7/1/92-6/30/94	Child and Adolescent Psychiatry Fellow, The University of Chicago, Chicago, Illinois
10/1/88-6/30/92	Psychiatry Resident, Northwestern University, Chicago, Illinois
7/1/91-12/31/91	Chief Resident, Psychiatry, Northwestern University, Chicago, Illinois
7/1/87-6/30/88	Surgical Intern, Boston University, Boston, Massachusetts
ACADEMIC APPOINTMENTS:	
July 2016 – Present	Professor of Clinical Psychiatry, Rush University Medical Center
July 2003 – June 2016	Associate Professor of Clinical Psychiatry, Rush University Medical Center
March 2001 – 2002	Visiting Associate Professor of Psychiatry, University of Illinois at Chicago
July 2001 – 2002	Assistant Professor of Psychiatry, Northwestern University
November 1997 – July 2001	Clinical Instructor, Dept. of Psychiatry, Northwestern University

July 1994 – August 1997	Assistant Professor, Department of Psychiatry, University of Chicago
July 1994 – August 1997	Director of Child and Adolescent Forensic Psychiatry, University of Chicago

BOARD CERTIFICATION:

May, 2015 (Current)	Maintenance of Certification in Child and Adolescent Psychiatry, by The American Board of Psychiatry and Neurology, Certification No. 3956
June, 2019 (Current)	Board Certified in Forensic Psychiatry, by the American Board of Psychiatry and Neurology, Certification No. 1079
October, 1995 (Current)	Board certified in Child and Adolescent Psychiatry, by The American Board of Psychiatry and Neurology, Certification No. 3956
December, 1993 (Lifetime)	Board certified in General Psychiatry, by The American Board of Psychiatry and Neurology, Certification No. 38252

LICENSE:

State of Illinois	No. 036-079584	Expires: 07/31/2023
State of Florida	No. ME 83084	Expires: 01/31/2023
State of Arizona	No. 33456	Expires: 04/03/2023

HONORS AND AWARDS:

- 2020 Agnes Purcell McGavin Award for Distinguished Career Achievement in Child and Adolescent Psychiatry from the American Psychiatric Association (APA) and APA Foundation.
- Child and Adolescent Psychiatry, Award: "Scholarship and Perseverance in the Creation of our Practice Parameter for Child and Adolescent Forensic Evaluations", 58th Annual Meeting, Toronto, Canada, October 2011.
- Fellow, American Academy of Child and Adolescent Psychiatry (2006)
- Distinguished Fellow, American Psychiatric Association (2004)
- Woman's Board Professor of Child and Adolescent Psychiatry, Rush University Medical Center (2004)
- AMA Glaxo Welcome Emerging Leaders Development Program (1998)
- Top Doctor – 1997 - 2001
- Resident Fellowship of The American Psychoanalytic Association (1992)
- Laughlin Fellow, Northwestern University (1991)
- Magna Cum Laude, Syracuse University

- Phi Beta Kappa Honor Society
- Honors Program in Biology, Syracuse University

PROFESSIONAL SOCIETY MEMBERSHIPS:

American Medical Association

American Academy of Child and Adolescent Psychiatry

American Academy of Psychiatry and the Law

American Psychiatric Association

Illinois State Medical Society

Illinois Council of Child and Adolescent Psychiatry

Illinois Psychiatric Association

Chicago Medical Society

American College of Psychiatrists

TEACHING EXPERIENCE:

Sept 2021 – Present	Supervise Rush child and adolescent psychiatry fellows of the Orthogenic Day School.
May 2008 – Present	American Psychiatric Association Mentor for psychiatric residents through the Council on Children, Adolescents and Their Families
July 2006 – June 2021	Supervise Rush child and adolescent psychiatry fellows at the Sonia Shankman Orthogenic School (a residential school)
July 2002 – Present	Supervise general residents and child and adolescent fellows at Rush University Medical Center
July 2002 – Present	Developed forensic rotation at Rush University Medical Center for child and adolescent fellows allowing them to observe forensic evaluations in court, and the Cook County Juvenile Pre-Detention Facility
July 2002 – Present	Develop school consult didactics as well as didactics dealing with Autism at Rush University Medical Center; Supervise Rush University Medical Center's child and adolescent fellows in their school Autism rotation at the Chicago Metropolitan Easter Seals Therapeutic Day Schools
July 2002 – Present	Develop and teach the child and adolescent forensic psychiatry course for child and adolescent psychiatry fellows at University of Illinois at Chicago and Rush University Medical Center

July 2002 – Present	Teach and supervise medical students in clinical rotations through child and adolescent psychiatry at Rush University Medical Center
March 2001 – July 2002	Supervise and lecture residents at University of Illinois
August 1997 – March 2001	Teaching and lecturing to general psychiatry residents at Northwestern University
August 1997 – March 2001	Supervise child and adolescent psychiatry residents and general psychiatry residents at Northwestern University
August 1994 – 1997	Provide child and adolescent forensic psychiatry course offered to residents and fellows at the University of Chicago
August 1993 – 1997	Supervise child and adolescent psychiatry fellows, psychiatry residents and psychology trainees at the University of Chicago
July 1991 – July 1992	Supervise psychiatry residents at Northwestern University

ELECTED POSITIONS:

June 2008 – Oct 2021	Chair, AACAP Delegation to AMA House of Delegates
July 2015 – June 2016	Chair, AMA Council on Science and Public Health
July 2014 – June 2015	Chair Elect, AMA Council on Science and Public Health
2011 – 2013	Chair, AACAP Assembly
2011 – 2013	AACAP Executive Committee
July 2008 – June 2016	AMA Council on Science and Public Health
2009 – 2011	Vice-Chair, AACAP Assembly
2007 – 2009	AACAP Assembly Treasurer
2007 – 2013	AACAP Council
2002 – 2004	AACAP Assembly Representative to the Executive Committee

REVIEWER:

Guest Reviewer – Journal of The American Academy of Child and Adolescent Psychiatry

Panelists – AMA Organized Medical Staff on Science and Public Health June 6, 2018

Guest

TRAINEES AND MENTOREES:

2005 – Present	Ongoing Mentoring for AACAP and APA Mentor Programs

2005 – 2007 (Jada Johnson, MD)	Chair, Psychiatry, Illinois Masonic Hospital
2002 – 2004 (Shiraz Butt, MD)	Prior Medical Director, Maryville Academy
1998 – 2000 (Lucyna Puszkarska, MD)	Medical Director, River Edge Hospital
2021-Present (Adrienne Adams)	Medical Director, for Rosecrance Residential Treatment Program

PROFESSIONAL SOCIETY APPOINTMENTS:

2017 – 2021	APA Budget & Finance Committee
May 2015 – 2021	American Psychiatric Foundation (APF BOD), Board of Directors
2014 – 2021	CMS District 1, Delegate to 2014 Illinois House of Delegates
May 2012 – 2016	Chair – Council on Children, Adolescents and Their Families, American Psychiatric Association
May 2012 – May 2014	Chicago Medical Society, District 1 Councilor
May 2012 – May 2013	Chicago Medical Society District 1, Alternate Delegate to Illinois 2013 House of Delegates
November 2010 – June 2011	APA Task Force on Prevention of Bullying.
2009 – Present	APA Political Action Committee (PAC) Board
October 2009 – Present	AACAP Committee on Juvenile Justice Reform
April 2008 – 2009	Member APA Council on Children, Adolescents and Their Families.
2008 – Present	AACAP Delegate to AMA House of Delegates
May 2007 – Present	Member – Council on Children, Adolescents and Their Families, American Psychiatric Association
September 2001 – Present	Co-chairman of the AACAP committee on Juvenile Justice Reform.
May 2001 – 2010	Chairman of the American Psychiatric Association Committee on Juvenile Justice Issues
December 2000 – 2007	AACAP Alternate Delegate to the AMA House of Delegates 2007
June 2000 – June 2002	President, Illinois Council of Child & Adolescent Psychiatry
December 1999 – December 2000	AACAP Delegate for Young Physicians to the AMA
November 1999 – 2001	Evanston Northwestern Healthcare Child Protection Committee

September 1999 – March 2001	Member, Evanston Mental Health Board, Substance Abuse Task Force
June 1999 – 2001	Member, AMA Advisory Board on Alcohol Intervention Project for Youth
January 1999 – January 2003	Chairman, National Commission on Correctional Health Care, Committee on Juvenile Health Care
1998 – 2010	Member of the American Psychiatric Association Committee on Juvenile Justice Issues
October 1998 – Present	Delegate, for The Illinois Council of Child and Adolescent Psychiatry to American Academy of Child and Adolescent Psychiatry (AACAP)
September 1998 – 2000	Clinical Advisor, Chicago Metropolitan Child and Adolescent Comprehensive Community Services Systems Network Advisory Council
April 1998 – December 1998	Vice Chairman, National Commission on Correctional Health Care, Committee on Juvenile Health Care
April 1998 – December 1998	Vice Chairman, National Commission on Correctional Health Care, Task Force for Revision of the NCCHC Standards for Health Services in Juvenile Detention and Confinement Facilities
June 1997 – January 1999	Chairperson of AACAP Committee for New Physicians
June 1997 – January 2003	Board of Directors, National Commission on Correctional Health Care
January 1997 – July 2000	Program Chairman, Illinois Council for Child and Adolescent Psychiatry
July 1995 – July 1996	Program Chairman for Chicago Society for Adolescent Psychiatry
September 1994 – October 1999	AACAP Committee on Foster and Adoptive Families
March 1994 – December 1996	AACAP Alternate Delegate for Young Physicians to the AMA

CONSULTING POSITIONS:

January 2013 – Present	Federal Consent Decree appointment, Assessment and restructuring of the mental health programming for the Illinois Department of Juvenile Justice (IDJJ) under a Consent Decree filed with the Attorney General's Office by the American Civil Liberties Union (ACLU) of Illinois in December 2012 (RJ v. Bishop)
February 2006 – Present	Consultant to the ACLU

May 2003 – 2008	Consultant, United States Department of Juvenile Justice, Civil Rights Division
March 2001 – June 2002	Director, Child and Adolescent Forensic Psychiatry, University of Illinois at Chicago
1993 – Present	Forensic testimony in Juvenile Court (abuse/neglect & delinquency), Family Court focusing on custody and expert testimony in other state and federal cases. Previously worked as an Expert for the Cook County Public Guardian's Office and DCFS.
September 1992 – 1993	Psychiatrist Chairperson of the Physician Review Board for the City of Chicago, Department of Mental Health – 1992
1992 – Present	Expert testimony in juvenile and domestic relations courts in a variety of cases ranging from transfer hearings, abuse including Munchausen by Proxy, Child Advocacy Focusing on Custody and "Best Interest" of the Child
April 1990 – June 1999	Psychiatric Consultant to Illinois Youth Center, Joliet, Illinois; General Population and the Intensive Reintegration Unit
January 1990 – 1992	City of Chicago, South East Community Mental Health Center

ADMINISTRATIVE SERVICES:

2021 – Present	Division Head of Child and Adolescent Psychiatry Rush University Medical Center.
2011 – Present	Development of the Autism Assessment, Research, Treatment and Services (AARTS) Center at Rush University Medical Center
2006 – Present	Director of the Sonia Shankman Orthogenic School and Rush University Medical Center's clinical rotation for child and adolescent psychiatry fellows at Rush
2006 – Present	Director of Psychiatric Services, Sonia Shankman Orthogenic School
2002 – Present	Chief of Child and Adolescent Psychiatry, Rush University Medical Center
1999 – Present	Medical Director of the Chicago Metropolitan Easter Seals Therapeutic Schools

CLINICAL SERVICE:

June 2019 – Present	Medical Director, Josselyn Community Mental Health Center

2012 – Present	Director, Autism Assessment, Research, Treatment and Services Center at Rush University Medical Center
July 2005 – Present	Psychiatric Director Sonia Shankman Orthogenic School at Chicago
June 2005 – Present	Psychiatric Consultant to New Trier, Niles North and Niles West High Schools
February 2000 – June 2001	Director, Child and Adolescent and Forensic Psychiatry, University of Illinois at Chicago
January 1999 – present	Medical Director, Chicago Metropolitan Easter Seals Therapeutic School
September 1998 – Present	Psychiatric Consultant to Evanston Township High School
August 1997 – February 2000	Division Head of Child/Adolescent Psychiatry, Evanston Northwestern Healthcare
May 1997 – June 1999	Psychiatric Consultant to Youth Campus (A DCFS contracting agency)
September 1992 – May 1993	Psychiatrist Chairperson of the Physician Review Board for the City of Chicago, Department of Mental Health – 1992
July 1994 – August 1997	Assistant Director of Child and Adolescent Inpatient Services, University of Chicago

MEDIA

1. October 26, 1994, Chicago Sun Times, TV-Violence Line Elusive.
2. November 6, 1994, Chicago Tribune, "Mental health tests for kids spark debate;" Screening: Testing would help parents, supporters say.
3. November 19, 1994, Chicago Tribune, Try Sandifer suspect as kid, experts say. Louis Kraus testified, "Derrick Hardaway suffers from a *conduct disorder* that developed in his early adolescence because of family tensions, physical abuse and other problems."
4. February 25, 1997, Chicago Tribune, Leniency sought for teen convicted of killing Sandifer.
5. March 13, 1997, Chicago Tribune, Return girl slowly to mom, psychiatrist say.
6. March 30, 1997, Chicago Tribune, Student-Teacher contact is becoming a danger zone. Kraus was quoted to say, "The students are drawn into the relationship because they idolize their teacher and often don't see anything wrong until much later. At that point they might feel depressed and used and have trouble forming relationships."
7. March 25, 1998, Chicago Tribune, 4 pupils, teacher die in schoolyard ambush.
8. March 25, 1998, Chicago Sun Times, Kids ambush kids; Shooting stuns school.
9. March 29, 1998, Violence is linked to genetics, early abuses that set patterns

10. April 6, 1998, Chicago Tribune, Teen smokers a pack short of a carton in wisdom department.
11. June 3, 1998, Toronto, Canada, American Psychiatric Association, The Daily Bulletin, Presidential Sessions on “A Time of Violence.”
12. June 1998, Chicago Parenting, “Keeping rage from turning into tragedy.”
13. August 14, 1998, Chicago Sun Times, Making Sense of kids’ case.
14. August 14, 1998, Chicago Tribune, Young suspects sent home. Dr. Kraus testament was paramount in the 7-year-old being allowed to go home with his family.
15. Possley, M. and Puente, T., “Young Suspects Sent Home”, Chicago Tribune, August 14, 1998
16. Kotlowitz, A., “The Unprotected”, The New Yorker. February 8, 1999
17. March 7, 1999, Chicago Tribune, Aftermath an ordeal for parents, kids.
18. November 11, 1999, Northwest Herald, Boy who shot clerk sentenced.
19. February 23, 2000, Tribune Allied Health, Safety nets for teens.
20. April 9, 2000, Chicago Tribute, School provides unique antidote for depression.
21. January 30, 2001, Chicago Tribune, Files in Ryan Harris case shed new light. Disclosure of the results of the psychiatric interview changed interview process of minors.
22. December 7, 2001, Psychiatric News, AACAP Kraus was quoted “We certainly disagree with the Supreme Court ruling and believe the death penalty constitutes cruel and unusual punishment.”
23. July 9, 2002, Psychiatric News, AMA Vows to Prevent Future Psychologist Prescribing Laws.
24. April 4, 2003, Study Questions Youths’ Ability to Understand Trial Process, *Study Implications*.
25. July 18, 2003, Psychiatric News, Psychiatrist Wins AMA Leadership Post: *Psychiatry Scores in HOD*. Kraus argued successfully in favor of an amendment to a resolution asking that the AMA support comprehensive health education for female delinquent, including information on responsible sexual behavior and the prevention of sexually transmitted diseases and HIV/AIDS.” Kraus also testified, “Medicaid reaches 44 million Americans, more than Medicare or any other form of health insurance and covers Americans who are among the poorest and most disadvantaged populations in the country.”
26. February 13, 2004, Chicago, Metro North Shore, Abuse of cold medicine rising.
27. Tresniowski, A. Hewitt, B., “Escape from Hell”, People Magazine. September 25, 2006
28. Reuters, “Experts say video games not an addiction in AMA Meeting”, June 25, 2007
29. Neergaard, L. “Easy nondrug helps ADHD Kids”, USA Today. September 3, 2007
30. Tanner, L. “Shock Treatment Sought for Autistic Man”, USA Today. September 3, 2007

31. Reuters, "Antidepressant warnings scared parents, doctors", September 9, 2007
32. Fox News, "Study: Brains of ADHD Children Develop More Slowly than Brains of other Youngsters", November 13, 2007
33. Bynum, R., Stobbe, M., "Experts Dubious of Ga. 3rd- Grader Plot", Associated Press. April 2, 2008
34. October 31, 2008, The Wall Street Journal, Therapy, Antidepressants Ease Anxiety in Children.
35. Tanner, L., "Kids with ADHD on meds test better than peers", Associated Press. April 27, 2009
36. Tanner, L., "Jackson kids face hurdles coping with his death, universal trauma of losing a parent may be eased if stability can be offered", Associated Press. July 5, 2009
37. Chicago Tribune by Bonnie Miller Rubin, "Caught in the Web of Addiction", September 9, 2009
38. Fox News, "Psychiatrists say Blagojevich's choice to have daughters join him at court may be stressful", July 7, 2010
39. FOX – Judge Jeanine, "8-year Old Boy's Commitment to a Psychiatric Ward", February 19, 2011
40. CNN, Anderson Cooper 360, "KTH: Mass. School called 'house of horrors', May 24, 2012,
41. Fox News Chicago, "Beauty may no longer be in the eye of the beholder", May 10, 2012
42. CNN, Anderson Cooper 360, "Anderson Cooper Investigates Shocking RTC Treatment", June 4, 2012
43. Moran, M. "More research needed on SSRI's for treating Autism Disorders", Psychiatric News. Volume 47, Number 11. June 11, 2012
44. CNN, Anderson Cooper 360, "Crime and Punishment, The Sandusky Trial", June 12, 2012
45. NBC News Chicago, "How to Talk to Your Kids about Conn. Shooting", December 14, 2012
46. Niedowski, E., Tanner, L. "How to Talk to Your Kids about Conn. Shooting", Associated Press. December 15, 2012
47. CNN, Anderson Cooper 360, "Former Child Hostage Describes Captivity Underground", February 4, 2013
48. Fox News Chicago, "Violence has long term effects on children", August 12, 2013
49. England, C. "Helping young adults make the transition", Chicago Medicine Magazine, September 2013
50. Schmadeke, S., "State's youth prison system violates inmates' rights, experts say", Chicago Tribune. September 25, 2013
51. WGN Radio.com, "Solutions for Gun Violence in Chicago", June 17, 2014

52. NBC News, "Black Box warning on antidepressants raised suicide attempt", July 18, 2014
53. FOX News, "How far should we go to discipline our kids", September 2014
54. Fox News, "Study: Brains of ADHD Children Develop More Slowly than Brains of Other Youngsters", January 13, 2015
55. FOX News, "Could a self-esteem booster turn your child into a narcissist?", March 2015
56. Al Jazeera America, "US Only Nation to Imprison Kids for Life," March 2015
57. NBC Channel 5 News, "Some Suburban Schools Ban Fidget Spinners as Popularity Grows", May 2, 2017
58. Associated Press, "Video Games Focus on a Red Herring", March 8, 2018
59. US Today, "Doctor: Impact-separating-families tragic June 19, 2018
60. Fox News, "Medical experts warn that separating children from parents causes psychological damage June 20, 2018
61. March 20, 2019, Chicago Tribune, "Local autism community cheers Amy Schumer's loving disclosure that her husband has a form of autism". Kraus was quoted stating "To have someone like Amy Schumer come out and talk about this is really amazing. I think it will be wonderful for people (with autism) and perhaps generate interest in the dating population about autism"
62. AP News, "Linked by pain: 2 school massacre survivors, dad kill selves", March 25, 2019

SCIENTIFIC ACTIVITIES:

a) Grants:

2011 – Present	Effects of memantine vs. placebo on motor planning and memory in children with autism spectrum disorders. $74,176
2010	Rush Women's Board, Assessment of prevalence of Bipolar Disorder in adolescent population in a residential placement, $30,000
April, 1999	Department of Human Service, State of Illinois Grant – Bridges Program for Development of School and Home-based Therapeutic Services for Adolescents, $100,000 per year
March, 1998	Evanston Northwestern Healthcare Auxiliary Grant for Development of a Community-based Adolescent Mental Health and Substance Abuse Program, $1,000,000

b) Research

2011 – Present	Development of Research Program at the Rush AARTS Center

1984 – 1986	Research under direction of Max Harry Weil, Ph.D., Chairman, Department of Medicine, University of Health Sciences, The Chicago Medical School, on the reversal of academia during cardiopulmonary resuscitation
1999 – 2001	Outcomes research focusing on adolescent dual diagnosis; early diagnosis and intervention in a community based treatment program.

c) Poster Presentations

Grunewald, S., Kraus, L., Youngkin, S., Wade, K. H., Forburger, N., Owley, T., Loftin, R., Fogg, L. & Soorya, L. (May 2014). *Access to care: Familial and racial variables associated with limited service access for individuals with ASD*. Poster presented at 2014 Annual International Meeting for Autism Research (IMFAR). Atlanta, GA.

Poster Presentation: APA Meeting, Washington, DC "Monitoring Resident Supervision in Times of Change," May 1992.

SCHOLARSHIP

a) Books and Chapters

1. Thomas, C.R., Kraus, L.J. "Public Policy Implications of Research on Aggression and Antisocial Behavior", The Origins of Antisocial Behavior. Oxford University Press, 2012.
2. Galatzer-Levy, R., Kraus, L., Galatzer-Levy, J., The Scientific Basis of Child Custody Decisions. **Cambridge Press**, 2009.
3. Kessler, C., Kraus, L, The Mental Health Needs of Young Offenders. **Cambridge Press**, 2007.
4. Geraghty, R., Kraus, L, Fink, P, "Assessing children's competence to stand trial and to waive Miranda rights: new directions for legal and medical decision-making in juvenile courts" in The Mental Health Needs of Young Offenders. **Cambridge Press**, 2007,
5. Kraus L, Sobel, H, "Post-adjudicatory assessment of youth" in The Mental Health Needs of Young Offenders. **Cambridge Press**, 2007.
6. Galatzer-Levy, R., Kraus, L.J., eds, The Scientific Study of Child Custody Decisions, **Wiley Press**, 1999.
7. Kraus, L, "Understanding the Relationship between Children and Caregivers" in The Scientific Basis of Child Custody Decisions, **Wiley Press**, Ed. Galatzer-Levy R. and Kraus, L 1999.

8. Leventhal, B. Kelman, J., Galatzer-Levy, R., Kraus, L., "Divorce, Custody, and Visitation in Mid-Childhood" in The Scientific Basis of Child Custody Decisions, **Wiley Press**, Ed. Galatzer-Levy R. and Kraus, L 1999.
9. Kraus, L.J., Trivedi, H.K. "Adjudicated Youth: Child and Adolescent Psychiatric Clinics of North America" in Clinics Review Articles Volume 25. **Elsevier**, 2016.

b) Peer Reviewed Publications

1. 1988 Practice Parameter for "Child and Adolescent Forensic Evaluations", Kraus, L, JAACAP, Vol 50, No.12, Dec. 2011 pp1299-1312.
2. Geraghty, T.F., Kraus, L, "Treating the Mentally-Ill Offender: The Challenge of Creating an Effective, Safe and Just System," **The Journal of Criminal Law and Criminology**, Northwestern University School of Law 89 (1) Fall, 1998.
3. von Planta, M., Gluldipati, R., Weil, M.H., Kraus, L.J., Rackow, E., "Bicarbonate and Tromethamine (Tham) Buffers Fail to Improve Resuscitability During Porcine C.P.R.," **Federation Proceedings 46** (4), 1145, 1987
4. von Planta, M, Gudipati, R., Weil, M.H., Kraus, L.J., Rackow, E., "Effects of Tromethamine and Sodium Bicarbonate Buffers During Cardiac Resuscitation," **Journal of Clinical Pharmacology** 28, 594-599, 1987

c) Other Publications

1. Kraus, L., Arroyo, W. "Recommendations for Juvenile Justice Reform, Second Edition", American Academy of Child and Adolescent Psychiatry Committee on Juvenile Justice Reform. October 2005.
2. Kraus, L, Arroyo, W. Editors, "Recommendations for Juvenile Justice Reform", **Monograph**, October 2001, American Academy Child and Adolescent Psychiatry.
3. Kraus, L. "Standards for Juvenile Detention and Confinement Facilities", Recommendations for Juvenile Justice Reform, **Monograph**, October 2001.
4. Kraus, L. "Females in the Juvenile Justice System", Recommendations for Juvenile Justice Reform, **Monograph**, October 2001.
5. Kraus, L, Morris R. "Seclusion and Restraint Standards in Juvenile Corrections", Recommendations for Juvenile Justice Reform, **Monograph**, October 2001.
6. Kraus, L, "Tackling Juvenile Justice," **AACAP News**, Volume 31, Issue 2, March/April 2000, pp. 75-76.

PRESENTATIONS:

American Psychiatric Association, "*Mentally-Healthy Schools in Times of a Pandemic*" Speaker - Wednesday, August 19th, 2020.

Community SAFETY/ & The Future of Illinois' Youth Prisons. Children and Family Justice Center, "Harm Instead of Healing: Imprisoning Youth with Mental Illness", March 2020.

American Psychiatric Association, "Children & Adolescents In Juvenile Detention", October 7, 2018

Harvard University Conference, “Behind Bars: Health and Human Rights in U.S. Prisons” November 28, 2017

AACAP 64th Annual Meeting, Washington, DC October 23-28, 2017

Keynote Speaker, Eugene J-M.A. Thonar, PhD, Award Presentation, Rush University Medical Center, October 14, 2014

Grand Rounds, Rush University Medical Center, “Psychiatric Malpractice: Dos and Don’ts.” May 21, 2014

Chair, AACAP Douglas B. Hansen, MD 39th Annual Review Course in Child and Adolescent Psychiatry, *Child and Adolescent Forensic Psychiatry*, Westin Chicago River North, Chicago, IL, March 22-23, 2014.

Autism, Behavioral Challenges and Complex Medical Needs (ABC) Conference, “Making Systems Work Across the Lifespan for Children with Special Needs,” *Treatment and Advocacy for the Autistic Teen as they Transition into Adulthood*, Kraus, LJ, Palos Hills, IL November 22, 2013.

Illinois State Board of Education, Kraus, LJ, **Keynote Speaker**, “The Complexity of Diagnosis and Behavior of Students Placed Residentially.” November 7, 2013.

Illinois State Board of Education, Kraus, LJ, “Juvenile Justice, Social Maladjustment and Associated Mental Health Disorder: How do we educate this difficult population and what do we do when they get out?” November 7, 2013.

7th Congress of Asian Society for Child and Adolescent Psychiatry & Allied Professions and 12th Biennial Conference of Indian Association for Child and Adolescent Mental Health; Kraus, LJ., **Chair**, “Cyberage and Child Mental Health.” September 26, 2013, New Delhi, India.

12th Biennial Conference of Indian Association for Child and Adolescent Mental Health; Kraus, LJ., **Chair**, “Role in the Changing Landscape of Child and Adolescent Psychiatry and Mental Health,” September 25, 2013, New Delhi, India.

12th Biennial Conference of Indian Association for Child and Adolescent Mental Health, Kraus, LJ., “DSM-V: Implications for Child and Adolescent Psychiatry,” September 25, 2013, New Delhi, India.

Illinois Institute for Continuing Legal Education, IIT Chicago-Kent College of Law, “Cutting Edge Child Custody Symposium”, *Professional Training and Requirements*, June 21, 2013.

Illinois Institute for Continuing Legal Education, IIT Chicago-Kent College of Law, “Cutting Edge Child Custody Symposium,” *Point and Counterpoint: Adoption of Custody Evaluation Standards*, June 21, 2013.

American Psychiatric Association (APA) Annual Meeting Workshop; “A Career in Child and Adolescent Psychiatry: From a Developmental Perspective.” San Francisco, CA May 22, 2013.

Office of Juvenile Justice and Delinquency Prevention in Collaboration with the National Center for Youth in Custody “The Impact of Isolation Practices in Confinement Facilities,” National Webinar, April 3, 2013.

19th Judicial Circuit Child Representative/Guardian ad Litem Training, "Psychology of Child Development and Age Appropriate Visitation." College of Lake County, Grayslake, Illinois, September 12, 2012.

Abraxas Education Forums; "The Role of Child and Adolescent Psychiatry in Public and Private Special Education." Woodridge, IL March 30, 2012.

Learning Disabilities Association of America, 49th International Conference, "Dissecting a Bully: Interventions for the Bullied." February 22-25, 2012, Chicago, IL.

APA Annual Meeting, "Wayward Youth Revisited", May 17, 2011, Honolulu, Hawaii.

APA Annual Meeting, "Teen Bullying", May 17, 2011, Honolulu, Hawaii.

ISBA Chicago Regional Meeting (Effective Advocacy for Juveniles with Mental Health Needs) "Diagnosis and Treatment of Mental Health in the Juvenile Justice System", May 11, 2011.

American Academy of Child and Adolescent Psychiatry (AACAP) 57th Annual Meeting, "Variations in State Decisions on Custody" October 29, 2010, NY, NY.

AACAP 57th Annual Meeting, "Role of the Expert in Child & Adolescent Psychiatry Malpractice" October 29, 2010, NY, NY.

AACAP 57th Annual Meeting, "Advocacy for Children with Autism: How to Find the Right Services" October 29, 2010, NY, NY.

ISBA Family Law Section, Springfield, IL. "Custody Evaluations When Children Have Major Psychiatric Disorders", October15, 2010.

ISBA Family Law Section, Chicago, IL. "Custody Evaluations When Children Have Major Psychiatric Disorders", September 23, 2010.

DePaul University College of Law, "Juvenile Competency to Stand Trial and Understand Miranda", April 11, 2009.

Illinois State Bar Association (ISBA) and the Committee on Continuing Legal Education, Attorney Education in Child Custody and Visitation Matters, "Factoring a Child's Development into Custody and Visitation" November 21, 2008.

AACAP Members Forum, Practice Parameter for Child and Adolescent Forensic Evaluations, October 31, 2008.

55th Annual AACAP Meeting Chicago, "The Role of the Child Psychiatrist in Juvenile Competency" October 30, 2008.

Rush University Medical Center, Department of Pediatrics Grand Rounds, "Perspectives on Delinquency, Past and Present", August 12, 2008.

American Medical Association (AMA), "How has science impacted juvenile justice regarding competency, waiver hearings, adjudications, dispositions, and treatment (psychopharmacology)". Annual Meeting, Washington DC, July 2008.

Spring Midwest American Academy of Psychiatry and the Law (AAPL) Meeting, Chicago, IL, "Juvenile Competency to Stand Trial and Understand Miranda," Louis J. Kraus, MD, April 21, 2007.

National APA Meeting in San Diego, "Workshop on Juvenile Justice Presentation on Child Competency to Stand Trial and Understand Miranda. May 2007.

53rd Annual American Academy of Child & Adolescent Psychiatry, San Diego, CA, "The Psychiatrist's Role in Child Custody: A Mock Hearing," Louis J. Kraus, MD, October 28, 2006.

Rush University Medical Center, Department of Psychiatry Grand Rounds, "Capital Punishment for Teenagers – The Recent Supreme Court Decision Roper v Simmons: Discussion and Forensic Application of Current Neuroimaging Research on Teenagers ", April 20, 2005.

Cambridge Hospital, Department of Psychiatry Grand Rounds, "Juvenile Delinquency", September 2004

AACAP National Meeting, San Francisco – Symposium – "Addressing the Needs of Behavior Disordered Children Within the School System", San Francisco, CA, October 25, 2002.

University of Chicago – Workshop "Early Onset Bipolar Disorder", December 14, 2001.

Juvenile Justice Reform – Media Workshop, National AACAP meeting, Honolulu, Hawaii, October 2001.

Hephzibah Children's Association – Workshop "Child and Adolescent Psychiatric Diagnoses and Medications" September 28, 2001

A&E Television Broadcast on "Shattered Innocence - Fells Acres Abuse Case", August 8, 2001

15th Annual Statewide Forensic Conference, October 16-17, 2000 Loyola University Chicago, Illinois Department of Human Services

Speaking engagements at parent groups, managed care meetings, University of Chicago, the Department of Corrections and Probation

Media interviews on television, radio and in newspapers and various publications.

American Psychiatric Association – "Littleton – One Year Later, The Assessment of the Potentially Violent Child Within The School System," May 15, 2000.

Institute of Psychoanalysis, Conference on Youth and Violence, "Diagnosis and Treatment of Delinquents in a Maximum Security Youth Center," May 12, 2000

Evanston Northwestern Healthcare – Pediatric Grand Rounds, "Connections Program – Development of a Community-Based Adolescent Alcohol and Drug Treatment Program," May 2, 2000.

Evanston Northwestern Healthcare – Pediatric Grand Rounds, "ADHD, Differential Diagnosis and Treatment" April 4, 2000.

New Trier High School – Peer Helping, "Adolescent Youth Violence," March 2, 2000.

Response Center, Skokie, IL, "Adolescent School Violence," February 16, 2000.

Chicago Bar Association Matrimonial Law Committee, "Physical, Mental and Emotional Abuse in Custody Cases," February 14, 2000.

Cook County Public Guardian's Office, "Domestic Violence and How It Affects Children," January 31, 2000.

Illinois Psychological Association, "Assessment of Violence in Children and Adolescents, November 11, 1999.

New Trier Township, "School Violence - Treatment and Community Intervention," May 12, 1999.

Shand Morahan Worksite Lunch Program, "Signs of ADD/ADHD and Possible Treatment," April 21, 1999.

Evanston Northwestern Healthcare Health Watch Program, "Childhood Attention Deficit Disorder: Treatment Options," April 7, 1999.

Evanston Northwestern Healthcare, Department of Psychiatry, Professional Conferences, "School Violence," April 6, 1999.

The Warren Wright Adolescent Center, Stone Institute of Psychiatry, Northwestern Memorial Hospital, "Violence in Schools," November 6, 1998.

Institute for Women's Health, Evanston Northwestern Healthcare "Helping Kids Cope with Divorce," October 1998.

Illinois Society of Child and Adolescent Psychiatry, "Juvenile Transfer Hearings – The Psychiatric Evaluation," October 1998.

APA Meeting, Toronto, Ontario, Canada, "Treatment of Severe Delinquents in a Maximum Security Youth Center," June 1998.

Evanston Northwestern Healthcare Pediatric Lecture Series, "The Continuum of Behavior Disorders," April 1998.

Evanston Northwestern Healthcare Department of Psychiatry, Professional Conferences, "Transfer Hearings in Juvenile Court: Evaluation of Behavior Disordered Youth," January 1998.

Evanston Northwestern Healthcare Department of Psychiatry, Professional Conferences, "The Use of Attachment Theory in Custody Evaluations," January 1998.

Juvenile Justice Division of the Circuit Court of Cook County, "Psychiatric Assessments in Juvenile Justice Cases," June 1997.

Chicago Bar Association-Juvenile Law Committee, "Utilizing Psychiatric Evaluations In Juvenile Justice Cases: Transfer And Dispositional Hearings," February 1997.

Genesis Schools/Illinois Association of Counsel for Children, "Helping Incarcerated Youth Overcome Delinquency and Mental Illness," December 1996.

University of Chicago, Laboratory School Lower School Parents Association Lecture Series, "Is My Child's Behavior Normal?" November 1995.

CAUSES - Illinois Masonic Hospital, "Attachment Theory In The Use Of Bonding Evaluations," September 1995.

Illinois Probation and Court Services 1995 Annual Spring Conference, "Kids Killing Kids," March 1995.

Grand Rounds: Columbus Hospital Department of Pediatrics. "Delinquency, Etiology and Intervention," July 1994.

Cook County Juvenile Court, Office of the Public Guardian. "Munchausen By Proxy," July 1994.

Columbus Hospital, Department of Pediatrics Grand Rounds, "Delinquency, Risk Factors, and Interventions," July 1994.

International Correctional Education Association Conference, Chicago " Attention Deficit Hyperactivity Disorder," May 1993.

The American Psychoanalytic Association National Conference, New York, "Attachment Theory - Forensic Implications for Best Interest of the Child," December 1993.

Poster Presentation: APA Meeting, Washington, DC "Monitoring Resident Supervision in Times of Change," May 1992.

The University of Health Sciences, The Chicago Medical School, "Effects of Tham and NaHCO3 on Acid Base Balance During CPR," 1984.

Presentation: Lake County Bar Association Seminar, "Preparing a Client for a 604.10 Evaluation and/or Mediation," April 23, 2021.

APPENDIX B

APPENDIX B

Louis J. Kraus, M.D. *Telephone: 847-559-560*
Deposition and Testimony Cases *Facsimile: 847-559-0612*

03/18/2022 4:19-cv-00431-RLF-MJF	Florida Legal Services, Inc.	GH., et al v. Dept of Juvenile Justice and Secretary of the Dept of Juvenile Justice	Deposition	United States District Court of Northern District of Florida Tallahassee Division
03/09/2022 14D8661	Katz & Stefani	Skidelsky v Skidelsky	Deposition	Circuit Court of Cook County
02/15/2022 14D8661	Davis Friedman	Skidelsky v Skidelsky	Deposition	Circuit Court of Cook County
01/20/2022 18D005945	Schiller, DuCanto & Fleck, LLP	Kenney v Strang	Deposition	Circuit Court of Cook County
09/29/2021 4:19-cv-002-AW-MAF	Florida Legal Services, Inc.	Harvard v Inch	Deposition	United States District Court Northern District of Florida Tallahassee Division
9/22/2021 12 L 58	Patrick Flaherty of Kinnally, Flaherty, Krentz, Loran, Hodge & Masur	Carolyn Overstreet, Special Administrator of the estate of Cynthia Overstreet, Deceased v Rhomas Rossi, MD et al	Trial	Circuit Court of the 17th Judicial Circuit Winnebago County, Illinois
9/21/2021 2014 D 11482	Brigham Law	Buterman v Buterman	Trial	Circuit Court of Cook County
07/06/2021 2015 D 3224	Beermann Law And Veon Law	Ball v Olson	Deposition	Circuit Court of Cook County, Illinois
05/21/2021 1:18-CV-05560	City of Chicago	City of Chicago v. Mendez	Deposition	United States District Court for the Northern District of Illinois
03/29/2021 16 L 008702	Karlin Fleisher & Falkenber LLC And Clausen Miller, PC	TR v Rockford	Deposition	Circuit Court of Cook County, Illinois

02/03/21 **2019 D 6124**	Berger Schatz	Zach Trial	Deposition	Circuit Court of Cook County, Illinois
2021 **2016 L 008702**	Clausen Miller, PC	T.R. vs. Rockford Acquisition Sub, Inc	Deposition	Circuit Court of Cook County, Illinois
2020 **18 D 1380**	Bradford & Gordon, LLC/Burcu Ozadali	Sean Noonan v Brook Noonan	Deposition	Circuit Court of Cook County, Illinois
2019 **2016 L 011004 Consolidated with 2016 L 011007**	Kathleen Kunkle of Ancel, Glink, Diamond, Bush, DeCianni Krafthefer, P.C.	Jane Doe 1 v Cicero School District 99	Trial	Circuit Court of Cook County, Illinois, County Department, Law Division
2019 **12 L 58**	Patrick Flaherty of Kinnally, Flaherty, Krentz, Loran, Hodge & Masur	Carolyn Overstreet, Special Administrator of the estate of Cynthia Overstreet, Deceased v Rhomas Rossi, MD et al	Deposition	Circuit Court of the Seventeenth Judicial Circuit Winnebago County, Illinois
2019 **18 D 1071**	Jordan Rosenberg of Beermann, LLP	Dr. Jennifer Casey v Jason Sachman	Deposition	Circuit Court for the Nineteenth Judicial Circuit Lake County, Illinois
2019 **16 D 6144**	Joan Comiskey of Law Office of Joan Comiskey and Leon Finkel of Berger & Schatz	Anthony Geroulis v Mirofora Geroulis	Deposition	Circuit Court of Cook County Illinois
2019 **11 D 002 451**	Enrico Mirabelli of Beermann, Pritikin, Mirabelli, Swerdlove, LLP	Roiban Ryan v Suzanne Ryan	Trial	Circuit Court of Cook County, Illinois
2019 **9:19-CV-0061**	Mario Williams, Dalls LePierre of Nexus Derechos Humanos Attorneys, Inc.	Natalya Paykina, on behalf of minor child, E.L. v Donna Lewin, Anthony Annucci, John Doe 1, John Doe 2, et al	Evidentiary Hearing	United States District Court for the Northern District of New York
2019 **1:16-CV-08303**	Steven Weil Weil and Chardon LLC	T.S., et at v Twentieth Centry	Deposition	United States District Court for the

		Fox Television, et al.		Northern District of Illinois Eastern Division
2019 **2017 D 0301**	Ruggio & Associates	Yasser Refaat Farid/ Hassan V Rehab Esmat Baldrerin	Deposition	Circuit Court of Cook County Illinois
2019 **2017 D 1173**	Richard Boonstra Boonstra, Hoogendoorn & Talbot LLP	Charles Pratt v Lisa Anne Settli	Trial	Circuit Court of Cook County Illinois
2019 **12 – L 132**	Ann DeVries, Hinshaw & Culbertson Law, LLP	Chynna Brown v Rockford Memorial Hospital	Deposition	Circuit Court of the 17th Judicial Circuit Winnebago County, IL
2018 **17 D 662**	Miller, Shakman & Beem, LLP and Berger Schatz	Kemper Ryan v Kristen Ryan	Deposition	Circuit Court of the Nineteenth Judicial Circuit, Lake County, Il
2018 **3:18-CV-05056**	Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S.	Samuel Tarabochia v Thurson County; Peter Feliciano, Christopher Marx, Anjelita Fornara, Vic Herbert, John Cody White, Mike Fenton, Ted Bryan, Dana Hanson, in their individual capacities	Deposition	U.S. District Court Seattle, Washington
2018 **12CV02595**	Alan Mandel, Alan J Mandel Law Office	Nagrin Kormi v Antoinette Choate, and David L. Lee	Deposition	US District Court Northern District of Illinois Eastern Division
2018 **17 – D 662**	Miller,Shakman and Beem LLC	Kemper Ryan v Kristen Ryan	Deposition	Circuit Court of the Nineteenth Judicial Circuit, Lake County, Il
2018 **16-CV-01356-NJR-RLD**	Roderick and Solange MacArthur Justice Center, Northwestern	Delarren Mason v Superintendent Donald Schaefer, Cheryl Prost, et al.	Deposition	US District Court Southern District of Illinois

	Pritzker School of Law			
2017 **16-CV-00039**	Buckley Sandler	Latson V Clarke	Deposition	Western District of VA
2017 **16-cv-02848-LHK**	Daniel Berger of Grant & Eisenhofer	Charles Des Roche et el v California Physicians Service	Deposition	US District Court for the Northern District of California (San Jose Division)
2017 **2012 F 000032**	Michael Ochoa Law Office of Jeffery Leving, Ltd.	Whitlock/Kochevor	Deposition	1st Municipal District – Cook County, Chicago
2016 **2014 D 001488**	Schiller DuCanto & Fleck	DePalo v. DePalo	Deposition Testimony	1st Municipal District – Cook County, Chicago
2016 **2014 D 009277**	James Hagler, Esq. Law Office of Jeffery Leving, Ltd	Rea v. Rea	Deposition Testimony	1st Municipal District – Cook County, Chicago
2016 **2014 D 009277**	James Hagler, Esq. Law Office of Jeffery Leving, Ltd	Rea v. Rea	Deposition Testimony	1st Municipal District – Cook County, Chicago
2015 **2010 L005691**	B. Whalen	McKinley v Doe	Deposition	1st Municipal District-Cook County, Chicago
2015 **2013 D 000182**	A Berman Grund & Leavitt	Radassnau 215(a)	Deposition	1st Municipal District-Cook County, Chicago
2014 **2008 D 10469**	Michael Bender	Dowd v Strauss	Deposition Trial	1st Municipal District-Cook County, Chicago
2014 **008800**	O'Connor v Hurst	Weinhouse	Trial	1st Municipal District-Cook County, Chicago
2014 **ON L143**	Livingston/Berger	Miller v Morgan	Deposition	1st Municipal District-Cook County, Chicago
2014 **2013 D 005580**	Schiller, DuCanto Fleck	Ring 215a	Deposition	1st Municipal District-Cook County, Chicago

2014 **2009 L 003496**	Stephen Veltman Pretzel, Strougger	Angel v Segal	Deposition Trial	1st Municipal District-Cook County, Chicago
2014 **2012-CV-000648**	Minh C. Wai	LaCrosse v Veolia, et al	Deposition	1st Municipal District-Cook County, Chicago
2013 **2010 D 007929**	Brian Hurst	Burrows v Burrows 604.5	Trial	1st Municipal District-Cook County, Chicago
2013 **2010 D 009879**	Levin & Conde	Blakeslee/Slade 604.5	Deposition Trial	1st Municipal District-Cook County, Chicago
2013 **2010 EV 11187C**	Insley/Race	Dukes v Acadia et al	Deposition	1st Municipal District-Cook County, Chicago
2013 **2009 L 003496**	Pretzel & Stouffer	Angel v Segal et al	Deposition	1st Municipal District-Cook County, Chicago
2013 **2012 D 011835**	Clancy Law	Sproston v Gallee DO	Deposition	1st Municipal District-Cook County, Chicago
2013 **2009 L 000083**	Holfert Hickey, Melia & Assoc	Bjork v Beltran	Deposition	1st Municipal District-Cook County, Chicago
2013 **2007 L 009154**	Richard Griffin	Molina v Morgan	Deposition	1st Municipal District-Cook County, Chicago
2013 **2012 D 011835**	J. Dahlan	G. Rotter (215a)	Testimony	1st Municipal District-Cook County, Chicago
2012 **09 CV 7290**	Wms. Montgomery & John	Green v Kabota	Opinion Deposition	1st Municipal District-Cook County, Chicago
2012	Samuel Lockner Carlson, Caspers, Vandenburg	Elan v Teva	2nd Opinion	
2012	Capital WRITS	How Brain Development Effect	Opinion	

		Both Intent & Culpability		
2011	Baizer Kolar & Lewis	Estate of K. Brock	Deposition	
2011	Cunningham Meyer & Vedrine	First Choice v Professional, Ltd. Et al	Deposition	
2011	Kevin Costello Zukowski, Flood, Rogers, McArdie	Jeremy March	Deposition Trial	1st Municipal District
2010 00 D 06326	Grund & Leavitt	Gleicher v Garland	Testimony	1st Municipal District
2010 4:09-CV-00033	York Legal Group	USA v Arkansas	Deposition	

SUPPLEMENTAL DECLARATION OF DAVID MUHAMMAD

1. I have served nearly a decade in management positions in community corrections.

2. In 2004, I became a Deputy Director of Washington, DC's juvenile justice system, the Department of Youth Rehabilitation Services (DYRS). My responsibilities at DYRS included managing 300 staff, a $42 million annual budget, a juvenile institution, and 900 youth committed to the Department's care.

3. At DYRS, I was responsible for the long-term juvenile facility and supervision of committed youth who were in the community (equivalent of parole). During my tenure, I oversaw the historic closure of the notorious juvenile facility Oak Hill and the opening of the state-of-the-art New Beginnings Youth Center, which has received national acclaim as a model juvenile justice facility. I also managed the closure of the facility's solitary confinement unit and the elimination of punitive segregation. At the New Beginnings Youth Center, I wrote the operations manual for the now celebrated facility.[1]

4. I also helped implement the new model of Positive Youth Development at DYRS, including re-writing the Case Management Manual for all juvenile parole officers. In addition, I was closely involved in the launch of the innovative Regional Service Coalitions, providing services, supports, and opportunities to system-involved youth in the community. Now called DC Youth Link, the initiative has experienced enormous success.

5. In 2009, I was named the Deputy Commissioner of the Department of Probation in New York City, the second largest Probation Department in the country, where I was responsible for overseeing 35,000 adults on probation and a staff of 800. Managing the adult division of probation, I led the effort to place Probation Officers in community settings to

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[1] NBC News. Making a Difference: Turning jailed teens into model students (2012). https://www.nbcnews.com/video/making-a-difference-turning-jailed-teens-into-model-students- 44570691793.

provide people on probation with greater opportunity and accountability, culminating in the creation of Neighborhood Opportunity Centers (NeONs). The new NeONs in every borough of New York City have become a renowned probation and re-entry innovation throughout the country.

6. At NYC Probation, I re-wrote the entire Supervision Manual, emphasizing effective practices and a strength-based approach. I also worked with Mayor Bloomberg's Young Men's Initiative (YMI). Mayor Bloomberg's YMI invested $9 million in Transformative Mentoring programs for young men on probation. After more than five years of operation, an evaluation of those programs demonstrated that participants had a more than 50 percent lower recidivism rate than others on probation who were not in the program.

7. I later became the Chief Probation Officer of Alameda County, where I was responsible for overseeing 20,000 youth and adults on probation, two juvenile facilities, a staff of 600, and a $90 million budget. While at Alameda County, I was able to significantly expand the amount of community based services available for system-involved youth, including: opening three new Evening Reporting Centers as alternatives to detention; launching a new Juvenile Re-Entry Initiative that provides mentoring and employment readiness training to youth leaving the county's juvenile camp; and, in partnership with the Child Welfare agency, building a new Summer Youth and After-School employment program that provides jobs to 700 youth on probation or in foster care.

8. I currently serve as the Executive Director of the National Institute for Criminal Justice Reform (NICJR), a non-profit organization that provides technical assistance, training, and consultation to government agencies, community based organizations and philanthropies in the areas of criminal justice, youth development, and violence prevention.

9. I have worked to implement positive youth development into youth justice systems around the country and was the primary author of NICJR's seminal report – A Positive Youth Justice System.[2]

10. For three years, I was extensively involved in developing a detailed reform plan for the Los Angeles County Probation Department, the largest probation department in the country. For the first two years, I was a primary consultant and author of a detailed report on how to thoroughly reform LA County Probation.[3]

11. I also have extensive experience working as a monitor and expert witness in several federal lawsuits, consent decrees, and settlement agreements.

12. In 2015, I was appointed as the federal court appointed monitor overseeing reforms in the Illinois juvenile justice system under the *MH v. Monreal Consent Decree*. Every three months, I submitted detailed reports to the federal court on the progress of the Illinois Department of Juvenile Justice (IDJJ) and the Illinois Parole Review Board's compliance with the provisions of the consent decree. After nearly four years, I determined that IDJJ was in substantial compliance with the consent decree.

13. I also served as the federal monitor in the *Morales v. Findley* Settlement Agreement, which requires the Illinois Parole Review Board (PRB) and the Department of Corrections (DOC) to reform its parole system. My team submitted semi-annual reports to the federal court on the progress of the PRB and DOC in their compliance of the provisions of the Settlement Agreement.

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[2] National Institute for Criminal Justice Reform. A Positive Youth Justice System, https://nicjr.org/pyjs/.
[3] Resource Development Associates, Inc.. LA Probation Governance Study (2018). https://rdaconsulting.com/wp-content/uploads/2018/02/LAPGS_Final_Report.pdf.

14. As a member of the Antelope Valley Monitoring Team, which is charged with monitoring the Los Angeles Sherriff's Department's implementation of a federal Settlement Agreement, I manage oversight of the Department's Community Engagement. I have served on the Monitoring Team since 2015.

15. I have served as an expert witness in three federal cases: (1) *Mason v. St. Clair County* regarding juvenile detention center conditions, solitary confinement and access to adequate mental health and educational services, in which I submitted an Expert Witness report and provided deposition testimony; (2) *Gasga et. al. vs. Precythe et. al.*, regarding the parole revocation process in Missouri, in which I submitted an expert witness report and provided testimony in depositions and at trial; and (3) *Bergamaschi v Cuomo*, regarding the parole revocation process in New York and in which I submitted a declaration and provided deposition testimony. I attach a copy of my Curriculum Vitae to this declaration. *See* Exhibit A.

16. My opinions in this declaration are based on my extensive training and experience in the field of juvenile justice and my review of specific documents and materials, including relevant literature provided to me by counsel in this case. In my prior declaration filed in this case on May 24, 2022, I relied on, among other things, certain audits and legislative reports attached as exhibits to the Complaint. My understanding is that there have been no additional such audits or reports in the time since my prior declaration was filed; however, based on recent information I reviewed, it appears that the issues identified in these reports remain largely unresolved, and as such, I am still relying on them to form my opinion.

17. In my most recent declaration filed in this case on March 17, 2023, I relied on additional information that has been gathered through multiple fact witnesses, including several juvenile defense attorneys. Based on recent information I have reviewed, it appears that the

issues identified in this information remain largely unresolved, and as such, I am still relying on them to form my opinion.

18. Attorneys for plaintiffs have provided me with additional information that has been gathered through discovery and multiple fact witnesses.

19. After reviewing all of the aforementioned information, I remain convinced that the levels of violence, use of isolation, and provision of rehabilitative services at DJJ all fall well below the professional standard for juvenile detention facilities. Based on this information, it is my professional opinion that conditions in DJJ facilities have worsened since my last declaration.

20. Children in DJJ facilities are subject to frequent assaults and injury and are gratuitously isolated. Based on my experience and the information I have reviewed, it appears that DJJ fails its most basic responsibilities—to keep the youth in its custody safe and to educate and help rehabilitate youth in its care and custody.

21. I have visited numerous juvenile facilities, more than 50, in my more than two decades of experience working in the field of juvenile justice and I have reviewed reports for many more. The alarming amount of violence occurring in South Carolina youth facilities is among the very highest I have ever seen.

22. In my professional opinion, children detained in DJJ facilities are subjected to inhumane, deplorable, and egregious conditions that require immediate intervention. The situation at DJJ seems to have devolved to brutal and torturous conditions.

DJJ'S EXCESSIVE USE OF ISOLATION

23. Based on the materials reviewed and my professional experience, it is my opinion that DJJ uses solitary confinement, what it refers to as isolation, in a manner that is harsh, harmful to youth, and flagrantly contrary to professional standards

24. I have based this opinion both on my professional experience as a juvenile justice administrator and consultant and on the materials I reviewed, which detail DJJ's excessive use of solitary confinement for punitive purposes.

25. For example, in 2017, the South Carolina Legislative Audit Council (LAC) conducted an audit of DJJ that found numerous deficiencies, mistreatment of youth, and a disregard for policies by staff. In April 2021, LAC released another report with updates from its initial audit. The 2021 audit found that DJJ engages in "excessive and unconstitutional use of isolation in DJJ facilities."[4] The LAC also reported that, of 12 quality assurance standards, "[t]he use and documentation of isolation is one of the most critical failed measures."[5] DJJ's failure to adequately document its use of isolation is notable, as it suggests that DJJ may isolate children more often than LAC auditors even realized.

26. The LAC cited a report from the United States Department of Justice (DOJ) that documented deficiencies and poor treatment of youth. LAC cited the report as finding that "the agency relies excessively on isolation as a consequence for misbehavior, which may increase subsequent incidents as juveniles fail to receive rehabilitative and other essential support while in isolation."[6]

27. I have reviewed that DOJ report, which it released in February 2020. That report contains DOJ's findings from a multi-year investigation into South Carolina DJJ's BRRC. The report includes many alarming findings and conclusions. Regarding the use of solitary confinement, the DOJ states: "The Constitution forbids isolating youth solely for punishment.

[4] S.C. General Assembly Legislative Audit Council. A Limited Review of the S.C. Department of Juvenile Justice and Follow Up to Our January 2017 Audit (2021) (page 17). https://dc.statelibrary.sc.gov/bitstream/handle/10827/37166/LAC_Limited_Review_DJJ_2021-04.pdf?sequence=1&isAllowed=y.
[5] Ibid. (page 28)
[6] Ibid. (page 21)

DJJ uses isolation to punish youth. Though its policy expressly prohibits disciplinary isolation, our review of data and documents revealed that DJJ isolates youth frequently as punishment for minor misbehaviors when the youth was not a threat to health or safety."[7]

28. The DOJ investigation also found that "[s]ome particularly egregious examples of isolation for non-violent offenses included a youth who was placed in isolation for having playing cards, a youth who was isolated for being unable to urinate to complete a drug test, and two youths who were isolated for tattooing each other with ink pens."[8]

29. The DOJ concluded that "[t]hese punitive placements go almost unaddressed by DJJ leadership. We reviewed hundreds of requests from 2015-2017 to place youth in isolation beyond four hours that were not reviewed for months after the request was made. Despite its stated policy objectives to protect health and safety, DJJ instead uses isolation mainly as a tool to punish youth and to enforce compliance with its rules."[9]

30. The DOJ also found that DJJ placed youth in solitary confinement for very long periods of time and, for many youth, on numerous occasions. According to the DOJ, DJJ's own data showed that it used isolation more than 1,000 times in the 11 months between July 1, 2018 and May 31, 2019.[10]

31. I have reviewed DJJ's S.T.A.R. Program Overview ("S.T.A.R."), and while the program sounds promising, it also reveals that DJJ authorizes youth to be sent to isolation for a variety of reasons, including vague and subjective ones, and for punitive purposes. For example, S.T.A.R. permits isolation of any youth for "participation of a group disturbance" and "continued

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[7] U.S. Department of Justice Civil Rights Division. Notice Regarding Investigation of South Carolina Department of Juvenile Justice (2020). https://www.justice.gov/crt/page/file/1244381/download (page 9).
[8] Ibid. (page 10)
[9] Ibid. (page 10)
[10] Ibid. (page 11)

disruptive behaviors that causes safety and security concerns on campus and GP housing", among other reasons. Additionally, the STAR Overview says that "All youth of the S.T.A.R. program will be escorted in full restraints (shackles and handcuffs)" – this is alarming as a program that is purportedly "therapeutic".

32. The LAC audits, DOJ findings, and S.T.A.R. are consistent with Plaintiffs' numerous allegations about DJJ's use of isolation, which I describe in this paragraph. The Complaint alleges that youth detained in solitary confinement typically spend 23 hours of each day in their tiny cell, where they must sleep, eat, defecate, and urinate. DJJ staff have developed a term "23- and-1" to describe this common practice. Boys and girls in isolation have only one hour per day to be outside of isolation, in order to shower and change clothes. Some youth detained in solitary confinement do not have working toilets in their cells and must wait until their allotted one hour outside of their cell to use the restroom or ask a juvenile correctional officer ("JCO") for permission to use the restroom. When children are permitted to go outside during this one hour, they are shackled in a small recreation area.

33. The LAC audits and DOJ findings are also consistent with the written testimony of witnesses in this case that I have reviewed. According to these witnesses, DJJ uses isolation not only for explicit punishment but also as a management tool—often to address issues arising from understaffing and lack of capacity. When isolation is used for this purpose, DJJ will often detain children in their cells or rooms. This amounts to the same thing as formal solitary confinement, because children are not able to go outside or freely move about in any amount of space. In my experience, this isolation is deeply disruptive, directly counter to any rehabilitative aims, and antithetical to professional standards of care that apply to the operation of juvenile facilities.

34. According to more recent information I have reviewed, children continue to be placed in isolation for punitive purposes and often for extended periods of time.[11] Phyllis Ross, a former monitor with Disability Rights South Carolina ("DRSC"), recently visited MEC and reported the use of both formal and informal isolation.[12] In one pod, 3 of the 15 children were in formal isolation, but an additional 5 children were locked in their cells and only permitted out for 1 hour per day.[13] One child who had been repeatedly attacked had been locked in his cell for weeks at MEC and stated he was repeatedly locked up during his time at CEC.[14]

35. Ms. Ross reported that children at MEC and JDC are often locked in their cells for extended periods of time due to understaffing, even when they are not in a form of protective custody or lock down or isolation.[15]

36. In my opinion, the use of solitary confinement at DJJ amounts to cruel treatment of the children in DJJ's care because it causes severe and harmful mental health effects. Solitary confinement has been associated with depression, anxiety, psychosis, and increased risk of suicide and self-harm.[16] Youth held in solitary confinement for 23 hours per day typically begin to lose their sense of reality and can become paranoid, anxious, and despondent, all of which can exacerbate existing mental health conditions.[17] Extended isolation may also contribute to violent episodes of acting out.[18]

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[11] Brown Declaration.
[12] Ross Decl. II.
[13] Ross Decl. II.
[14] Ross Decl. II.
[15] Ross Decl. II.
[16] American Academy of Child and Adolescent Psychiatry (2012). Policy Statement: Solitary Confinement of Juvenile Offenders and Hayes, Lindsay M. (2009). Characteristics of Juvenile Suicides in Confinement. Office of Juvenile Justice and Delinquency Prevention.
[17] Human Rights Watch and American Civil Liberties Union (2012). Growing up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States.
[18] Taylor-Nicholson, E. and Krisberg, B. (2013). National Academy of Sciences, Contagion of Violence: Correctional Facilities and Deitch, Michelle (2013). Understanding and Addressing Youth Violence in the Texas Juvenile Justice Department: Report to the Office of the Independent Ombudsman.

37. Given that many of the youth in custody have experienced some serious trauma in their lives or have undiagnosed or untreated mental illness, they are particularly vulnerable. This underlying trauma exacerbates the effects of the additional trauma imposed by DJJ, creating an exponentially cumulative effect on immediate and long-term outcomes for the children DJJ detains. A 2009 national survey of suicides in juvenile institutions published by the federal Office of Juvenile Justice and Delinquency Prevention reveals that 50.6 percent of youth who committed suicide did so while in isolation.[19]

38. Given the effects just described, it should come as no surprise that the punitive use of lengthy periods of isolation has been found to be ineffective in fostering behavior change.[20]

39. It is my professional opinion that solitary confinement should not be utilized frequently or for lengthy periods of time for any reason for children. My view is shared by juvenile justice experts nationwide, has been memorialized in professional standards for juvenile justice administrators, and has been supported by federal and state government efforts to minimize or eliminate the use of solitary confinement for youth.

40. For example, the Juvenile Detention Alternatives Initiative (JDAI) and the Performance-based Standards (PbS) provide standards for juvenile detention facilities that address the use of solitary confinement for children.

41. The Juvenile Detention Alternatives Initiative (JDAI) was initially piloted in five large counties throughout the country in 1994. JDAI now operates in nearly 300 counties nationwide. JDAI's 2014 update to its Juvenile Detention Facility Assessment notes that

[19] Hayes, Lindsay M. (2009). Juvenile Suicide in Confinement: A National Survey. Office of Juvenile Justice and Delinquency Prevention.
[20] Vera Institute (2021). The Impacts of Solitary Confinement. https://www.vera.org/publications/the-impacts-of-solitary-confinement.

professional standards limit the use of room confinement or isolation to temporary responses to behavior that threatens immediate harm to a youth or others. All other uses of isolation—such as for disciplinary measures, administrative convenience, retaliation, or staffing shortages—are prohibited.[21]

42. Performance-based Standards (PbS) is a program developed by the Council of Juvenile Correctional Administrators to improve conditions of confinement in juvenile facilities. Hundreds of state and county juvenile justice agencies are members of PbS and collect and provide detailed data about their operations to the program. South Carolina DJJ is a member of PbS.

43. A September 2012 PbS report, Reducing Isolation and Room Confinement, states: "PbS standards are clear: isolating or confining a youth to his/her room should be used only to protect the youth from harming himself or others and if used, should be brief and supervised. Any time a youth is alone for 15 minutes or more is a reportable PbS event and is documented. PbS reports isolation, room confinement, and segregation/special management unit data together to draw attention to practices that are inappropriate, ineffective, and can have deadly consequences."[22]

44. Because of these concerns, the federal government and many states have implemented reforms to align with the leading national standards on confinement. These reforms limit the use of isolation (whether referred to as solitary confinement or room confinement) to no more than a few hours.[23]

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[21] Juvenile Detention Alternatives Initiative (2014). A Guide to Juvenile Detention Reform: Juvenile Detention Facility Assessment 2014 Update.
[22] Performance-based Standards (2012). Reducing Isolation and Room Confinement.
[23] American Academy of Child and Adolescent Psychiatry (2012). Policy Statement: Solitary Confinement of Juvenile Offenders.

45. For example, in 2016, the Governor of California signed Senate Bill 1143, limiting the use of solitary confinement in juvenile facilities in the state to four hours. Under California law, the use of room confinement must now meet the following criteria:[24] (1) Room confinement shall not be used before other less restrictive options have been attempted and exhausted, unless attempting those options poses a threat to the safety or security of any minor, ward, or staff; (2) Room confinement shall not be used for the purposes of punishment, coercion, convenience, or retaliation by staff; (3) Room confinement shall not be used to the extent that it compromises the mental and physical health of the minor or ward. (a) A minor or ward may be held up to four hours in room confinement. After the minor or ward has been held in room confinement for a period of four hours, staff shall do one or more of the following: (1) Return the minor or ward to general population, (2) Consult with mental health or medical staff, and/or (3) Develop an individualized plan that includes the goals and objectives to be met in order to reintegrate the minor or ward to general population.

46. Additional states have limited or ended the practice of solitary confinement for children, due to widespread concerns about the harmful effects of solitary confinement on youth. At the conclusion of litigation over conditions of confinement in the Ohio Department of Youth Services (ODYS), for example, ODYS closed its solitary confinement units and eliminated the use of seclusion as punishment.[25]

47. The Massachusetts Department of Youth Services (DYS) rarely uses solitary confinement for more than two hours. According to its policy, room confinement may not be used as a consequence for non-compliance; punishment; harassment; or in retaliation for any

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[24] Chaptered as California Welfare and Institutions Code section 208.3.

[25] Ohio Department of Youth Services (2015). Extraordinary Reform in Ohio's Juvenile Justice System: Providing Reliable Conditions for Helping Youth Change Their Lives, https://www.dys.ohio.gov/static/About+DYS/Communications/Dec_2015_JointFactSheet.pdf.

youth conduct, and youth may not be placed on room confinement if they are on suicide watch. DYS policy further states that "room confinement may only be used when less restrictive interventions have failed and for the least amount of time required for youth to regain self-control."[26]

48. Due to the dangers and harms to children associated with solitary confinement, the federal government has eliminated the use of solitary confinement for juveniles.

DJJ'S FAILURE TO KEEP CHILDREN SAFE AND ITS FAILURE TO PROVIDE REHABILITATIVE SERVICES & EDUCATION TO CHILDREN IN ITS CUSTODY

49. In my experience, rehabilitative programming—e.g., regular schooling, therapy, and extracurricular activities—is an effective tool for reducing violence and improving overall behavior. By contrast, children who are unengaged, bored, or isolated are far more likely to act out, oftentimes violently.

50. Based on my professional opinion and the materials I have reviewed, DJJ completely fails to keep the children in its custody safe. To the contrary, children in DJJ facilities are frequently subjected to assaults and injury and are subjected to inhumane and unsanitary conditions.

51. According to DJJ's own reports and the first-hand experience of witnesses who have provided declarations in this case, a high volume of assaults have caused serious injuries to youth and staff, creating an environment where children in DJJ custody are unsafe.

52. According to SCDJJ's PbS data report for June 2023, youth on youth assaults increased in every facility. There has been a massive increase in CEC, where youth on youth

[26] DYS Involuntary Room Confinement Policy, https://stopsolitaryforkids.org/wp- content/uploads/2016/04/DYS-Involuntary-Room-Confinement-Policy.pdf.

assaults jumped from 2 in June of 2022 to 15 in June of 2023, a 750% increase. In JDC assaults increased from 18 in June 2022 to 34 in June 2023; in MEC assaults rose from 20 to 32; and in UEC assaults climbed from 5 to 16 over the same period.

53. According to SCDJJ data, in June 2023, there were 648 sick call appointments for youth on youth "aggression" for a population of only 284 children.

54. In part due to this violent environment, DJJ has failed to meet its basic obligations to provide rehabilitative services and educational programming to children it detains.

55. South Carolina DJJ provides monthly PbS reports to Disability Rights South Carolina that includes statistics on the number of critical incidents inside DJJ facilities. A review of each month's report between June 2021 through December 2022 showed numerous assaults in DJJ facilities. In November 2021 alone, in just one month there were 45 assaults, 40 fights, 51 injuries, and 10 trips to the emergency room for youth across five DJJ facilities. And information reviewed for this declaration included evidence that the actual number of fights, assaults, and injuries are much higher as many go unreported.

56. For example, in her prior declaration, Phyllis Ross, states that "conditions in DJJ are extremely dangerous for the children detained[27]

57. Ms. Ross also noted severe understaffing and poor conditions that lead to lack of rehabilitative programming, few recreational opportunities and facilities that are "plagued by frequent assaults and fights."[28]

58. Ms. Ross's prior declaration includes specific details of gruesome assaults that at best were allowed and at worst set up by DJJ staff. "During my time monitoring DJJ facilities, violence has become more and more common. This violence includes youth-on-youth violence

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[27] Ross Declaration I.
[28] Ross Decl. I.

that is sometimes instigated by DJJ staff, as well as direct violence perpetuated by DJJ staff against the detained children they are supposed to supervise."[29]

59. At DJJ's long-term facility, in her prior declaration, Ms. Ross reports that "[t]he violence at BRRC has become so frequent that children often do not attend school for days or weeks at a time. Children often go to school for only half a day because full day attendance with inadequate supervision causes too many fights, and many times children do not receive even limited educational instruction."[30]

60. Ms. Ross' most recent declaration confirms the ongoing dangerous conditions at DJJ. Ms. Ross reports that "attacks have become much more frequent" across DJJ facilities.[31] She reported that security officers accidentally opened the door to the wrong pod, resulting in those children attacking kids in another pod.[32] One child Ms. Ross spoke with at MEC reported being attacked in all three facilities he has been in, including a recent attack with a lock in a sock.[33] He has since been in isolation in his cell and every time the door to his cell opens, other children try to attack him.[34]

61. In her declaration in this case, Hannah Freedman, a staff attorney at plaintiff Justice 360, who represents clients in DJJ facilities, says that "[y]outh-on-youth violence is also rampant at DJJ facilities. I have never met any individual who was ever detained at a DJJ facility who was not assaulted by other juveniles at least once."[35]

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[29] Ross Decl. I.
[30] Ross Decl. I.
[31] Ross Decl. II.
[32] Ross Decl. II.
[33] Ross Decl. II.
[34] Ross Decl. II.
[35] Freedman Declaration.

62. Despite supposed efforts to increase safety and well-being in DJJ, the most recent month PbS data is available, December 2022, DJJ had the highest number of fights in a three years span.

63. Additional materials I have recently reviewed have shown that DJJ facilities continue to have alarming security failures, resulting in violent attacks, riots, fires in multiple facilities, which DJJ fails to respond to quickly or efficiently enough to protect the children in its custody from harm.[36]

64. Children at JDC have been attacked with tasers and pepper spray on multiple occasions, including children who report being tased while lying down in their unit at 6:00 AM.

65. One child reported being violently assaulted in JDC while DJJ staff members did nothing to assist the child under attack and instead locked themselves in another room. The officers remained in the other room while the child was being assaulted until security officers arrived approximately 30 minutes later.[37] This child, among others, have experienced hours-long delays before receiving any medical care after being assaulted.[38] Based on the materials I have reviewed, violent assaults at JDC are the rule and not the exception.

66. At MEC, a child reported being attacked with a lock and a DJJ staff member confirmed that this is "not uncommon a lot of youth have locks that they use as weapons and violence is rampant at MEC.[39]

[36] Brown Decl.
[37] Coyle Declaration.
[38] Coyle Declaration. Hamrick Declaration.
[39] Coyle Decl.

67. Based on recent information I have reviewed, it seems that the conditions in JDC are especially dangerous, unsafe, and unsanitary. Children in JDC report having no access to clean clothing for weeks at a time and being denied opportunities to shower. [40]

68. The 2021 South Carolina LAC Audit found that DJJ "does not maintain sufficient security to ensure safety for staff and juveniles, presenting substantial long-term and short-term hurdles to its ability to effectively provide rehabilitation and other services within secure facilities."[41]Likewise, DOJ's investigation found that "DJJ has engaged in a pattern or practice of failing to keep youth reasonably safe from harm." DOJ noted that "DJJ reported to the South Carolina legislature that, between July 2018 and May 2019, there were 134 fights and 71 assaults that resulted in 99 injuries to youth in a facility with an average daily population of just over 100."[42]

69. DOJ ultimately concluded that, "[b]ased on this evidence of regular assaults, fights, and injuries at BRRC, we conclude that youth at BRRC are not housed in reasonably safe conditions."[43]

70. DOJ and LAC both observed that youth are not safe and do not have access to education and rehabilitative programming primarily due to DJJ's shortage of staff, but also due to the lack and inadequacy of staff training, insufficient security protocols, and physical plants that are deteriorating and lacking appropriate safety features. When I served as a deputy director of the juvenile justice system in Washington, DC (DYRS), in acknowledging the primary

[40] Hays Decl.
[41] S.C. General Assembly Legislative Audit Council. A Limited Review of the S.C. Department of Juvenile Justice and Follow Up to Our January 2017 Audit 17 (2021), https://dc.statelibrary.sc.gov/bitstream/handle/10827/37166/LAC_Limited_Review_DJJ_2021-04.pdf?sequence=1&isAllowed=y.
[42] U.S. Department of Justice Civil Rights Division, Notice Regarding Investigation of South Carolina Department of Juvenile Justice 9 (2020), https://www.justice.gov/crt/page/file/1244381/download.
[43] Ibid. (page 6).

importance of providing education for children in our custody, we implemented a policy that prohibited youth from being taken out of school for disciplinary reasons or even staffing shortages. The only reason youth were removed from school was for actively engaging in violence in school. I implemented a similar measure in Alameda County's juvenile detention center when I served as the Chief Probation Officer there. In both cases, our commitment to providing educational services yielded better behavior, decreased violence, and improved rehabilitation.

71. I have had direct oversight of three juvenile facilities during my time working as a correctional administrator and I have served for three and a half years as a federal court monitor in Illinois. In all of these experiences, I have never witnessed anywhere near the level of violence that is reported to occur in South Carolina's DJJ facilities. This extremely high level of violence is far beyond the norm in youth facilities nationally, as I have directly experienced it or as I understand it from my work in numerous jurisdictions around the country and my connection to directors of youth facilities and correctional agencies.

CONCLUSION

72. I have concluded, based on my professional experience and my review of materials, that DJJ routinely fails to meet its basic obligations to the children it detains, in contravention of basic professional standards applicable to juvenile correctional institutions.

73. The State's investigators, DJJ officials and its own data dashboard, the federal DOJ, and accounts from youth, parents, and advocates all point to the same conclusion: South Carolina DJJ routinely fails to meet basic minimum standards for treatment and instead detains children in conditions that amount to punishment.

74. It is my professional opinion that DJJ's frequent, capricious, and extended use of isolation/solitary confinement departs from norms and best practices among juvenile justice agencies. As described above, DJJ's excessive use of solitary confinement, including for punitive purposes and as an administrative procedure, not only falls far short of the acceptable professional standard, it likely causes significant harm to the youth in DJJ's care.

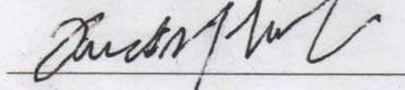
75. For these reasons, use of solitary confinement in DJJ should cease immediately and permanently.

76. DJJ has also failed to keep the children in its care safe, as demonstrated by the frequent violence and assaults that children in DJJ custody endure, sometimes even as a result of instigation by DJJ staff or failure to intervene by DJJ staff.

77. Finally, the dangerous conditions in DJJ facilities also result in the failure to provide basic rehabilitative services and educational programming to children in DJJ custody. A high volume of assaults have ensured that there is very little rehabilitation programming available and that youth rarely attend school.

78. Given all of the factors described above and throughout this report, my opinion is that DJJ appears to fail in its most basic responsibilities—to educate and help rehabilitate the youth in its care, to keep those youth safe, and in doing so to help improve public safety by reducing recidivism.

Executed October 26, 2023



David Muhammad