

DISTRICT COURT, PUEBLO COUNTY, COLORADO 320 W. 10 th Street Pueblo, CO 81003	σ COURT USE ONLY σ
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. [REDACTED] a Juvenile and Concerning [REDACTED] Respondent	
Douglas K. Wilson, Colorado State Public Defender MARALINA J. SCHOENFELDER, #40949 132 W. "B" Street Suite 200 Pueblo, CO 81003 Deputy State Public Defender Phone: (719) 546-0004 Fax: (719) 583-0746 Email: maralina.schoenfelder@coloradodefenders.us	Case No. [REDACTED] Division [REDACTED]
MOTION REQUESTING EMERGENCY PLACEMENT ORDER AND OBJECTING TO JUVENILE [REDACTED] [REDACTED] SUBJECTION TO ONGOING SOLITARY CONFINEMENT CONDITIONS AT EL PUEBLO RESIDENTIAL TREATMENT CENTER IN VIOLATION OF THE 8th AMENDMENT PROTECTIONS AGAINST CRUEL AND UNUSUAL PUNISHMENT	

Juvenile [REDACTED] [REDACTED] through Counsel, moves this Court for an Order granting emergency placement removal from El Pueblo Boys and Girls Ranch, Pueblo, Colorado, as grounds counsel states the following:

PROCEDURAL BACKGROUND

1. Juvenile [REDACTED] pled guilty to theft, a class 2 misdemeanor on March 12, 2013. She was adjudicated and sentenced to 12 months supervised probation on that same date.
2. On January 4, 2013, juvenile [REDACTED] admitted the violations of probation as alleged in the complaint for revocation, she was re-granted probation for a period of 12 months and ordered to complete a 60 days electronic home monitor sentence.
3. On January 8, 2013, juvenile [REDACTED] appeared on an arrest warrant for allegations of failure to comply with the electronic home monitor sentence imposed on January 4, 2013.
4. January 18, 2013, juvenile [REDACTED] probation terms and conditions were modified by Court order to include that successful completion of treatment at El Pueblo Boys and Girls Ranch and compliance with all rules and regulations of the residential treatment facility.
5. On January 18, 2013 counsel objected to [REDACTED] placement at El Pueblo Boys and Girls Ranch specifically noting concerns with [REDACTED]s placement in the "Reflection

¹ Juvenile [REDACTED] has been adjudicated in case [REDACTED]

Cottage” for 2 days prior to being eligible to transition to a non-isolation cottage housing unit at El Pueblo.

6. Counsel objected to the placement as being inappropriate and constitution a form of cruel and unusual punishment in violation of [REDACTED] 8th Amendment Constitutional rights because of the solitary confinement conditions. Counsel specifically advised the Court of the practice acknowledged by Pueblo Department of Social Services Worker [REDACTED] [REDACTED] that juveniles transitioning to El Pueblo be placed for a mandatory minimum of 2 days in the “Reflection Cottages” before transitioning to non-isolation housing units.
7. Counsel also provided the Court with the administrative regulatory guidance issued by the Division of Child Care, Colorado Department of Human Services titled “Quality Standards for 24-Hour Child Care.” Counsel specifically noted section 7.714.534 [Seclusion] effective 06/01/2012.
8. Section 7.174.534 states “[s]eclusion may only occur for the period of time necessary to accomplish its purpose. The individual shall be released from seclusion when the state of emergency has ceased. Seclusion shall not exceed **two (2) hours per incident** unless required by the individual’s treatment plan or individual child plan.” Quality Standards for 24-Hour Child Care. (Emphasis Added) (Exhibit A).
9. The Court noted counsel’s objection and replied that the Court had contacted Pueblo Department of Social Services Director, [REDACTED] regarding the concerns counsel raised. The Court informed counsel that neither the Court nor [REDACTED], the Director of Pueblo Department of Social Services had concerns regarding the practice of placing juveniles at El Pueblo Boys and Girls Ranch in the “Reflection Cottages.” The Court further stated that such practices are reviewed and approved and no complaints have been made regarding the practice of placing juveniles in the “Reflection Cottages.”
10. Juvenile [REDACTED] was ordered released to Pueblo Department of Social Services from Pueblo Youth Detention Facility to be placed at El Pueblo Boys and Girls Ranch, on January 18, 2013.
11. Juvenile [REDACTED] family contacted counsel, March 28, 2013 with the following concerns regarding the care and supervision of [REDACTED] while at El Pueblo Boys and Girls Ranch.
 - a. Juvenile [REDACTED] was held in the “Reflection Cottages” solitary confinement conditions for a period of nearly **30 days** upon her initial entry into the residential treatment center at El Pueblo. (Emphasis Added).
 - b. Juvenile [REDACTED] was denied access to counsel, she was not allowed phone access to her defense counsel in this case, nor was she allowed phone access to her Guardian Ad Litem, [REDACTED] while placed at El Pueblo. Juvenile [REDACTED] was told that her counsel was not on her approved phone contact list.
 - c. Juvenile [REDACTED] suffered a broken finger, incorrectly diagnosed by the nursing and medical staff on March 7, 2013. Juvenile [REDACTED] repeatedly sought out medical aid and attention from the medical staff at El Pueblo. Juvenile [REDACTED] was told it was only a sprain and was not given ice or Tylenol or any other type of medical care regarding the injury for approximately 3 weeks. [REDACTED] juvenile [REDACTED] [REDACTED] sister provided a written statement and timeline of the incidents described. (Exhibit B).

- d. Juvenile [REDACTED] while on pass was taken to Urgent Care by her father and on March 27, 2013. Juvenile [REDACTED] was diagnosed with a broken finger on that same date and is scheduled for surgery on March 29, 2013 for the broken finger. Juvenile [REDACTED] will have to have a metal pin inserted surgically to repair the broken finger.
 - e. Juvenile [REDACTED] was also diagnosed with scabies infection by the Urgent Care provider on March 27, 2013. When [REDACTED] would complain about sever itching at El Pueblo she was told she had sensitive skin and must be having a reaction to the soap provided at El Pueblo. The nursing staff at El Pueblo also repeatedly failed to properly diagnose or treat juvenile [REDACTED] scabies infection she contracted while housed at El Pueblo.
 - f. [REDACTED] immediately notified the nursing staff at El Pueblo of the scabies infection diagnosis from Urgent Care on March 27, 2013. The nursing staff after receiving notification from [REDACTED] of the diagnoses of the broken finger and scabies infection informed [REDACTED] he needed to take juvenile [REDACTED] to another doctor for a second opinion, a "skin test" regarding the scabies infection.
 - g. Mr. [REDACTED] did take juvenile [REDACTED] to St. Mary Corwin Hospital Emergency room on March 28, 2013 where [REDACTED] was again diagnosed with a scabies infection. The emergency room doctor noted no such "skin test" existed for the diagnosis of a scabies infection.
 - h. After the second diagnosis of the scabies infection, juvenile [REDACTED] was again placed in the "Reflection Cottage," solitary confinement conditions for 12-14 hours.
 - i. Juvenile [REDACTED] is returning from a pass with her family as of the date of drafting this motion, due to her scabies infection she will likely again spend 8-10 hours in the "Reflection Cottage" solitary confinement conditions.
 - j. Juvenile [REDACTED] also reported not having enough food to eat while placed at El Pueblo. She reported that she is often told the portion sizes are so small because El Pueblo does not have enough food for all the residents.
12. Counsel for juvenile [REDACTED] has toured the facilities at El Pueblo Boys and Girls Ranch and personally observed the solitary confinement conditions in the "Reflection Cottages." Counsel observed the following:
- a. A locked unit accessible only by key card.
 - b. Six to eight individual cells with concrete floors and a concrete raised area, what appears to be a concrete bed.
 - c. The individual cells have a wooden door with a Plexiglas viewing area or window.
 - d. The children/detainees are not allowed to leave the locked unit to participate in educational programming or recreational programming.
 - e. The children/detainees are forced to eat on the locked unit, metal trays approximately 6 inches in width and length extend from the wall in the common area. (Note: it is assumed that some form of chair or seating is provided when the

children/detainees eat facing the wall on the metal trays, none form of seating was observed).

- f. Children/detainees are not provided access to a day room with chairs or any type of seating or cushioned seating.
 - g. Children/detainees have to ask permission to leave the concrete cell to use the bathroom; a shared communal bathroom and shower are on the locked unit.
13. Counsel for Juvenile ██████████ asked ██████████ about her experience in the “Reflection Cottage” solitary confinement conditions, she reported experiencing cold uncomfortable conditions and that she repeatedly had not being given blankets or a sleeping mat until late at night.
14. Juvenile ██████████ also reported she would have to stand or sit on the cold concrete only for hours upon hours in the cell. She also reported that the only heat provided for the “Reflection Cottages,” was in the control room, an area not accessible by the juveniles detained therein. Juvenile ██████████ provided a written statement regarding the conditions and her experiences at El Pueblo. (Exhibit C).

LAW

1. The 8th Amendment to the United States Constitution states “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” *U.S. Const., Amend, VIII; Colo. Const., Art. II, § 20.*
2. The 14th Amendment to the United States Constitution Section 1 states: “[N]or shall any State deprive any person of life, liberty, or property, without due process of law.” *U.S. Const., Amend, XIV; Colo. Const., Art. II, § 25.*
3. Isolation or seclusion is usually described as placing a youth alone in an unfurnished cell for as much as twenty-three hours a day, usually for disciplinary, safety or administrative purposes. Sandra Simkins, Marty Beyer, and Lisa M. Geis, *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 Wash. U.J.L & Pol’y 241, 251-252 (2012). (Exhibit D).
4. “It’s an awful thing, solitary...It crushes your spirit and weakens your resistance more effectively than any other form of mistreatment.” Sandra Simkins, Marty Beyer, and Lisa M. Geis, *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 Wash. U.J.L & Pol’y 241, 250, footnote 35 (quoting John McCain) (2012).
5. Courts across the United States have ruled the use of isolation is harmful and in some cases, inhuman. For examples, it is unacceptable to isolate a child in a room with nothing but a mattress, stripped of everything else. *Id.* at 251.
6. Detaining juveniles in solitary confinement conditions is a harmful practice. Children detained in solitary confinement conditions are confined in the same manner or even worse than adults sentenced to the death penalty. Adults on death row are housed in 23 hour segregation units and allowed 1 hour daily for physical activity and personal hygiene.
7. The American Civil Liberties Union recently released a report “Growing Up Locked Down; Youth in Solitary Confinement in Jails and Prisons Across the United States.” The

report which included research on prisons and jails in five states including Colorado found that the isolation of solitary confinement provokes serious mental and health problems including anguish and depression sometimes resulting in suicide or suicidal ideation and works against rehabilitation for juveniles subjected to such conditions. (Exhibit E).

8. The American Academy of Child and Adolescent Psychiatry issued a policy statement in April 2012 regarding Solitary Confinement of Juvenile Offenders. In this policy statement the American Academy of Child and Adolescent Psychiatry concurred with the United Nations position regarding solitary confinement and opposes the use of solitary confinement in correctional facilities. *Solitary Confinement of Juvenile Offenders, Policy Statement, American Academy of Child and Adolescent Psychiatry, April 2012.* (Exhibit F).
9. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty establish minimum standards for the protection of juveniles in correctional facilities. The UN resolution was approved by the General Assembly in December 1990, and supported by the U.S. Section 67 of the Rules states: "All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned." *Id.*
10. "Solitary confinement should be distinguished from seclusion, which is a short term emergency procedure, the use of which is governed by federal, state and local laws and subject to regulations developed by the Joint Commission, CARF and supported by the National Commission of Correctional Health Care (NCHHC) and the American Correctional Association." *Id.*
11. "The Joint Commission states that seclusion should only be used for the least amount of time possible for the immediate physical protection of an individual, in situations where less restrictive interventions have proven ineffective. The Joint Commission specifically prohibits the use of seclusion 'as a means of coercion, discipline, convenience or staff retaliation.' A lack of resources should never be a rationale for solitary confinement," or seclusion. *Id.*
12. "Isolation even for brief periods, is harmful to adolescents for two reasons: (1) Youth in isolation cannot participate in programs, including education, designed to rehabilitate them; and (2) isolation has negative psychological consequences, including increased risk of suicide, re-traumatizing, depression and agitation." Sandra Simkins, Marty Beyer, and Lisa M. Geis, *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 Wash. U.J.L & Pol'y 241, 257 (2012).
13. Isolation can also make traumatized youth feel a sense of powerlessness; such feelings of powerlessness are damaging and can undermine any progress the youth has made in recovering from earlier traumatic experiences. In contrast to isolation practices interactive treatment programs have more success in reducing problem behavior and mental health problems than does isolation, which in fact provokes and worsens these problems. *Id.* at 259.
14. Numerous courts have held that juveniles subjected to isolation or solitary confinement conditions violated not only the Eighth Amendment but also the Fourteenth Amendment of the United States Constitution. In *Lollis v. New York Department of Social Services*, the court reviewed affidavits from numerous specialists, mental health experts, all seven specialists unanimously condemned extended isolation of children as not only cruel and

inhuman, but also counterproductive to the development of the child. *Id.* at 262-264, (citing *Lollis v. N.Y. Dep't of Soc. Servs.*, 322 F. Supp. 473, 482 (S.D.N.Y. 1970), *Inmates of the Boys' Training Sch. V. Affleck*, 346 F. Supp. 1354, 1372 (D.R.I. 1972)).

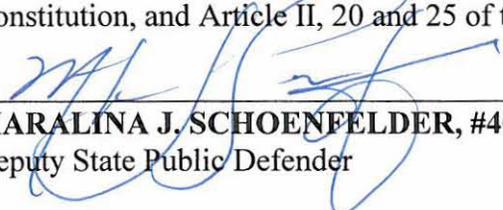
15. "*In re Gault*, clearly established the right for juveniles to the due process of the law and defined the juvenile system as having rehabilitative goals instead of punitive goals." *Id.* at 264 (citing *In re Gault*, 387 U.S. 1 (1967)). "In reliance on the decision *In re Gault*, the Court in *Affleck* held that placing a child in isolation was anti-rehabilitative and therefore deprived the child of due process under the Fourteenth Amendment." *Id.* at 264 (citing *Inmates of the Boys' Training Sch. V. Affleck*, 346 F. Supp. 1354, 1372 (D.R.I. 1972)).
16. "The Colorado Children's Code's sole emphasis is on rehabilitating children, assisting them in becoming responsible and productive members of society, and preventing them while at an impressionable and vulnerable age, from becoming criminals." *People in the Interest of M.C.*, 750 P.2d 69 (Colo. App. 1987), *aff'd*, 774 P.2d 857 (Colo. 1989).

ARGUMENT

1. El Pueblo Boys and Girls Ranch is a residential treatment facility it is not a juvenile detention facility, it has no legitimate or therapeutic interest in detaining or isolating children entrusted to its care.
2. Juvenile [REDACTED] has been subjected to **30 days or more** of solitary confinement conditions in the "Reflection Cottages" since her placement at El Pueblo Boys on January 18, 2013. (Emphasis Added).
3. As of March 27, 2013 Juvenile [REDACTED] was again subjected to placement in solitary confinement as a result of contracting a scabies infection while housed El Pueblo. Juvenile [REDACTED] did nothing wrong, violated no law, policy or procedure of the El Pueblo Boys and Girls Ranch and was still subjected to solitary confinement conditions as a housing alternative when arguably the sanitary conditions of the facility itself were negligent and injurious to juvenile [REDACTED] resulting in her contraction of a communicable skin ailment, scabies.
4. Juvenile [REDACTED] reported that other female juveniles in the facility who have had lice are also removed from the non-isolation living units and placed for days sometimes up to weeks in the "Reflection Cottages" as a result of the lice infestation. Sadly, again a non-culpable act on the part of the juvenile so isolated and subjected to solitary confinement conditions.
15. Placing a juvenile in seclusion is limited by the administrative regulation, issued by the Division of Child Care, Colorado Department of Human Services titled "Quality Standards for 24-Hour Child Care." Effective June 2012.
16. Section 7.174.534 states "[s]eclusion may only occur for the period of time necessary to accomplish its purpose. The individual shall be released from seclusion when the state of emergency has ceased. Seclusion shall not exceed **two (2) hours per incident** unless required by the individual's treatment plan or individual child plan." Quality Standards for 24-Hour Child Care. (Emphasis Added) (Exhibit A).
17. Juvenile [REDACTED] reported in addition to the subjection to extremely detrimental and injurious isolation, solitary confinement conditions at the "Reflection Cottages" additional concerns that she was not receiving adequate food and medical care while house at El Pueblo Boys and Girls Ranch.

18. Juvenile [REDACTED] faces an ongoing risk of cruel and unusual punishment in violation of her federal and state Constitutional rights to Due Process and protection from Cruel and Unusual Punishments. These concerns are ongoing because her successful completion of the residential treatment program at El Pueblo Boys and Girls Ranch was court ordered as a condition of probation on January 18, 2013.
19. The ongoing requirement of completion of the treatment program at El Pueblo places juvenile [REDACTED] in imminent danger of unfair and unconscionable continued use of seclusion and isolation practices as both an unfair and prejudicially applied punitive measure and as a housing alternative for extended periods of time.
20. Juvenile [REDACTED] has at present suffered severe and possibly irreparable harm by her extended exposure to the solitary confinement conditions in the "Reflection Cottage" at El Pueblo Boys and Girls Ranch, Pueblo, Colorado. Sadly, as this risk is ongoing and in clear violation of her state and federal constitutional rights to due process and protection from cruel and unusual punishment. Juvenile [REDACTED] requests and Emergency Order granting her immediate removal from El Pueblo Boys and Girls Ranch, Pueblo, Colorado.
21. In the event the Court declines this request for immediate placement removal of Juvenile [REDACTED] from El Pueblo Boys and Girls Ranch she is requesting a hearing set on the Court's calendar at the earliest availability.

WHEREFORE, Juvenile [REDACTED] requests this Honorable Court to grant the Emergency Order or Removal from the El Pueblo Boys and Girls Ranch. Juvenile [REDACTED] makes this motion, on the following grounds and authorities: Federal and State Constitutional rights to due process protections and protections from cruel and unusual punishment of the Federal and Colorado Constitutions, specifically the Eight, and Fourteenth Amendments to the United States Constitution, and Article II, 20 and 25 of the Colorado Constitution.



MARALINA J. SCHOENFELDER, #40949
Deputy State Public Defender

Dated: March 29, 2013

Certificate of Service

I hereby certify that on _____, 2013, I served the foregoing document by delivering ___ mailing ___ faxing ___ same to all opposing counsel of record.

DISTRICT COURT, PUEBLO COUNTY, COLORADO 320 W. 10 th Street Pueblo, CO 81003	
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. [REDACTED] a Juvenile and Concerning [REDACTED] Respondent	σ COURT USE ONLY σ
Douglas K. Wilson, Colorado State Public Defender MARALINA J. SCHOENFELDER, #40949 132 W. "B" Street Suite 200 Pueblo, CO 81003 Deputy State Public Defender Phone: (719) 546-0004 Fax: (719) 583-0746 Email: maralina.schoenfelder@coloradodefenders.us	Case No. [REDACTED] Division [REDACTED]
ORDER GRANTING EMERGENCY PLACEMENT REMOVAL FROM EL PUEBO BOYS AND GIRLS RANCH	

BY THE COURT:

THIS MATTER comes before the Court on Juvenile [REDACTED] Motion Requesting an Order Placement Order and Objecting to Juvenile [REDACTED] Subjection to Ongoing Solitary Confinement Conditions at El Pueblo Residential Treatment Center in Violation of the 8th Amendment Protections Against Cruel and Unusual Punishment. The Court being fully advised,

IT IS SO ORDERED:

That Juvenile [REDACTED] is ordered removed from placement at El Pueblo Boys and Girls Ranch and placed at _____.

J U D G E