

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

THE UNITED STATES

AND

THE STATE OF NEVADA

This Memorandum of Understanding is made and entered into this 26<sup>th</sup> day of February, 2004, by and between the State of Nevada, the Nevada Department of Human Resources, the Nevada Division of Child and Family Services (collectively, "the State") and the United States (collectively with the State, "the parties"). Pursuant to this memorandum of understanding, the parties agree as follows:

**I. RECITALS**

- A. On December 6, 2001, the United States Department of Justice ("DOJ") notified the State of its intent to investigate conditions of confinement at the Nevada Youth Training Center ("NYTC" or "the facility"), pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, and the pattern or practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141.
- B. In February 2002, DOJ and its expert consultants toured the facility. Following the tour, DOJ held an exit conference with the facility, during which it outlined its preliminary findings and recommendations.
- C. Throughout the course of the investigation, the United States received complete cooperation and access to the facility and documents from the State, and particularly from the Administrator of the Division, the Deputy Administrator for Youth Corrections, the Superintendent of the Nevada Youth Training Center, and the Center's employees.
- D. The State represents that, from February 2002 to the present, the State has been working to implement the changes recommended by DOJ. In particular, it represents that personnel actions have been taken to appropriately discipline employees identified as using excessive force against the youths in the facility, that it has revised its policies and procedures for the facility, and that it has trained its employees in the revisions.
- E. On November 12, 2002, the United States issued a findings letter pursuant to 42 U.S.C. § 1997(a)(1), which concluded that certain conditions at the facility violated the constitutional and/or statutory rights of youths confined therein.

- F. The State denies that conditions at the facility violate the constitutional and/or statutory rights of youth confined there.
- G. The United States acknowledges that the State has engaged in significant activities to improve the quality of conditions and services at NYTC, and accepts as true the State's commitment to continue this work.
- H. The parties have engaged in good faith negotiations to reach agreement in this Memorandum of Understanding, and enter into this agreement for the purpose of memorializing the efforts the State will engage in to implement necessary improvement in the facility and to avoid protracted, contested litigation related to the United States' investigation of the facility.
- I. This Agreement is not intended to create any rights in any person or entity not a party to it.

## II. **SUBSTANTIVE MEASURES**

### A. Use of Force

- 1. The State agrees to take reasonable measures to assure the safety of the youths in its custody and to protect them from the use of excessive force.
- 2. Consistent with the State's Youth Corrections Statewide Policy ("YCSP") 19 and NYTC 14-1, which the State represents that it already has implemented, the State will limit the use of force to situations where:
  - (a) the youth is currently physically violent and poses an immediate danger to himself or others; or
  - (b) the youth is affirmatively physically resisting institutional rules and:
    - i. the institution has attempted and exhausted a hierarchy of non-physical alternatives, including:
      - (A) verbal requests for compliance;
      - (B) reminders of the consequences of noncompliance;
      - (C) provision to the youth of adequate time for compliance; and
      - (D) the physical presence and supervision of the shift supervisor, assistant head group supervisor, or a more senior staff person; and

- ii. the shift supervisor, assistant head group supervisor, or a more senior staff person, in addition to at least one other staff person, is physically present and supervises the use of force throughout the use of force.
3. Consistent with the State's Policies # YCSP 14 and YCSP 15, which the State represents that it already has implemented, the State will limit the amount, form and duration of uses of force to the minimum necessary to prevent harm to persons or obtain compliance with institutional rules, where compliance is necessary, under the circumstances, and to that force which is expressly set forth in the institution's policies, procedures and protocols and is taught to staff through competency-based training.
4. Consistent with the State's Policies #YCSP 19 and NYTC 9-12, which the State represents that it already has implemented, the State will expressly prohibit use of force practices that are incompatible with minimum actions necessary to prevent harm or obtain compliance with reasonable and proper orders, including but not limited to practices such as shoving, pushing, kicking or striking youths, or holding youths in a manner inconsistent with techniques formally approved and taught to facility staff.
5. Consistent with the State Policy # YCSP 19, which the State represents that it already has implemented, the State will ensure that all staff are held accountable for the use of excessive force or abuse. (In addition to such actions being contrary to Facility policy, they are also violations of the Prohibitions and Penalties of the Department of Human Resources, and the personnel regulations of Nevada.) The State will forward all personnel disciplinary actions to the Deputy Administrator for Youth Corrections, the Division Administrator, and the Director's Office for review, ensure that each staff person who is a mandatory reporter of abuse under Nevada law has reviewed and signed a statement setting forth those obligations, (which statement is maintained in the staff person's personnel file at the agency, consistent with Policy #NYTC 3-14), and initiate appropriate disciplinary action of staff persons using excessive force or engaging in abuse.
6. Consistent with the State's request to increase staffing levels through the Nevada budgeting process and the Legislature, and the Legislature's approved enriched staffing in the form of 24 new positions for the facility, including group supervisors, nurses, and counselors, the State will ensure that, by June 1, 2004, the facility maintains staff ratios that will permit staff to supervise, and maintain control of, youths without resorting to use of excessive force or abuse. Subject to minor deviations due to the temporary unavailability of qualified staff, the facility shall maintain:

- (a) Group Supervisor-to-youth ratios of 1:16 during hours of sleep; and 1:10, and preferably 1:8, during waking hours; and
- (b) Professional-Level-Counselor-to-youth ratios of 1:25.

B. Incident Review

The State represents that it has created an Incident Review Team, as described in Policy #NYTC 1-5, (YCSPs 4, 7, 13, 14 and 19 also deal with reviews of incidents). The State agrees to submit quarterly reports to the DOJ on the activities of the Incident Review Team. The State agrees that:

1. The Incident Review Team shall consist of three or more staff persons at the facility who:
  - (a) are designated by the facility to manage a quality assurance system at the facility adequate to enable the State to monitor and ensure full compliance with this agreement and to perform investigations of use of force and other incidents;
  - (b) include among them at least one person with demonstrated competence in quality assurance management;
  - (c) do not have direct or indirect responsibility for the supervision of youths; and
  - (d) with respect to their Incident Review Team duties; report directly to the facility Assistant Superintendent or Superintendent.
2. All instances and allegations of use of force will be immediately and reliably documented and investigated, in that:
  - (a) each instance of use of force is promptly documented in a thorough, coherent manner as to:
    - i. when, where and under what circumstances the use of force occurred;
    - ii. who participated in or witnessed any use of force or precursors to it;
    - iii. what non-physical interventions were first attempted, by whom, for how long, with what effect; and
    - iv. what force was used, by whom, for how long, with what effect; and

- (b) each instance of use of force is investigated by a member of the Incident Review Team, who shall, at a minimum:
  - i. not, due to their assignments and/or relationships with involved staff or youths, have or appear to have a conflict of interest in conducting the investigation;
  - ii. have successfully completed competency-based training in performing use-of-force and similar investigations and have otherwise demonstrated a capacity to perform such investigations;
  - iii. conduct private, in-person interviews of the youth(s) subjected to the use of force within 12 hours of the incident;
  - iv. obtain a written report from staff involved in the use of force before those staff leave the facility;
  - v. gather written statements from and, as warranted by the facts, conduct private, in-person interviews of all witnesses to the use of force;
  - vi. as appropriate, consider trends based on previous incidents or allegations of use of force involving any of the staff or youth who participated in or witnessed the use of force currently under review;
  - vii. submit to the Incident Review Team within five days of the incident, a written report that shall include, at a minimum:
    - (1) a summary of relevant facts;
    - (2) a summary of all steps taken during the investigation;
    - (3) all witness statements;
    - (4) the questions asked and responsive answers given, and by whom, and
    - (5) proposed findings addressing, as applicable, whether:
      - (A) use of force was warranted; and

- (B) the force actually used was appropriate and consistent with approved and trained techniques; and
- viii. within two days, conduct any further investigation and/or clarify the report as directed by the Incident Review Team;
- (c) The Incident Review Team shall, within two business days of the report's receipt:
  - i. review the proposed report for completeness and accuracy;
  - ii. identify any issues to be clarified or (re)investigated; and
  - iii. as appropriate, review the report as modified before approving it.
- (d) For all investigations not approved by the Incident Review Team within ten days of the allegation or incident, the Deputy Administrator for Youth Corrections shall be notified as to:
  - i. the reason for the delay;
  - ii. the amount of additional time required to complete the investigation; and
  - iii. when the investigation is actually completed.
- (e) In conjunction with approving a report, the Incident Review Team shall recommend a determination as to whether the use of force was appropriate and, if deemed not appropriate, what corrective training, operational or institutional changes, or remedial measures would be warranted, and what, if any, disciplinary action should be undertaken;
- (f) Once the written report is approved by the Incident Review Team, the report shall be transmitted to the Superintendent, quality assurance personnel and to the staff who used force; and
- (g) The Superintendent shall adopt, modify and adopt, or reject each of the Incident Review Team's recommendations and shall provide a written basis as to any recommendation that is not adopted without modification.

3. All allegations of abuse shall be investigated in a timely and thorough manner. The State represents that it has acted in collaboration with the local office of Child Protective Services and with local law enforcement to implement policies and procedures regarding the steps to be taken and referrals to be made in the event of a report of alleged abuse of a youth, including steps that must be taken immediately upon the reporting of an allegation of abuse in order to preserve evidence and to protect youths pending an investigation of abuse. The State represents that staff has been trained in these policies and procedures, evidence of the same is in each employee's personnel file, and future employees will be so trained, in a documented manner. The State agrees to submit quarterly reports to the DOJ on the actions taken pursuant to this collaboration.
  
4. In regard to abuse and abuse investigations, the State agrees that:
  - (a) Each youth entering the facility shall be given an orientation that shall include simple directions for reporting abuse and assuring youth of their right to be protected from retaliation for reporting allegations of abuse;
  
  - (b) Each youth who reports to the infirmary with an injury shall be questioned by a nurse or other health care provider outside the hearing of all other staff or youths, regarding the cause of the injury. If, in the course of the youth's infirmary visit, a health care provider suspects abuse, that health care provider shall immediately:
    - i. take all appropriate steps to preserve evidence of the injury (e.g., photograph the injury and any other physical evidence);
  
    - ii. report the suspected abuse to the local Child Protective Services office;
  
    - iii. document adequately the matter in the youth's medical record; and
  
    - iv. complete an incident report.
  
  - (c) The facility shall implement policies directing how, when and to whom (including Child Protective Services, law enforcement officials, and facility administrators) allegations of abuse shall be referred. At a minimum, a referral to Child Protective Services shall be made, and an abuse investigation shall be warranted, whenever:
    - i. a health care provider, staff or youth reports suspected abuse; or

- ii. an incident report, use of force report, injury report, grievance or other source of information provides a credible basis for concluding that abuse may have occurred;

(d) Whenever an abuse investigation is warranted:

- i. Child Protective Services shall immediately commence an investigation that shall:
  - (1) be conducted consistent with the requirements governing the Incident Review team set forth at II.B.2(b)i.-iv., above;
  - (2) explicitly and separately address, in its report:
    - (A) each allegation of wrongdoing investigated;
    - (B) the name(s) of all of the alleged victims and perpetrators;
    - (C) the names of all witnesses;
    - (D) the names of all persons interviewed during the investigation;
    - (E) all documents reviewed during the investigation;
    - (F) all other Child Protective Services or facility investigations involving any of the alleged victim(s) and perpetrator(s), and the findings of such investigations;
    - (G) a review of potentially relevant medical records, and all quality assurance data regarding previous allegations of abuse or use of force involving the staff and/or youth involved in the current investigation;
    - (H) the investigator's findings of whether the allegation is substantiated, unfounded, or unresolved; and
    - (I) a determination whether any facility staff person knew of, but did not report the alleged



abuse, or provided false information during the investigation;

ii. subject to II.B.4.d.ii., above, the facility shall notify the youth's parent(s) or guardian(s) of the allegation of abuse, except in the unusual circumstance where the Deputy Administrator for Youth Corrections personally determines that the best interests of the youth require that such notification be withheld;

iii. at the conclusion of the investigation:

(1) the State shall notify the youth and the youth's parent(s) or guardian(s) of the outcome of the investigation;

(2) the State shall transmit the investigation report to the facility's quality assurance personnel and to the Incident Review Team;

(3) the facility's quality assurance personnel shall analyze the report and, whenever appropriate, identify corrective action to address operational, systemic or other problems identified in the report and ensure that such action is taken; and

(e) All reports of substantiated abuse shall be forwarded to the Deputy Administrator for Youth Corrections and the facility's Superintendent for appropriate disciplinary and corrective action.

5. The State requested and obtained through the Legislature the ability to employ staff to perform Quality Assurance functions. This unit was envisioned by the previous Administrator; it will be the duty of the new Administrator to implement this function. The State agrees to submit quarterly progress reports on the creation and implementation of the Quality Assurance unit, including policies and procedures that are developed for linkage to the Incident Review Teams for the review and analysis of data concerning incidents and the feedback loops to the agency, staff and youth that will be developed. The State agrees that: the Quality Assurance unit shall adequately monitor and analyze incidents where force is used, or where abuse is reported, identify corrective action, as appropriate, and ensure that such action is successfully undertaken. More particularly, the Quality Assurance unit shall:

(a) Track data with sufficient particularity to identify trends across, among, within and/or regarding:

- i. Cottages and/or living units;
  - ii. Program areas;
  - iii. Work shifts;
  - iv. Time of day;
  - v. Nature and/or appropriateness of force or other intervention used;
  - vi. Allegations, and substantiated cases, of abuse;
  - vii. Numbers and types of injuries;
  - viii. Individual staff; and/or
  - ix. Individual youths;
- (b) Analyze data regularly and, whenever appropriate, require the development and implementation of corrective action plans to address problems identified through the quality assurance process. At a minimum, such plans shall identify:
- i. the actions necessary to remedy and/or prevent the reoccurrence of problems (e.g., retraining, development of alternative interventions, provision of alternative staffing arrangements, disciplinary action), and
  - ii. the anticipated outcome of each action step; the person(s) responsible, and the time frame in which each action step must occur;
- (c) Disseminate corrective action plans to all persons or entities responsible for their implementation;
- (d) Monitor corrective action plans in a documented fashion to ensure that:
- i. They are implemented fully and in a timely manner; and
  - ii. The implementation has the desired outcome for remedying the underlying causes of the problems originally identified; and

- (e) Modify corrective action plans, as necessary, to ensure their effectiveness.

### C. Staff Training

1. The State represents that it has obtained enhanced funding for staff training and provides appropriate competency-based training in behavior management and crisis intervention to existing staff and to new staff (YCSP 16). The State agrees that this training shall be provided to staff before such staff may work in direct contact with youths. The State has formally requested technical assistance from the National Institute of Corrections (NIC) for assistance with training, staff and program development. The State will provide quarterly reports on the trainings provided to staff for the duration of this agreement.
2. The State further agrees that the facility shall regularly evaluate the training and the trained techniques through quality assurance data (including data correlating use of force incidents and abuse allegations with data measuring the efficacy, occurrence of, and staff participation in training programs), evaluations from training program participants, Incident Review Team reviews of use of force incidents, abuse investigation reports, interviews with staff and youths, and other means evidencing the efficacy of the trained techniques in managing behaviors and crisis interventions at the facility. As warranted, the facility shall adjust the training curriculum based on such evaluations.

### D. Grievances

The State represents that it has enacted policies and procedures to provide youths with an effective, reliable process to raise grievances, without exposing them to retribution from staff. (Policy # YCSP 2 and YCSP 9.) Further, the State represents and agrees that:

1. A clear explanation of the grievance process is, and will continue to be, provided to youths upon admission to the facility during orientation, and to their parent(s) or guardian(s), and youths' understanding of the process is at least verbally verified;
2. Without any staff involvement, youths easily can, and will be able to, obtain grievance forms and submit grievances;
3. There are, and will continue to be, no formal or informal preconditions to the completion and submission of a grievance;
4. Grievances are, and will continue to be, reviewed by the Incident Review Team; and

5. The youth who makes the grievance is, and will continue to be, informed of the results of the process.

E. Time Out and Disciplinary Room Confinement

1. "Time Out" is the placement of a youth in a room or other area from which egress is prevented, and which results in involuntary isolation from others and ongoing activities: i) because the youth poses an immediate and significant risk of danger to himself or others, or poses an immediate risk of elopement; and ii) until the youth no longer poses this immediate and significant risk of danger or of elopement.
2. The State represents that it has enacted policies and procedures governing the use of Time Out and Disciplinary Room Confinement which ensure that youths do not remain segregated after they cease to pose a significant risk of danger to themselves or others, or after they cease to pose an immediate risk of elopement. (Policy # YCSP 2, 12, 14 and 15 set forth the process to be followed in the event a Disciplinary Room Confinement in excess of 24 hours is to be used.) The State agrees that, consistent with its policies, youths shall not remain in Time Out or Disciplinary Room Confinement after they no longer pose a significant risk of danger to themselves or others, or no longer pose an immediate risk of elopement. The State will report quarterly to the DOJ on any instances of the use of Time Out or Disciplinary Room Confinement, and will make such data part of the Quality Assurance evaluation process.
3. The State further agrees that:
  - (a) All youths in Time Out or Disciplinary Room Confinement shall be visually observed no less than every 15 minutes and as frequently as is warranted by the risk of harm that they pose to themselves or others;
  - (b) A facility nurse shall assess each youth within the first hour that the youth is in Time Out or Disciplinary Room Confinement and on a regular basis thereafter;
  - (c) A youth in Time Out or Disciplinary Room Confinement receives, within the first hour of such segregation, appropriate counseling, having as its objectives:
    - i. the provision of an opportunity for the youth to describe the events leading to the Time Out/Disciplinary Room Confinement;

- ii. adult correction or clarification of any incomplete or incorrect portions of the youth's description of these events;
  - iii. exploration of appropriate behavior choices; and
  - iv. the youth's decision to make appropriate behavior choices in the future;
- (d) All incidents of Time Out and of Disciplinary Room Confinement, including the presence or absence of factors affecting a youth's release, are thoroughly documented by the nurse and by staff supervising the youth;
  - (e) Time Out and Disciplinary Room Confinement records shall be audited to ensure that youths in such segregation are released immediately after they no longer pose a significant risk of danger to themselves, others or no longer pose an immediate risk of elopement; and
  - (f) Before youths are placed in Time Out or Disciplinary Room Confinement in excess of 24 hours, they shall be afforded adequate due process protections, including an evidentiary hearing.

F. Screening and Censoring Outgoing Mail

The State represents that it has enacted Policies # YCSP 8 AND 10 which specify that there is to be no censoring of youths' mail for information critical of the facility. The State agrees that it will ensure that this prohibition will remain in force and that it is complied with.

G. Mental Health Care and Safety

1. The State represents that it ensures, and agrees to continue to ensure, that decisions regarding the administration, alteration or termination of psychotropic medications for youth at the facility are made based upon an appropriate mental health assessment of the youth. Policy YCSP 11. The Legislature approved additional funding for psychiatric consultation services, medication, and related travel.
2. The State represents that it ensures, and agrees to continue to ensure, that toxic substances are safeguarded properly. Staff has been instructed to regularly survey the facility for suicide risks.

#### H. Transportation of Youths

It is the policy of the State that youth safety during transportation is to be observed. Staff are prohibited from handcuffing youths together during transportation. Policy # YCSP 18. The State agrees to ensure that these requirements are, and continue to be, met.

### III. IMPLEMENTATION OF AGREEMENT

- A. The State represents that it has implemented the above-referenced policies and procedures according to its understanding of the applicable law, as well as from the guidance it has received from the DOJ. The State has provided copies of existing policies and procedures to the DOJ under a letter of transmittal dated May 28, 2003. It will continue to refine and revise these policies and procedures in conjunction with comments and discussions with the DOJ, and will send all revised policies to the DOJ for review and comment. The State represents that it has trained employees at the facility with respect to these policies and procedures, has documented employee review of the same in employee personnel files, and will continue this documentation as to all new facility employees.
- B. The State agrees that, within 90 days of the date of this agreement, the State will provide the DOJ with a status report of: i) incidents involving the use of Time Out and Disciplinary Room Confinement, ii) incidents involving the use of force on youth, iii) reports of abuse or other reports to Child Protective Services, iv) investigations (including outcomes and timeliness thereof) of use of force and other incidents, and any other activities of the Incident Review Team, v) Group Supervisor-to-youth ratios during hours of sleep and wake, vi) Professional-Level-Counselor-to-youth ratios, vii) the provision of behavior management/crisis intervention training to staff and assessments of such training's utility, viii) submission and resolution of grievances, ix) the youths arriving at the facility having prescriptions for psychotropic medications and the timing of mental health examinations of such youths, x) copies of all quality assurance reports and analyses over the preceding 90 days, and xi) progress reports on the hiring of personnel and the formation and implementation of the Quality Assurance program. Thereafter, for the duration of this agreement, the State will send such a status report every 90 days to the DOJ.
- C. The DOJ agrees to work with the State regarding the development and implementation of policies, and will work with the State to identify resources to allow for the protection of constitutional rights.
- D. The State agrees to maintain sufficient records to document its compliance with the requirements of this agreement, and will provide copies or make them available for inspection and review to the DOJ upon request.

- E. The State shall provide DOJ, its staff, consultants and agents, with reasonable access to:
1. all buildings and facilities at the facility,
  2. all staff having duties relating to the facility,
  3. all youths, and
  4. any records regarding the facility, the facility's staff, or youths.
- F. Within 30 days of receipt of written questions from the DOJ concerning the State's compliance with this Agreement, the State shall provide the DOJ with written answers and any requested documents regarding the State's compliance with the requirements of this Agreement.
- G. The State designates Karen Dickerson as the Coordinator of the State's efforts in reporting to the DOJ, and as a point of contact, until the State provides notice to the contrary.
- H. The DOJ designates Benjamin O. Tayloe, Jr. as the Coordinator of the DOJ's review of and responses to the State, and as a Staff Attorney point of contact, until the DOJ provides notice to the contrary.
- I. This Agreement shall constitute the entire integrated agreement of the parties. With the exception of DOJ's findings letter referenced in paragraph I.E. hereof, and any DOJ technical assistance recommendations regarding use of force or other issues addressed herein, no prior or contemporaneous communications, oral or written, shall be relevant or admissible for purposes of determining the meaning of any provisions herein. If DOJ believes that the State has failed to fulfill any obligation under this Agreement, DOJ will, prior to initiating suit regarding conditions at the facility, give written notice of the failure to the State. The State shall have 60 days from the date of such notice to cure the failure, and provide DOJ with sufficient proof of its cure. At the end of the 60-day period, in the event that DOJ determines that the failure has not been cured, DOJ may initiate suit without further notice. DOJ commits to work in good faith with the State to avoid litigation. However, in case of an emergency posing an immediate threat to the health or safety of youths, the United States may omit the notice and cure requirements herein, before seeking judicial action.
- J. Two years from the date hereof, the parties shall meet and confer regarding whether the State is in full compliance with each and every provision of this Agreement. At that time the parties may agree to continue, modify, or terminate this Agreement. The parties agree to defend the provisions of this Agreement. The parties shall notify each other of any court challenge to this Agreement. In

the event any provision of this Agreement is challenged in any local or state court, either party may seek removal to a federal court.

K. The Parties may jointly agree, in writing, to modify this Agreement.

This agreement will terminate two years from the date of signing.

DATED this 26<sup>th</sup> day of February, 2004



FOR THE UNITED STATES:

*/s/ R. Alexander Acosta*

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Assistant Attorney General  
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*/s/ Bradley J. Schlozman*

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/s/ Michael J. Willden

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