

Does v. Stewart



PC-AZ-009-001

PROPOSED REMEDIAL PLAN BY
THE ARIZONA DEPARTMENT OF CORRECTIONS
RE: PROTECTIVE SEGREGATION ISSUES

JOHN DOES #1-5, on behalf of themselves
and those similarly situated,

v.

TERRY L. STEWART, Director of
the Arizona Department of Corrections.

CIV 96-0486 WFN (VAM)

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1 Introduction

2 This Plan represents the Arizona Department of Corrections'
3 (ADOC) response to serious concerns raised in Does v. Stewart, CIV96-
4 0486 WFN (VAM), regarding the status of Plaintiffs in protective
5 segregation (PS). It is submitted pursuant to a stipulation approved
6 by the Court in an Order filed on March 4, 1998. The precipitating
7 event for this case was a special review conducted by ADOC in 1995 of
8 all inmates in PS. During the course of the litigation, a number of
9 other issues of concern were raised as well, and they too are
10 addressed herein. In presenting this Plan to the Court and Plaintiffs,
11 ADOC demonstrates its responsiveness to the issues raised in the
12 various legal proceedings related to Does. The Plan is notable in that
13 it goes beyond the narrow issues raised in Does, and describes a fully
14 integrated approach to the problems of managing this difficult inmate
15 population in a modern correctional setting. The Plan shows that ADOC
16 has actively engaged this issue, dealt with it in an effective manner,
17 and is willing to devote a high level of resources to resolving the
18 problems identified through this litigation. It clearly refutes any
19 assertion that ADOC continues to be deliberately indifferent to the
20 needs of PS inmates. While most of the numerous policy and operational
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1 components of the Plan already have been implemented, portions not yet
2 fully in place are so noted.

3 Developing the Plan required the agency to integrate a new PS
4 strategy with ongoing management improvements. This required a great
5 deal of concerted effort by the agency at a time when it has also been
6 coping with a massive inmate population increase and a major
7 construction program. Between June 30, 1995, and February 3, 2000,
8 ADOC's population grew from 21,133 to 25,984 -- a 23 percent increase.
9 During that same period, the number of PS inmates increased from 463
10 to 662 -- an absolute increase of 43 percent or an adjusted increase
11 of 16 percent (from 2.19 percent to 2.55 percent of ADOC's population)
12 since the litigation arose.
13

14 Managing an agency undergoing this amount of growth presents a
15 significant challenge. That ADOC administrators devoted so much time
16 and effort to Does signifies the importance the agency places on PS-
17 related issues. ADOC also retained the consulting services of Richard
18 Phillips, a retired Federal Bureau of Prisons (FBOP) administrator
19 who, in addition to his experience in working with PS inmates, co-
20 authored the publication on PS issues cited as authoritative by
21 Charles Montgomery, the Court's expert in this case.
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1 By way of broader context, no single PS strategy is used
2 uniformly across the spectrum of American corrections. Some very large
3 agencies (notably the FBOP) use a centrally monitored method for
4 transferring inmate separates^s from one facility to another and have
5 no specific PS policy or PS units for cases originating in their
6 general population (GP) facilities.¹ Some systems (Utah and Colorado,
7 for instance) mainstream virtually all PS inmates, confining the few
8 who cannot be in GP to detention units. Other systems (California is
9 a prominent example) use a combination of intra-state transfers, out-
10 of-state placements, and specialized housing for this purpose. New
11 Mexico has contracted with a private firm to house a large proportion
12 of its PS population. In short, each correctional agency must tailor
13 its response to a different context -- one that is defined by factors
14 peculiar to it, such as the types of inmate involved, available staff
15 and facility resources, and the relevant statutory and litigation
16 environment. Thus, this Plan adopts a unique approach geared to
17 ADOC's individual needs.

23
24 ¹ The FBOP operates several witness security units, but they
25 confine a specialized group of protected witnesses who are screened
26 and selected by the Department of Justice Office of Enforcement
Operations, not the FBOP.

1 Finally, no plan of this type can claim perfection or credibly
2 assert that there will be no further incidents involving PS inmates.
3 However, ADOC's methods for identifying, safeguarding, and processing
4 PS candidates are comprehensive, professional, and carefully
5 supervised. They provide every reasonable assurance that an inmate
6 with legitimate safety concerns will be protected.²

8 As with any meaningful program, the various components of
9 ADOC's PS Plan will be subject to ongoing alteration over time.
10 Changing conditions within and outside the agency make this a reality.
11 Nevertheless, any future changes will be in the nature of fine-tuning
12 in the interest of further improving the system, and will not reduce
13 in any way the level of inmate safety provided for in this Plan.

19 ²Even inmates whose needs cannot be verified will be protected,
20 although perhaps not in the form they request or expect. Correctional
21 agencies must retain the right to evaluate and dispose of each case
22 on its individual merits, in accord with agency policy. Notwithstanding that fact, and as an explicit article of ADOC policy,
23 no inmate will ever be forced into GP against his will. In instances
24 where an inmate's claimed protection needs cannot be verified under
25 the extensive investigative process required by ADOC policy, and that
26 inmate still refuses to enter GP, the inmate will be subject to
disciplinary action and placed in detention. Continued refusal to
enter GP will result in ongoing detention, where an inmate will be
afforded protection similar to that in PS, but with reduced
privileges.

1 History of The Case

2 Starting in 1995, numerous inmates in PS status began to
3 file lawsuits to enjoin ADOC from implementing a plan to screen its
4 PS population and transfer appropriately classified inmates to GP
5 units. Inmates claimed the process ADOC used jeopardized their safety.
6 On December 21, 1995, the Court stayed and consolidated all of these
7 individual lawsuits, appointed Charles Montgomery as an expert to
8 assist it, and appointed counsel for the inmates.
9

10
11 On February 22, 1996, counsel filed an amended class action
12 complaint on behalf of all PS inmates. The Complaint sought only
13 equitable relief and, among other things, asked the Court to direct
14 ADOC "to promulgate and implement policies and procedures to ensure
15 that Protective Segregation prisoners' safety is protected." On April
16 17, 1996, the Court certified a class consisting "of all protective
17 segregation inmates who now are or in the future may be classified
18 from protective segregation back to GP. . . ." Further, the Court
19 "ORDERED that the class action be confined to the following issues:
20

- 21
22 1. Whether the plan to return, en masse,
23 prisoners currently in protective segregation
24 to general population places all such
25 prisoners at a serious risk of harm to which
26 Defendant is being deliberately indifferent in

1 violation of the prisoners' Eighth Amendment
2 rights; and,

3 2. Whether returning protective segregation
4 prisoners to general population, given the
5 attitudes and perceptions of general
6 population prisoners, is inherently dangerous
7 thereby placing such protective custody
8 inmates at serious risk of harm to which
9 Defendant is deliberately indifferent in
10 violation of the prisoners' Eighth Amendment
11 rights."

12 On December 6, 1996, the Court issued a "Memorandum Opinion and
13 Order" containing Findings of Facts and Conclusions of Law in support
14 of its decision permanently enjoining ADOC from transferring PS
15 inmates to maximum security GP yards. On April 29, 1997, however, the
16 Court altered its December 6, 1996, Order, to the extent that it
17 vacated its permanent injunction pending ADOC's submission of a plan
18 addressing how it could safely transfer PS inmates to GP.

19 ADOC submitted its plan on July 1, 1997, and an evidentiary
20 hearing commenced on February 18, 1998. Towards the end of that
21 hearing, however, it became apparent to the Director of ADOC that its
22 plan did not fully address the Court's concerns. As a result, the
23 parties entered into a stipulation providing that ADOC 1) would have
24 two years to submit a more comprehensive remedial plan, and 2) would
25 not involuntarily transfer any PS inmate to GP during the two year
26

1 period. The Court approved the stipulation, and ADOC now submits its
2 revised comprehensive plan.

3 Guiding Legal Principles

4
5 The legal principles that underlie this case are simple and
6 well-known. Under the Eighth Amendment, prison officials have a duty
7 to house inmates in an environment that provides "reasonable safety."
8 Farmer v. Brennan, 511 U.S. 825, 844, 114 S.Ct. 1970, 1983 (1994)
9 (quoting Helling v. McKinney, 509 U.S. 25, 33, 113 S.Ct. 2475, 2481
10 (1993)). This is not to say, however, that such officials must or can
11 be insurers of inmate safety. Doe v. District of Columbia, 701 F.2d
12 948, 954 (D.C. Cir. 1983). As one court has noted, "[i]t would be
13 fantasy to believe that even the most enlightened prison officials
14 operating with unlimited resources could prevent all acts of violence
15 within the prison." Penn v. Oliver, 351 F.Supp. 1292, 1294 (E.D. Va.
16 1972). Thus, prison officials violate the Eighth Amendment only if
17 they 1) expose inmates to a substantial risk of harm and, 2) are
18 deliberately indifferent to inmates' safety. Farmer, 511 U.S. at 834,
19 114 S.Ct. at 1977.

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21 A prison official is deliberately indifferent to an inmate's
22 safety only if he 1) knows that the inmate faces a substantial risk
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1 of serious harm, and 2) fails to take reasonable measures to abate it.
2 Id. at 845-846, 114 S.Ct. at 1983.

3 Deliberate indifference is determined in light of the attitudes
4 and conduct of prison authorities at the time suit is brought and
5 thereafter. Id. at 845, 114 S.Ct. at 1983. Therefore, prison officials
6 who actually know of a substantial risk to inmate safety may
7 nonetheless be found free from liability if they respond reasonably
8 to the risk. Id. at 844, 114 S.Ct. at 1982-83.

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11 Against this backdrop of official duty lies the admonition
12 that:

13 [Because] the problems that arise in the day-
14 to-day operation of a corrections facility are
15 not susceptible of easy solutions . . .
16 [prison administrators]. . . should be
17 accorded wide-ranging deference in the
18 adoption and execution of policies and
practices that in their judgment are needed to
preserve internal order and discipline and to
maintain institutional security.

19 Bell v. Wolfish, 441 U.S. 520, 547, 99 S.Ct. 1861, 1878 (1979). The
20 deference to which prison officials are entitled extends to core
21 correctional decisions such as where to house and how to classify
22 inmates. Meachum v. Fano, 427 U.S. 215, 96 S.Ct. 2532 (1976).

1 To the extent that federal courts find it necessary to
2 intervene to remedy unconstitutional prison conditions, they are
3 dutybound to first give prison officials every reasonable opportunity
4 to correct their own deficiencies. See Lewis v. Casey, 518 U.S. 343,
5 362, 116 S.Ct. 2174, 2185 (1996) (prison officials should be given the
6 opportunity to correct their own errors before judicial mandates are
7 imposed upon them); Farmer, 511 U.S. at 846-47, 114 S.Ct. at 1984 ("a
8 district court should approach issuance of injunctive orders with the
9 usual caution [citation omitted], and may, for example, exercise its
10 discretion if appropriate by giving prison officials time to rectify
11 the situation before issuing an injunction").

14 In crafting the Plan set-forth herein, ADOC has designed a
15 system that balances the distinct, but equally important, goals of
16 safeguarding inmates and preserving official discretion on matters
17 affecting core correctional functions.

19 Issues Addressed in the Plan

20 As noted above, the Court narrowed Does to two issues:

- 21 1. Whether the aborted 1995 plan to return some PS
22 inmates to GP was unconstitutionally indifferent to
23 a serious risk of harm; and,

1 2. Whether ADOC is generally indifferent to
2 the potential risks of returning PS inmates to
3 GP.

4 The first issue pertaining to the 1995 review is no longer a
5 matter in dispute. ADOC concedes its 1995 procedures were inadequate.
6 The special PS review process that triggered this litigation will not
7 be re-established. Involuntary inmate transfers under that and all
8 succeeding policies were suspended pending acceptance of a new plan
9 by the Court. As outlined in this Plan, the agency has refined its
10 policy on PS processing and has incorporated far more structure and
11 guidance for staff in screening these inmates.
12

13 Dealing with the second issue has been far more problematic for
14 ADOC. Even though the agency never conceded that it was indifferent
15 to the potential risks of returning inmates to GP, it recognizes its
16 approach to this issue could have been far more rigorous. This aspect
17 of the case entailed resolving a number of inter-related concerns, and
18 required a complete review of all PS-related policies and operations.
19 This process led to not only a re-examination of issues raised
20 directly in Does, but also identification of a number of distinct sub-
21 issues as well. These are analyzed and organized within three broad
22 areas which constitute the framework of this Plan: 1) the policy
23 ;
24 2) the policy
25 ;
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1 governing PS processing, 2) conditions of confinement for PS inmates,
2 and 3) related systemic improvements.

3 Director's Instruction 67 (DI-67) Issues:

4
5 First, ADOC recognized weaknesses in its policy governing PS
6 processing. The agency has significantly strengthened its process for
7 screening and approving inmates for entry into PS status. It has done
8 so by upgrading the policy (DI-67) governing this function. While many
9 changes have been made in the process since 1995, the entire policy
10 was most recently re-written in 1999, to include much greater detail
11 with respect to inmate reviews. The new policy is far more specific
12 as to the decision-making criteria and level of documentation required
13 for all decisions. The policy also emphasizes integration of critical
14 PS-related decisions with other agency classification and information-
15 gathering functions.
16
17

18 This Plan describes five general areas of policy change:

- 19 • A more distinctly-prescribed inmate review process;
20 • Use of specific PS decision-making criteria;
21 • Assignment of special responsibilities under DI-67;
22 • More complete documentation regarding DI-67
23 decisions; and
24 • Integration of DI-67 with other critical processes.
25

1 Just as important as the mechanics of the DI-67 process, the
2 policy also clearly communicates a new approach to handling PS cases.
3 The following explicitly stated changes and/or expressions address
4 important legal and conceptual issues raised by the Court and
5 Plaintiffs:
6

- 7 • Public and institutional safety concerns will always
8 be the governing elements for managing PS inmates;
- 9 • Staff will err on the side of caution in making PS
10 decisions; in each instance of potential harm, the
11 inmate's safety will always come first;
- 12 • PS is a non-punitive status;
- 13 • No inmate will ever be forced into general
14 population;
- 15 • A Correctional Officer IV (CO-IV) will be designated
16 in each facility to serve as a liaison on PS issues;
- 17 • An inmate's inability to identify his attacker will
18 not necessarily disqualify him from PS placement;
- 19 • A multi-disciplinary review procedure reduces the
20 possibility of information gaps;
- 21 • Staff may exercise professional judgment in granting
22 PS even in the absence of all of the typical
23 indicators for such a placement;
- 24 • ADOC need not exhaust all alternate housing
25 possibilities before placing an inmate into PS;
- 26 • Former PS inmates in GP whose PS needs re-emerge will
be expeditiously reviewed for return to PS.

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1 those of non-PS level 5 inmates, PS status will not, however, override
2 normal classification factors in making such assignments.

3 In particular, this Plan addresses the following conditions of
4 confinement issues:

- 5 • Development of a separate policy governing PS
6 conditions of confinement;
- 7 • Overall programs and services for PS inmates;
- 8 • Level 5 issues; and
- 9 • Management oversight of PS operations.

10
11 Systemic Improvements:

12 Third, ADOC understood strategically that for the PS process to
13 be most effective, it had to be supported by other segments of the
14 agency's management and operational structure. To that end, ADOC has
15 made a number of systemic changes that, taken together, should make
16 its facilities safer, thereby reducing the need for some inmates to
17 seek PS status in the first place, while making it safer for others
18 to leave PS. These include a continued high degree of emphasis on
19 suppression of Security Threat Group (STG) (i.e., prison gang)
20 activity, a zero tolerance policy towards violence, and a greater
21 emphasis on control of illicit drugs. In addition, specific units
22 have been identified to separately house appropriately classified sex
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1 offenders, who traditionally have constituted a major component of the
2 PS population. Staff training on both PS and other related issues has
3 also been examined and enhanced.

4
5 The Plan describes ongoing efforts in the system-wide areas of:

- 6 • Suppression of STG activity;
- 7 • Sex offender-specific housing;
- 8 • Control of drugs;
- 9 • Control of violence;
- 10 • Controlling inappropriate staff/inmate
- 11 relationships;
- 12 • Controlling the dissemination of PS-
- 13 related information;
- 14 • Reducing PS visibility and related
- 15 concerns;
- 16 • Communications and training; and
- 17 • Auditing.

18
19 ADOC anticipates its research ultimately will link changes now
20 under way with safer prisons. However, most of these areas are among
21 those considered by corrections professionals as core elements in
22 maintaining safe and secure prison environments. Over time, ADOC is
23

1 committed to continuing these efforts and to more rigorously tracking
2 their effects on safety.

3 Implementation Issues

4
5 The balance of this document presents more detail on these
6 three parts of ADOC's Plan. However, before detailing the remaining
7 elements of ADOC's Plan, it is important to note that during the
8 development of this Plan the agency communicated extensively with
9 Plaintiffs' counsel and adopted a number of solutions intended to
10 resolve concerns they identified. These include:

- 12 • *Concerns that inmates with unverifiable protection*
13 *claims might be forced into GP. The new DI-67*
14 *clearly states, "[n]otwithstanding the fact there*
15 *may be no verified information suggesting a need*
16 *for protection, staff shall never force an inmate*
17 *into GP. When an inmate refuses to enter GP, staff*
18 *shall take appropriate disciplinary and*
19 *classification actions. Those actions may*
20 *eventually result in inmate placement in a more*
restrictive custody assignment. That status will
provide an equivalent level of protection, and will
offer programs and services commensurate with such
an assignment."
- 21 • *Concerns that inmates should be able to re-enter PS*
22 *expeditiously after a failed attempt to re-enter*
23 *GP. The new policy states: "[i]n instances such as*
24 *this, where an inmate's PS needs already have been*
25 *assessed via the DI-67 process, renewed processing*
26 *shall be expedited, given the ready availability of*
accumulated investigative and background

1 information." In another section, the policy
2 states: "[t]he processing of inmates who formerly
3 were verified PS inmates (voluntary or involuntary)
4 shall be given priority." The policy also states:
5 "[w]here facts conclusively demonstrate the
6 inmate's protection needs have not abated (an
7 immediate assault, for instance) the inmate's case
8 shall be processed expeditiously under this
9 Instruction; ordinarily, total time from emergence
10 of the problem to transfer shall not exceed 30
11 calendar days."

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- Concerns that there was no one staff member for inmates to seek out as a contact person or liaison on PS issues. The policy now requires, "[e]ach Warden [to] identify a specific CO-IV, who will serve as the coordinator and specialist for all PS issues; a single CO-IV may serve this purpose for a complex. This person shall be responsible for maintaining a tracking system for all PS and pending PS inmates, and serve as the point of contact for inmates on all PS-related issues. All incoming inmates shall be advised of that fact as part of the institution's orientation process."

- Concerns that the agency did not sufficiently consider the possibility that inmates legitimately requiring protection might not always be able to identify a specific attacker. The new policy deals with this by stating that an inmate's "inability to identify a specific attacker, or threatening individual, or other potential threat source may not be the sole reason for excluding [him] from further consideration, or approval, for PS status."

- Concerns that ADOC did not sufficiently acknowledge the stigma that may follow former PS inmates into GP. The agency includes language in its new policy that states, "[d]ecisions regarding the involuntary transfer to GP of a PS inmates will take into

1 consideration the possibility that the problem that
2 sent the inmate to PS may have been of such a
3 nature so as to persist over time and may involve a
4 group threat against the inmate even though the
original threat involved only a single antagonist
inmate."

- 5 • Concerns that all possible alternate placements
6 (used instead of PS confinement) had to be
7 exhausted before approving an inmate for PS. The
8 new policy explicitly provides that staff, "may
9 assign PS status when the typical level of
10 justification for PS status is lacking, but when
11 prudent professional judgment strongly suggests
12 that alternate placement is not likely to be a safe
13 option." Even more pointedly, it states, "in cases
14 of repeated alternate placement failures, staff
15 shall consider the possibility that such failures
indicate a general and intractable inability or
unwillingness on the part of the inmate to function
in any GP for the foreseeable future. In such
situations, reviewing officials need not exhaust
all possible alternate placements before
authorizing PS status."

- 16 • Concerns that the policy might not equitably treat
17 level 5 PS inmates who were approaching or had
18 attained technical eligibility for reduced
19 classification. The new policy explicitly permits
20 inmates in PS status to qualify for custody
21 reductions and transfers to appropriate facilities
in the same manner that non-PS inmates may do so
under ADOC's inmate Classification Manual.

- 22 • Concerns regarding the ability of inmates who
23 renounce gang activity to attain a reduced
24 classification level. The policy permits such
25 inmates to be placed in level 4 housing under
standard ADOC classification procedures.
Application of this procedure must, however, be

tempered with the understanding that an inmate might claim to renounce gang activity simply to gain access to a legitimate PS inmate in order to harm or kill that inmate. Thus, while the agency is committed to diligently applying this policy, it will do so with appropriate safeguards.

- *Concerns for the needs of inmates housed in the Special Management Unit (SMU).* The agency developed a completely new policy, DI-125, that addresses conditions of confinement for PS inmates, including those housed in SMU. The policy sets forth specific program and activity differentials and mandates separation from non-PS inmates at all times. Such separation is already being accomplished through the use of separate housing pods at SMU.
- *Concerns regarding the use of CB-6 for PS inmates.* ADOC has removed all PS inmates from CB-6 and is committed to not returning PS inmates to that location other than for emergency purposes. In the future, the only PS inmates who will be confined in level 5 units will be those whose classification scores justify such restrictive housing, those for whom such confinement is compelled by "Do Not House With" (DNHW) considerations, or those who refuse to accept the conditions of confinement in another PS unit.
- *Concerns regarding the backlog of PS inmates in DI-67 processing.* Plaintiffs' counsel correctly identified a major backlog in the processing DI-67 cases. The agency has eliminated this backlog and will process all but the most difficult cases within 60 days from the time the DI-67 process is initiated. Also, to guard against future backlogs, ADOC's tracking system will include a mechanism for identifying all cases "in the pipeline" that are falling behind in processing so that staff can expedite them, with the oldest cases going first.

1 The DI-67 Process

2 General

3 Since 1995, ADOC has engaged in an evolving process with
4 respect to its policy on PS inmates. The most recent policy is the
5 centerpiece of this Plan, reflecting both extensive refinement based
6 on experience, and the agency's resolve to ensure the most complete
7 review system possible. The new DI-67:

- 9
- 10 • Ensures that, to the greatest extent possible,
11 every inmate who requires protection receives it at
12 once and for as long as it is needed;
 - 13 • Emphasizes that careful classification, appropriate
14 security measures, and preliminary screening for
15 alternate management can reduce the number of
16 inmates needing PS;
 - 17 ✓ • Requires staff to use specified criteria for PS
18 decision-making;
 - 19 • Requires each PS-related decision to be clearly
20 documented, well-reasoned, and appropriately
21 reviewed;
 - 22 • Outlines specific staff responsibilities;
 - 23 • Provides multi-level reviews to safeguard against
24 improper confinement in, or exclusion or removal
25 from PS status;
 - 26 • Streamlines processing of cases (and particularly
cases where prior PS issues are known to ADOC)
while still ensuring complete investigations and
prudent decision-making;

- 1 • Establishes a PS Administrator position and a
- 2 multi-disciplinary PS Committee to review all PS
- 3 placement and removal decisions;
- 4 • Establishes an improved agency infrastructure for
- 5 handling and coordinating PS inmates;
- 6 • Requires new staff training, inmate orientation,
- 7 auditing, and local operational instructions, to
- 8 enable staff to more safely and professionally
- 9 manage PS inmates; and,
- 10 • Clearly states that PS is not a punitive status,
- 11 and mandates that most PS inmates be afforded
- 12 privileges and programs parallel to those offered
- 13 similarly classified GP inmates.

14 While these elements have always have been part of ADOC's
15 underlying approach to managing PS inmates, the new DI-67 clearly
16 articulates them and puts into place the explicit means of carrying
17 them out. Exhibit 1 is a copy of the ADOC's revised DI-67.

18 To further improve management, ADOC will, in the near future,
19 divide DI-67 into two parts:

- 20 • A relatively brief policy document which will state
- 21 that the intent of the program is to ensure inmate
- 22 safety; establish the principle of erring on the
- 23 side of caution in all PS decision-making;
- 24 emphasize that PS is not a punitive status; and
- 25 express the philosophy that PS inmates will be
- 26 afforded the same privileges and programs as
- similarly classified GP inmates (subject to

1 whatever legitimate security and safety concerns
2 special housing may require).

- 3 • A technical manual, complete with detailed flow
4 charts, that will outline the mechanics of the
5 process itself. This manual will foster
6 significantly improved management control and a
7 more complete base for developing data collection
8 instruments (DCIs) for auditing program compliance.
9 It also will enable the agency to gather, organize,
10 and inform staff about various interpretations of
11 the policy as it is applied over time.

12 ADOC has also developed a separate policy, DI-125, which, among
13 other things, distinguishes conditions of confinement for lower
14 custody PS inmates who must be confined in maximum custody facilities
15 for safety reasons. That policy will be discussed in more detail later
16 in this Plan.

17 Case Review Process

18 The newly revised DI-67 sets forth a much more detailed case
19 review process than in the past. It defines specific actions that are
20 to be taken at each level of management, and offers staff far more
21 guidance than in the past. It outlines a detailed process, with
22 multiple safeguards and specific requirements to document the
23 rationale for each decision.

24 Briefly, the process is as follows:

- 25 • Whenever an inmate requests protection (verbally or
26 in writing) or a staff member becomes aware of a

1 need for protection in some other way, the inmate
2 is immediately placed into secure segregated
3 housing;

- 4 • The inmate is served with a notice regarding his
5 detention status, appropriate forms are completed
6 (reflecting initial interviews and review of any
7 available records), and a file is started on the
8 case; the designated CO-IV PS specialist
9 coordinates this activity;
- 10 • The Unit Deputy Warden reviews the preliminary
11 information and, when appropriate, initiates a
12 local investigation by the Criminal Investigations
13 Unit (CIU)⁴;
- 14 • Following the investigation, the Deputy Warden
15 makes a recommendation and refers the case to the
16 Warden;
- 17 • The Warden reviews the file, makes a further
18 recommendation, and sends the case to ADOC's
19 Central Office for final action;
- 20 • The PS Committee reviews the case and decides
21 whether to order the inmate to return to GP, place
22 the inmate at an alternate location, order further
23 investigation, or approve PS status;
- 24 • The inmate is advised of the decision and of his
25 right to appeal to ADOC's Deputy Director for
26 Prison Operations; and
- Central Office Classification staff identifies a
 suitable institution for alternate or PS housing.

⁴CIU personnel are ADOC's trained investigators.

1 Exhibit 2 contains flow charts that represent key decision-making
2 stages of the PS process.

3 Decision-Making Criteria

4
5 ADOC found that its prior practices failed to allow for
6 adequate reconstruction of PS decisions. The revised DI-67 provides
7 staff with a clear set of decision-making criteria, and a framework
8 for evaluating the needs of individual inmates with possible
9 protection needs. Staff are now required to address and document their
10 rationales for each PS decision in five specific areas:
11

- 12 • *Basis for the determination of the existence (or*
13 *non-existence) of a threat* - The decisionmaker must
14 provide a full explanation of the reason he or she
believes why a threat does or does not exist;
- 15 • *Assessment of the estimated degree of risk*
16 *presented to the inmate* - Staff must also include a
17 statement assessing how serious the threat is
18 deemed to be, inasmuch as there may be cases where
the perceived danger is not so high as to require
full PS measures;
- 19 • *Options considered* - A statement must be provided
20 indicating the options considered in each
21 particular case;
- 22 • *Option chosen* - The recommended (or, in the case of
23 the PS Committee, the chosen) option must be
clearly stated; and
- 24 • *Rationale for choice* - The rationale for the
25 ultimate choice must be clearly explained,

1 particularly when it differs from lower-level
2 recommendations, or when there are disagreements
3 within the PS Committee with respect to the final
choice.

4 By requiring staff to address these issues explicitly, a
5 consistent framework is maintained for assessing not only initial
6 case decisions, but also for conducting subsequent case reviews,
7 including appeals. Such specific decision-making criteria also
8 facilitates auditing of the PS process. Audit personnel will be able
9 to assess the quality of decision-making at all levels using DCIs
10 that specify reviews of each step of the process. A more detailed
11 discussion of the audit process is provided in the "Systemic
12 Changes" portion of this Plan.
13
14

15 In applying these decision-making criteria, the policy also
16 provides staff with additional discretion in several new areas:

- 17 • Staff may now recommend PS status where an inmate
18 genuinely cannot identify a specific individual who
19 constitutes a threat;
- 20 • Staff may exercise broader discretion in
21 considering cases where other credible (but
22 atypical) information leads to the conclusion that
a threat exists;
- 23 • Staff need not exhaust all possible alternate
24 placements before approving PS when an inmate has a
25 history of failed alternate placements; and
26

- Because of the availability of case history information, staff must accelerate the PS processing of inmates who have either previously been in PS or considered for PS.

Specific Responsibilities

While specific staff responsibilities were not clearly defined under former policy, they are now explicitly described in DI-67 -- from those of the Shift Commander and designated CO-IV, through those of the PS Committee members and the Deputy Director. These duties include:

- Shift Commander - Responsible for moving PS candidates to provisional protective housing in a detention unit as soon as the report of a threat is received, as well as for obtaining inmate statements and serving key DI-67-related forms on inmates;
- CO-IV - Responsible for coordinating all local PS-related activities, conducting PS interviews, assembling and maintaining PS files at the facility level, advising other staff on PS issues, serving as the inmate point of contact on PS concerns (both for entry into and removal from PS status), and coordinating PS issues with the Central Office. The CO-IV is a key figure in the local management of the PS program, with respect to both staff and inmate matters;
- Criminal Investigation Unit - Responsible for conducting local investigations into all prospective PS cases and providing an investigative package to management personnel to aid in decision-making;

- 1 • Deputy Warden - Responsible for managing the PS
2 process at his or her unit, preliminarily reviewing
3 the developing cases of PS inmates, referring cases
4 for further investigation, and making
5 recommendations to the Warden for further action;
- 6 • Warden - Responsible for reviewing information in
7 the PS file compiled by the CO-IV and CIU
8 personnel, and the Deputy Warden's recommendation,
9 and making a further recommendation to the PS
10 Committee for disposition of the case;
- 11 • PS Administrator - Responsible for the day-to-day
12 management of the overall PS program (including all
13 Central Office PS-related administrative functions)
14 and for chairing the PS Committee;
- 15 • PS Committee - Responsible for making decisions on
16 each PS referral; consists of the PS Administrator
17 (chair) and representatives from ADOC's
18 Classification and STG sections; the PS Committee
19 is formulated in this manner to ensure input from
20 ADOC sections that may possess vital information
21 relating to PS decisions;
- 22 • STG Personnel - Responsible for contributing
23 information to the overall process and for
24 supplying a member to the PS Committee in the
25 Central Office;
- 26 • Central Office Classification Personnel -
Responsible for supplying a member to sit on the PS
Committee and for making institutional placement
decisions on PS inmates, in consultation with PS,
STG, and other key personnel;
- Deputy Director - Responsible for deciding all PS-
related appeals, and for the overall administration
of the PS program; and

- Special Security Unit (SSU) Personnel⁵ - Responsible for conducting a final investigation prior to the arrival of a PS inmate to evaluate the appropriateness of the placement based on any last-minute information or developments at the institution.

Documentation

The new policy addresses concerns about the nature and quality of documentation used in PS decision-making. DI-67 now requires that each stage of the decision-making process be documented in sufficient detail to enable a complete reconstruction of all staff actions.

The focus of PS documentation the PS file -- a compilation of initial, investigative, and decision-related information. The file must contain, at a minimum:

- PS request or continuation forms;
- Classification and placement documents;
- All CIU, STG and other investigative documents;
- Copies of all other relevant reports;
- Relevant court or other public documents, such as newspaper clippings;

⁵ Field staff whose responsibilities include a variety of security and investigative duties, including STGs, drugs, escapes, and other issues.

- Any relevant correspondence with non-ADOC parties; and
- All decision documents.

Portions of PS file reflecting this new approach are provided as Exhibit 3.

Many aspects of the DI-67 process rely on PS-related documentation contained in several ADOC databases. The first of these is the PROTECT database maintained by the PS Administrator's office. This tracking system was established in June of 1999 to provide summary statistics and text reports for personnel involved in the Central Office PS process. PROTECT will, when fully implemented, provide tracking information on pending cases, inmate demographics, and the rationales for all PS and alternate placement decisions, including appeals. The data maintained in this system will be enhanced over time to assure it remains relevant to the needs of management. A representative set of tracking and management information reports from the PROTECT system is provided in Exhibit 4.

The PROTECT database draws information from ADOC's Adult Inmate Management System (AIMS), which is the agency's main database for inmate information. AIMS documents individual inmate placements, custody status, and other program information relating to PS status.

1 This system is used extensively in the day-to-day management of PS
2 inmates. A representative AIMS printout containing key PS-related
3 information is provided as Exhibit 5.

4
5 AIMS includes information from ADOC's "do not house with"
6 ("DNHW") system, which tracks the names of inmates who must be
7 separated from other inmates. These entries are verified by staff
8 prior to being included in the automated database. Once an inmate has
9 DNHW issues, staff review (in advance of a transfer, for instance) the
10 relevant entries to assure that antagonistic inmates do not come into
11 contact. The DNHW system is an important tool for managing inmates who
12 otherwise might require formal protection. As of October 1, 1999,
13 9,169 inmates (35.1% of the inmate population) had at least one other
14 inmate listed as a DNHW separatee.⁶

17 Integration with other Critical Processes

18 In the past, ADOC's organizational structure created the
19 possibility that decision-makers might not have complete data to make
20 PS determinations. A key enhancement to ADOC's new policy is the
21 linking of PS-related functions with other aspects of ADOC's
22 operations to lessen such potential information gaps. Vital

24
25 ⁶When an inmate has a problem with another inmate, two DNHW
26 entries are generated -- one for each inmate involved.

1 interfaces now exist between PS staff and other ADOC personnel in the
2 following ways:

- 3
4 • Each facility must designate a CO-IV responsible
5 for coordinating all aspects of the PS process with
6 other disciplines;
- 7 • Each prospective PS inmate must be investigated by
8 Criminal Investigation Unit (CIU) personnel at the
9 originating facility, whose findings are provided
10 to the Deputy Warden and Warden for use in the
11 decision-making process;
- 12 • Classification staff also are more intimately
13 involved in the ongoing PS process. The new policy
14 uses ADOC's 180-day classification review cycle as
15 a vehicle to review an inmate's PS status twice a
16 year. This ensures that all inmates in PS status
17 are afforded full and timely reviews, and assists
18 in keeping all PS-related information current;
- 19 • Notably, and possibly unique in American
20 corrections, ADOC has established a PS Committee,
21 chaired by the PS Administrator. Composed of
22 representatives from the PS, Classification, and
23 STG sections of the agency, this Committee makes
24 all final PS decisions (with the exception of those
25 appealed to the Deputy Director's level). It is
26 constituted specifically to ensure that complete
and up-to-date information from all key operational
departments is available for PS decisions;
- Finally, upon determination of an institutional
transfer, security staff at the receiving facility
is provided advance notice of the inmate's arrival,
and the opportunity to perform one last
intelligence check to assure there are no known
threats at that location.

1 Taken as a whole, the new DI-67 process represents a major and
2 well-reasoned upgrade of existing procedures for processing PS
3 inmates. It builds on existing policy and experience, strengthens
4 important decision-making procedures, improves documentation, and
5 enhances communications in many ways. While no policy or decision-
6 making process can be perfect, this approach clearly provides
7 elaborate safeguards against future problems in determining inmate
8 protection needs, both for admissions into and transfers out of PS.

9 Conditions of Confinement

10 General

11 In addition to making major revisions to the policy governing
12 the processing of PS inmates, ADOC recognized that it needed to
13 address concerns regarding conditions of confinement for such inmates.
14 The agency had, in the past, aspired to provide a reasonable level of
15 programs and services to PS inmates. However, practical limitations
16 within the system meant that, in some cases, PS inmates were confined
17 under conditions that were indistinguishable from those imposed upon
18 inmates who were in restrictive housing for security, disciplinary or
19 other management reasons.
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1 Under this Plan, virtually all level 2, 3 and 4 PS inmates are
2 now being confined in ASPC-Lewis, a newly opened facility in Buckeye,
3 Arizona. Currently, two modern, newly-constructed housing areas are
4 dedicated to this purpose (levels 2 and 3 PS inmates in one, and level
5 4 inmates the other).⁷

7 To further strengthen its commitment in this area, ADOC
8 developed DI-125, which defines conditions of confinement for PS
9 inmates. That policy will be discussed below. ADOC facilities housing
10 PS inmates have also developed separate institution orders on PS
11 operations, based on the new DI. Exhibit 6 contains representative
12 materials in this category from ASPC-Lewis and ASPC-Eyman (SMU).

14 Overall Programs and Services

15 Historically, most of ADOC's lower custody PS inmates were held
16 in facilities that matched their basic classification needs and
17 offered programs and services somewhat parallel to those available to
18 GP inmates. Even in such facilities, however, program comparability
19 was not exact (smaller yards and fewer work options, for instance),
20 and there were concerns about visibility by non-PS inmates. Further,
21 because ADOC's PS population has grown so dramatically in such a short
22
23

24
25 ⁷ Plaintiffs' counsel have toured the units designated for PS
26 use at Lewis on a number of occasions.

1 period of time, ADOC was forced to house some PS inmates in level 5
2 facilities even though their classification scores would not have
3 otherwise called for such housing.
4

5 The decision to use the Lewis facility to house PS inmates in
6 appropriately designed and programmatically supported units is one of
7 the cornerstones of this Plan. Because Lewis was originally designed
8 to confine male and female inmates in separate but identical settings,
9 ADOC concluded that Lewis could be used equally well for a PS/non-PS
10 configuration. Currently, level 2 and 3 inmates are confined in a
11 dormitory setting in the Stiner Unit, while level 4 inmates are
12 confined in cell-type housing in the Morey Unit. To the extent
13 possible, Lewis will, when fully activated and staffed, offer programs
14 and services to Level 2, 3, and 4 PS inmates comparable to those
15 available to similarly classified non-PS inmates in Lewis. Separation
16 issues are dealt with through Lewis' design as well as properly
17 devised and implemented procedures. If necessary, additional housing
18 units in Lewis can be dedicated for PS use.
19
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22 ADOC began transferring PS inmates to Lewis on October 19,
23 1999, and anticipates completing all such transfers by the end of
24 January, 2000. ADOC has also transferred all PS inmates out of CB-6
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1 and into either Lewis or SMU. Such transfers demonstrate ADOC's
2 commitment, whenever possible, to only housing PS inmates in
3 facilities commensurate with their classification scores. As a
4 practical matter, this means that the only inmates who will remain in
5 level 5 housing will be those whose classification or security needs
6 require such housing.
7

8 Level 5 Issues

9
10 As a matter of philosophy, ADOC's view is that when security
11 permits, there should be meaningful differential conditions of
12 confinement between PS and non-PS inmates in level 5 facilities. This
13 is because many non-PS inmates are classified to level 5 facilities
14 for security (often disciplinary) reasons, while this is not
15 necessarily so for PS inmates. PS inmates with a demonstrable need for
16 level 5 confinement present a difficult issue for ADOC as its primary
17 responsibility is to assure that the public is safeguarded, which
18 means that inmates with P-5⁸ scores must be housed in its highest
19 security environment. ADOC must also look to assure that staff and
20
21

22 ⁸Under ADOC's inmate classification system, an inmate's "P" (public
23 risk) score is a reflection of the danger he would present to the
24 public were he to escape. Thus, an inmate's "P" score is linked to
25 the seriousness of his crime. An inmate's "I" (institutional risk)
26 score reflects the degree of danger he presents to other inmates or
staff based on his institutional history. Each of these two factors
is scaled from 1 to 5, with 5 indicating the highest level of risk.

1 other PS inmates are safe and secure, which means that inmates with
2 I-5 scores also must be housed in an environment that provides a high
3 level of supervision and control.

4
5 Once those two elements are considered, inmate program issues
6 can then be considered. When PS inmates demonstrate that they no
7 longer need level 5 confinement, transfers to a lower security setting
8 are possible under ADOC's classification process.⁹

9
10 Because of security and control concerns, program and service
11 access is necessarily more limited for level 5 inmates. Even so, ADOC
12 has taken steps to distinguish conditions of confinement for PS
13 inmates confined in level 5 housing for non-disciplinary reasons from
14 those of non-PS level 5 inmates. This is based on the principle that
15 PS is not a punitive status and that, to the extent management
16 considerations permit, activities and privileges available to PS
17 inmates should approximate those available to similarly classified
18 inmates in non-detention settings. This requirement has been
19 established in DI-125 (see Exhibit 7), which sets forth privilege
20 differentials for level 5 PS inmates.
21
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23
24 ⁹This means, for instance, that (just as for GP inmates) level 5
25 PS inmates may be eligible for custody reductions after completing a
26 2 years of discipline-free conduct and fulfilling other qualifications
set forth in ADOC's Classification Manual.

1 Management Oversight of PS Operations

2 Management oversight is vital to assure that PS conditions of
3 confinement are appropriate. The evidence brought forth in Does
4 impressed agency leadership with the need to better focus attention
5 and resources on inmate safety issues. It also highlighted the need
6 to strengthen both direct program supervision and information systems-
7 related oversight.
8

9 ADOC understands that ongoing and attentive management
10 oversight will be needed to ensure its new approach to PS issues does
11 not deteriorate over time. Consequently, top administrators
12 (including Director Stewart, Deputy Director Charles Ryan, Assistant
13 Director Carl Nink, Offender Services Administrator Donna Knudson, and
14 PS Administrator April Robinson) have all personally been involved in
15 the development of this Plan and its related procedures, and they will
16 continue to take a personal interest in PS issues.
17

18 Over an extended period, Charles Ryan, ADOC's Deputy Director
19 for Prison Operations, coordinated a massive policy and operational
20 review project. To reinforce this, ADOC provided special training to
21 all top facility administrators on October 7, 1999. Director Terry L.
22 Stewart, Deputy Director Ryan, and consultant Phillips conducted this
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1 session. It was intended to provide key staff involved in the
2 management of PS inmates (wardens and deputy wardens, in particular)
3 with an update on all PS-related policy and operational changes.
4 Participants were specifically provided an overview of the
5 philosophical and contextual view the agency is promoting on PS
6 matters. The training covered other aspects of this Plan as well, so
7 all involved in its implementation would understand its interlocking
8 features.
9

10
11 A second major PS-related training session for ADOC's top
12 administrators was held on December 13, 1999. Deputy Director Ryan
13 conducted this training for wardens, deputy wardens, assistant deputy
14 wardens and other mid and upper-level managers, covering developments
15 in the Plan since the October session.
16

17 These training sessions allowed key managers to question those
18 involved in the development and overall administration of the policy
19 regarding its specific application. While lower level staff will
20 receive particularized training on PS issues, top managers have been
21 trained in the philosophical aspects of the Plan to enable them to
22 convey this important contextual information to their subordinates.
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1 The following direct supervision-type controls are being
2 implemented to help assure the PS program operates effectively:

- 3 • Top managers will be required to make regular tours
4 of PS units, assuring that high standards are set
5 and maintained and that inmates and staff have an
6 opportunity to personally communicate with
7 decision-makers;
- 8 • All facilities housing PS inmates will be required
9 to maintain official logs reflecting tours by
10 supervisory personnel, and top management staff
11 must review those logs on a regular basis to ensure
12 required tours are being made;
- 13 • The agency Plans to review all grievances filed on
14 PS issues. This will provide an important oversight
15 mechanism and will include specific data coding for
16 safety issues to allow for preparation of summary
17 reports for management. Such reports will enable
18 managers to track the incidence of PS-related
19 concerns; and
- 20 • Staff will be required to specifically document
21 inmate program opportunities, making detailed
22 entries in unit logs and in individual inmate
23 program charts or sheets; supervisory personnel
24 must review these documents for policy compliance.
25 Again, supervisory review of these documents will
26 help to ensure compliance by lower level staff.

20 ADOC also understands that enhanced computerized reporting
21 systems will strengthen its ability to track and proactively manage
22 facilities in general, and the PS population in particular. As part
23 of this Plan, ADOC's research and information management staff have
24
25
26

1 been tasked with developing a system for collecting data on a variety
2 of core topics, and organizing this information in a way that assures
3 ready use in future management reporting.¹⁰ This system (to be called
4 the Security Information Monitoring Report [SIMR]) will be capable of
5 providing useful management information on a variety of data elements.
6

7 The primary purpose of this report will be to provide a
8 mechanism for management to monitor key security-related indicators.
9 The report will help identify situations where corrective security
10 actions may need to be taken. It also will identify positive movements
11 in key indicators, so that successful programs and initiatives at one
12 facility can be implemented at others.
13

14 ADOC's goal is to provide top managers with a 2-4 page, easy-
15 to-reference summary of core indicators of institutional safety and
16 security. This information will first be compiled manually, and then
17 by an automated data collection system that is now under development,
18 with complete implementation expected during calendar year 2000.
19
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23 ¹⁰ ADOC has recently undertaken to improve the quality and
24 consistency of data feeding its new management information system.
25 Planned changes offer the expectation that future data will not only
26 be truly representative of events within ADOC, but will remain
comparable in a statistically meaningful manner over time.

The report will provide both current and monthly averages on key security indicators such as:

- High-risk incident information, including:
 - Major and minor disturbances
 - Assaults on staff
 - Assaults on inmates
 - Weapons recovered
 - Escapes and escape attempts
 - Other incidents of aggressive activity (extortion, threats, fights, etc.)
- Drug suppression information, including:
 - Drug confiscations
 - Urine testing results
- PS-related data, including:
 - Population in each PS unit
 - Number of inmates pending a PS decision for more than 60 days
 - Reasons for seeking PS
 - PS inmates who seek protection from other PS inmates
 - Number of inmates who have transitioned from PS to GP

1 PS inmates assaulted after returning to GP

2 PS requests by unit (voluntary and involuntary)

3 Renounced STGs

4
5 Inmates grievances, by category, specifically
6 on safety issue

7 Indicators in these and other important categories will be
8 monitored at both the departmental and complex levels for signs of
9 improvement. At some point in the future, indicators for individual
10 units within complexes may be maintained as well. Indicators will
11 reflect both raw totals and per capita data so that administrators can
12 more easily tell when an indicator is abnormally high or low,
13 independent of population growth.¹¹

14
15 Admittedly, some of the information ADOC used in the past for
16 management purposes may have been flawed by a lack of definitional
17 uniformity. To remedy this, ADOC is enhancing its security information
18 reporting capabilities by establishing precise definitions for all
19

20
21 ¹¹ As the agency gains experience with the use of this system
22 and a more complete and consistent data history is compiled for each
23 item, it will be possible to develop threshold levels for each,
24 indicating when a specific activity or problem is occurring outside
25 an identified range. Such knowledge will enable management to promptly
26 intervene in developing problem situations. On the other hand, an
indicator below the threshold might suggest incomplete or inaccurate
data, or a noteworthy advance in security practices. Since thresholds
are the key to interpreting and acting upon the indicators, they will
be updated over time.

1 reporting categories. Appropriate training will be developed for the
2 use of the SIMR system once it is finalized.

3 Systemic Changes

4 General

5
6 ADOC acknowledges that is not enough to only promulgate
7 policies and upgrade conditions of confinement for PS inmates. A well-
8 developed approach to these issues demands that the agency reinforce
9 its policies and practices through concerted actions in other related
10 areas. A few examples illustrate this point:
11

- 12 • By taking initiatives to control STGs, it is
13 reasonable to conclude that some inmates may be
14 able to remain in GP when they otherwise might have
15 sought refuge from gang pressure. Similarly,
16 continued STG suppression efforts may allow some PS
17 inmates to safely re-enter GP;
- 18 • Providing specialized housing for sex offenders can
19 reduce the number of such inmates likely to request
20 or need protection, while making it safer for these
21 types of PS inmates to reenter GP in such
22 specialized housing;
- 23 • Some inmates may be able to remain in GP or leave
24 PS if drug usage is suppressed and they no longer
25 are subject to pressure to hold, transport, or
26 assist in bringing drugs into the facility;
- Reducing overall violence levels makes institutions
safer in obvious ways; and

- The availability of key management indicators will empower managers to intervene in budding problem situations and identify effective initiatives for deployment elsewhere in the system.

ADOC is not asserting that changes in any one or combination of these areas will eliminate the need for PS. However, systemic changes that foster improved inmate and staff control, reduce the flow of drugs and other contraband, and reduce the influence that inmates have over one another, will undoubtedly produce a safer environment for marginal inmates -- those who are less sophisticated, physically weaker, or have committed crimes that may dispose them to pressure from others. These are the inmates who often seek protection and must be consigned to long-term segregated housing.

Because increasing the overall level of safety in ADOC bolsters other aspects of the Plan, the changes the agency has made over the last two years to strengthen collateral systems and programs will now be discussed.

Suppression of STG Activity

There was a great deal of testimony in Does regarding STGs. ADOC holds -- as one of its central tenets -- that control of institutions cannot be ceded to any individual or group of inmates. While gang influences exist and will continue to be a reality, the

1 agency has never accepted the view that these groups control any of
2 its facilities. ADOC has made great strides in reducing the influence
3 of these groups and this program's success to date makes it another
4 cornerstone, of the Plan.
5

6 By way of background, ADOC recognizes that so-called
7 "traditional" prison gangs such as the Aryan Brotherhood, Mexican
8 Mafia and others, compete in various ways to introduce drugs and other
9 illegal contraband, extort inmates and sometimes staff, engage in
10 assaultive behavior, and even commit murder. Such predatory behaviors
11 clearly pose a threat to staff and inmates. In recent years, ADOC has
12 observed a new type of inmate entering the prison system -- street
13 gang members. These individuals are far less disciplined and their
14 organizations far less structured than traditional prison gang
15 members. They are more prone to violence directed at one another and
16 staff. This development poses a serious new threat to the safe and
17 secure operation of ADOC's facilities, compounding the management
18 problems presented by STGs in general.
19
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22 Faced with this serious and growing threat, sound correctional
23 management compelled ADOC to take proactive steps to meet its
24 responsibilities. As a result, in September of 1997, ADOC enacted
25
26

1 Department Order (DO) 806 dealing with control of STGs. This policy
2 reflected the agency's response to threats presented by these groups.

3 Its significant features included:

- 4 • A method for identifying and certifying groups as
5 STGs;
- 6 • An expansion of the types of organizations which
7 may be certified as STGs;
- 8 • Expansion of the type of information that may be
9 used to validate an inmate as an STG member;
- 10 • Establishment of Department-level STG Hearing
11 Committees to evaluate validation "packets" and
12 appeals;
- 13 • An increase in the objectivity of the validation
14 process;
- 15 • Introduction of due process into the validation
16 process in light of the serious consequences
17 attached to validation; and
- 18 • Control of STG members through the use of high
19 security confinement in an SMU for the duration of
20 their current incarcerations, unless they are
21 willing to renounce their gang membership in a
22 verifiable way.

23 The lessons learned while operating under DO 806 for two years
24 produced an enhanced policy in 1999, with the following additional
25 features:

- 26 • The use of a "suspect" file as a data collection
27 tool preceding preparation of a validation packet;

- 1 • The use of more precise coding to better reflect an
- 2 inmate's status while in the various stages of the
- 3 validation, appeal, and renunciation processes;
- 4 • Standardization of the hearing process and its
- 5 documentation;
- 6 • Introduction of more realistic time frames;
- 7 • Redefined appeal criteria;
- 8 • Automatic initiation of the DI-67 PS process for
- 9 STG members who renounce their gang affiliation and
- 10 successfully debrief;¹² and
- 11 • An automated STG database that allows ADOC to track
- 12 the whereabouts of suspected STG members.

13 During the February, 1998 evidentiary hearing, Judge Bilby
14 remarked on the subject of ADOC's STG suppression efforts as follows:

15 I would think if nothing else has happened in
16 this hearing the thing that has given me some
17 sense of relief, and I think Mr. Hammond would
18 have to agree with me, is the fact that we are
19 moving on getting the gang members put away,
20 isolated, and they are going away for a long
21 time.

22 * * *

23 I think what you are doing is what you had to
24 absolutely do and the right thing and the
25 whole thing; if for no other purpose than to
26 make it safer for the guards that have to live

27 ¹² The debriefing process involves specific intelligence-
28 gathering and investigative techniques that provide a reasonable level
29 of assurance the inmate is genuinely renouncing his former
30 affiliation.

1 with these people so that they know what they
2 are dealing with.

3 Hearing Transcript, February 20, 1998 at p. 270; February 18, 1998 at
4 p. 57.

5 The Court noted in that same hearing its view that the number
6 of STG inmates within ADOC was "...500 plus or minus 50, 60, something
7 like that..." At the time of the February 1998 hearing, the Court record
8 shows that 165 inmates had been validated as STG members. As of
9 January 30, 2000, 426 inmates had been validated from among the 6
10 certified prison gangs. These inmates are housed under highly
11 controlled conditions in an SMU. In addition to these validated cases,
12 at any given time additional suspect STG members are in the active
13 validation "pipeline". These figures suggest ADOC has made, and
14 continues to make, significant progress in identifying and segregating
15 STG member and it is approaching the STG numbers adopted by the Court.
16 While many STG "wannabes" undoubtedly remain in ADOC, the agency's
17 efforts are also aimed at deterring such inmates from becoming active
18 gang members. Clearly, this approach to suppressing STG activity
19 supports ADOC's primary objectives of making its institutions safer.
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1 An instructive insight into the effectiveness of ADOC's
2 strategy came during the February, 1998, hearing, when a former Aryan
3 Brotherhood member (a class member), testified as follows:

4
5 [Q: What should ADOC do about STGs?] "Very Simple. Start
6 with the five-year program. Any gang member that they
positively identify, slam them five years."

7 [Q: Where?] "...SMU I or SMU II. Put them away for five
8 years right off the bat. Any probates or wannabes or any
9 associates that they can directly tie to the Aryan
Brotherhood, two year program..."

10 [Q: Would it be effective?] "When you know that if you
11 put a patch on you become, you are going to really think
12 about becoming a gang member, and you know if they
13 identify you positively, you got a good chance of going
14 to SMU I or SMU II for five years without no thought of
getting out early. I think a person would seriously think
twice about it."

15 [Q: Would it reduce violence?] "...People do not like to
16 spend two years in that type of environment, especially
17 the way they have turned it around the last few months"
(emphasis added)

18 Hearing Transcript, February 19, 1998, at pgs. 233-239.

19
20 In fact, ADOC's gang suppression program is harsher than that
21 suggested by this inmate. It places non-renouncing STG inmates in SMU
22 for the duration of their sentences, not just the five years he
23 proposed.
24
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While no data conclusively proves that ADOC's facilities are safer as a result of this effort alone, statements like these, combined with knowledge of generally-accepted correctional practice, appear to demonstrate the effectiveness of ADOC's STG suppression program. As a final note, serious threats against Director Stewart's life have been linked to adverse gang reaction to these measures. This further suggests that at least some gang leaders believe these initiatives constitute a threat to their future power in ADOC.

Control of Drugs

ADOC continues to enhance its long-standing efforts to reduce the introduction of illicit drugs into its facilities. Current efforts include random urine testing of 10 percent of the inmate population, use of drug service dogs, and phone, mail, and visitation monitoring. As noted previously, because many inmates seek PS as a refuge from drug-related problems, enhanced drug suppression efforts should not only reduce the need of such inmates to enter PS, but should also present opportunities for others to leave PS.

As discussed elsewhere, because ADOC's data collection system is currently being redesigned, it is difficult to determine the precise impact current methods are having on the introduction and use

1 of illicit drugs in Arizona prisons to date. It is known, however,
2 that the per capita rate of major violations for "Drug Possession,
3 Manufacturing, etc." declined from 113.5/1000 inmates during 1995-97,
4 to 92.1 during 1998-99, a 19% drop. While this may suggest that fewer
5 drugs were in circulation in ADOC's facilities, there simply is not
6 yet enough strength to this data to conclusively make this claim. The
7 agency remains committed to upgrading its data collection, analysis,
8 and reporting systems to enable it to track drug-related issues, which
9 clearly should have an impact on the climate and safety of its
10 institutions.
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13 As a particularly important initiative, the agency has
14 undertaken the goal of making its Perryville Complex totally drug-
15 free. To achieve that goal, Perryville operates a multi-faceted zero
16 drug tolerance program consisting of the following principal elements:
17

- 18 • An enhanced detection program that initially tests
19 100% of the population to attain a baseline for all
20 future testing. Inmates who test positive are
21 placed in a targeted monthly testing group. A 20%
22 random sample will be taken of all other inmates,
23 instead of the standard ADOC 10%;
- 24 • The saturation use of five teams of trained drug
25 service dogs to regularly search key areas and
26 individuals, including visitation, returning off-
site work crews, mail, property, housing and inmate

1 work areas, as well as vendors, contractors, and
2 staff;

- 3 • The agency obtained five state-of-the-art ion
4 detection machines to detect trace drugs from a
5 variety of surfaces. These machines, provided by
6 two different manufacturers, are being evaluated
side-by-side to determine which is most effective
in identifying drug residues.

7 This program is subject to a very rigorous data collection and
8 research protocol. Indeed, ADOC sought and received a \$423,000 grant
9 from the National Institute of Corrections to support this effort.
10 This part of the "Perryville Project" includes the use of a pioneering
11 database structure that could enable ADOC to use existing information
12 to much greater effect in a wide array of management activities. If
13 the Perryville zero-drug program is successful, ADOC will seek the
14 resources to expand it system-wide.
15

16 Control of Violence

17
18 Another key element in making institutions safer for all
19 inmates is ADOC's aggressive program to control violence in its
20 facilities. A no-tolerance policy towards violence (at the individual
21 and group levels) is a prominent part of both staff training and
22 inmate orientation. ADOC's previously described efforts to reduce drug
23

1 trafficking and the influence of STGs also work to reduce the
2 potential for violence in ADOC facilities.

3 ADOC compiles data on various measures of violence. Such data,
4 however, does not presently provide a conclusive picture of the
5 effectiveness of ADOC's efforts. This is due, to a large extent, to
6 a past lack of definitional uniformity in various information sub-
7 systems. This lack of uniformity made it impossible to develop useful
8 historical baselines for comparative purposes. The SIMR system
9 currently under development will rely on new and consistent violence-
10 related definitions for future refinements of the agency's research
11 and management reporting systems.

14 This is an important effort because if ADOC can reduce violence
15 levels in its institutions, some inmates who might formerly have
16 required protection might be able to continue to function in a GP
17 setting. Moreover, some PS inmates might be able to re-enter GP if the
18 potential for physical danger is reduced.

20 Sex Offender-Specific Housing

*MacLean, K. [unclear]
Code [unclear] [unclear]*

21 Historically, one of the core sub-populations of ADOC's PS
22 population has been sex offenders who have sought protection from the
23 pressures of GP, where other inmates hold them in low regard. While
24

1 often problematic to manage in GP, many such inmates pose little or
2 no threat to others with similar crimes and backgrounds. Consequently,
3 another cornerstone of this Plan is, ADOC's establishment of separate
4 housing units for sex offenders in three different units in ASPC-
5 Eyman. A fourth unit is currently in the planning stages.

7 In addition to providing a portion of the solution to the PS
8 issue, there are other reasons why this was an important strategy for
9 ADOC. Following passage of the State's sexual predator laws in 1996,
10 A.R.S. §36-3701 *et seq.*, it quickly became apparent that a new housing
11 strategy was needed for inmates identified as sexual predators.¹³
12 After reviewing its existing prison units, ADOC initially designated
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16 ¹³ Prior to enactment of the statute, sex offenders were housed
17 in GP throughout ADOC. After the law was passed, ADOC reviewed the
18 housing status of these inmates. When the first sexual offender
19 released was processed under the statute and subsequently civilly re-
20 confined as a violent sexual predator, ADOC removed all sex offenders
21 from its level 2 facilities. These inmates were reassigned to level
22 3 facilities based upon a concern that once they became aware of the
23 possibility of continued confinement, escape attempts would occur. The
24 number of such inmates moved from level 2 to level 3 was large, and
25 this movement was accompanied by media reports on the first use of the
sexual predator law. As a result, when these inmates arrived at level
3 facilities, they were questioned by other inmates concerning their
convictions. In some instances, these inmates were asked to produce
classification documents containing their "sex score," which at that
time was listed on classification paperwork. This quickly resulted in
a sharp increase in the number of inmate-on-inmate assaults, and a
corresponding rise in the number of requests from these inmates for
PS placement. It was for these reasons that ADOC initiated the
concept of sex-offender specific housing.

1 the Cook Unit for this purpose. This population adjustment was
2 completed on October 22, 1997.

3 Although the Cook Unit housed a specialized inmate population,
4 it continued to operate as a level 3 facility utilizing policies
5 applicable to all level 3 units. While program availability did not
6 initially change, unit staff began to notice differences between the
7 new sex offender population and the previous inmate population.
8 Consequently, the program profile of the facility shifted over time.
9 For instance, the number of inmates who required literacy training
10 decreased to the point that the literacy lab was removed from Cook and
11 sent to the Lewis Complex. Conversely, the number of inmates
12 requesting to attend educational and vocational programs significantly
13 increased to a point where enough inmates wanted to participate to
14 require a waiting list. Inmate work program differences were equally
15 impressive, with an average of 95 percent of all available inmates
16 involved in work programs. Also, a new Sex Offender Program (a four
17 part project) is being introduced at Eyman for these offenders. This
18 program offers psychiatric and psychological treatment to individuals
19 who have committed sexual offenses, thereby potentially reducing their
20 likelihood to re-offend.
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1 Importantly, the number of disciplinary reports in these units
2 dropped substantially. In calendar year 1997, 4,161 reports were
3 issued at Cook. During calendar year 1998, when the inmate population
4 was entirely sexual offenders, only 1,739 disciplinary reports were
5 issued -- a reduction of over 50 percent.
6

7 In April of 1999, as a result of an increasing number of inmate
8 sex offenders remaining in other prison units, the success of the Cook
9 operation, and continuing problems associated with housing this type
10 of inmate in a GP setting, the Meadows Unit (level 3) and the Rynning
11 Unit (level 4) were also converted to specialized housing for sex
12 offenders. Capacities of these units are: Cook Unit - 928 beds;
13 Meadows Unit - 928 beds; and Rynning Unit - 800 beds.
14

15 The operational record of these units has been promising to
16 date and is an excellent complement to other portions of the Plan. For
17 instance, in late 1998, prior to full implementation of sex offender-
18 specific housing, the number of PS requests from sex offenders began
19 to increase significantly, reaching 64 requests per month in April
20 1999. When the Meadows and Rynning units were converted to sex
21 offender only housing, the trend reversed. There were 32 requests in
22 May, 29 in June, 19 in July, 16 in August, 8 in September, and only
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1 2 in October, 1999. It appears, therefore, that the apparent impact
2 of this housing strategy has been to significantly reduce the
3 protection needs of sex offenders in ADOC.

4
5 This series of population transfers and institutional mission
6 changes has reduced pressure on these inmates, making it easier for
7 staff to safely and securely manage them, and thereby reducing the
8 number of sex offenders seeking protection. In addition, the
9 availability of such housing should make it easier to reintegrate PS
10 sex offenders back into GP. This developing trend will be monitored
11 to determine if these units are continuing to have the desired impact.

12 Inappropriate Staff/Inmate Relationships

13
14 ADOC makes every effort through quality recruiting, training,
15 and supervision, to ensure that staff performance is professional at
16 all times. Nonetheless, incidents do occur where an employee is
17 compromised in some way by an inmate or outside confederates. This can
18 be in the form of exchanges of sexual favors, money, drugs,
19 information, or access to other prohibited items or areas. All of
20 these activities weaken the security of a prison and to the extent
21 they can be curbed, institutions are safer.
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1 To that end, ADOC has engaged in an aggressive effort to
2 identify and remove staff who engage in these kinds of improper
3 relationships or activities. The agency uses a three-tiered approach
4 to evaluate and investigate allegations of inappropriate staff
5 conduct. "Supervisory Complaints" deal with policy violations where
6 the principals involved admit to fault and discipline is administered
7 with no further investigation. "Green Book" cases entail
8 investigations by supervisors at the employee's workplace of minor
9 violations. "Red Book" violations involve allegations of serious
10 violations, which are investigated by staff of ADOC's Professional
11 Standards Bureau.
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14 Available information for 1999 suggests a modest increase (per
15 1,000 employees) from 1995 to 1998 in incidents of inappropriate staff
16 behavior. However, it is unclear whether such increase is attributable
17 to greater agency vigilance or a real increase in misconduct.
18 Nevertheless, because of the importance of this factor in maintaining
19 institutional safety, these trends will be monitored in ADOC's
20 management tracking system under development.
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1 Control of Dissemination of PS-Related Information

2 Testimony in Does suggested that ADOC's own information systems
3 could be misused to obtain PS-related information to potentially harm
4 an inmate. While this is a valid concern, it must be tempered with
5 several facts. First, there was no evidence this ever had actually
6 taken place. Second, ADOC is not the only source of public information
7 about its inmate population. Other governmental entities (courts, for
8 instance) maintain publicly available information about inmates, and
9 many of ADOC's records must be made available to the public as a
10 matter of law. At some point, the law of diminishing returns begins
11 to apply with respect to how many resources ADOC can or should devote
12 to restrict information that is readily available from other sources.

13 Nevertheless, the agency has examined the issue of information
14 availability. ADOC focused on assessing the most commonly available
15 means of gathering information about inmates within its own record
16 system. The agency also set about to determine whether there were
17 instances in which it was facilitating public access to information
18 (and particularly information that could identify PS inmates) beyond
19 the bounds set by law in A.R.S. §31-221. That assessment developed the
20 following information:
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- 1 • Telephone-Based Systems - The Department of
2 Corrections maintains "1-900" and "1-800" phone
3 systems to provide basic location and sentence
4 information about inmates. One system is intended,
5 for instance, to inform victims of crimes of the
6 anticipated release dates of their victimizers.
7 However, because the system formerly provided
8 information that could assist in identifying the PS
9 status of inmates, it was subject to abuse. The
10 system has been modified, and no longer contains
11 information on specific inmate statuses, such as PS
12 housing. In addition, staff have been directed not
13 to disclose an inmate's PS status when receiving
14 phone inquiries from the public. While it still is
15 possible, for instance, to ascertain by phone that
16 an inmate is confined at ASPC-Lewis' Morey Unit,
17 only part of that facility confines PS inmates. The
18 need of providing the public with information to
19 contact staff and inmates for legitimate reasons
20 make it very impractical to eliminate the
21 dissemination of all such information.
- 22 • AIMS Printouts - ADOC formerly provided inmates
23 (pursuant to State statute) a hard copy of their
24 AIMS printouts which included PS status. This
25 fostered the practice of inmates asking each other
26 for their "papers", and often resulted in inmates
27 seeking PS. ADOC obtained passage of SB 1042,
28 effective July 1999, which amended ARS §31-221 to
29 allow an inmate to view, but not to possess, a copy
30 of his or her AIMS record.
- 31 • Sentence Computation Forms - ADOC formerly listed
32 crimes on the time computation sheets it provided
33 to inmates. This created the possibility that
34 inmates could learn of other inmates' crimes by
35 pressuring them to show their time computation
36 sheets. A computer programming change has been made
37 to allow staff to provide inmates with release date

1 calculations that do not reflect the nature of
2 their convictions.

- 3 • Classification Paperwork - ADOC formerly included
4 an inmate's sex offense (S) score on classification
5 paperwork it provided to inmates. This presented
6 yet another opportunity for inmates to learn of sex
7 offenders in their institutions. ADOC has changed
8 this procedure and the "S" score is no longer
9 recorded on classification paperwork given to
10 inmates. Inmates are now only verbally advised of
11 their "S" scores.
- 12 • Public File Review Process - ARS §31-221 makes
13 information about inmates generally available to
14 the public for inspection. Any member of the public
15 seeking to review an inmate's file is referred to
16 ADOC's Central Office Public Access Unit. Detailed
17 records are maintained regarding these file reviews
18 and copies of any documents provided to the public.
19 Additional management attention to this area will
20 strengthen these controls. A proposed technical
21 manual will more clearly outline documents that
22 should be either removed or excised from a file
23 prior to public review. In addition, Public Access
24 Unit staff will be required to attend PS training.
25 Finally, a computer program change has been
26 requested to remove PS status indicators from the
location information provided in batch records
requested by the public.

20 In short, it is neither possible nor desirable to totally
21 eliminate all ADOC-based information about inmates that might somehow
22 be incriminating. While ADOC is unaware of any actual incidents in
23 which such information has been used to harm an inmate, it will
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1 continue to be alert to opportunities to more carefully control
2 information of this type.

3 Reducing PS Visibility and Related Concerns

4
5 As must all correctional systems, ADOC has to deal with
6 identification and harassment concerns, both in its permanent housing
7 facilities and in its Alhambra Reception Center, as well as during
8 transport. To lessen such concerns the agency conducted a review of
9 the issues of visibility and harassment control. As with the issue of
10 information control, there are practical limits on the degree to which
11 visibility can be restricted. ADOC's review resulted in the following
12 findings:
13

- 14 • Initial Intake at Alhambra - Upon reception, re-
15 commits and parole violators are immediately
16 questioned as to whether or not they have any PS
17 issues. These inmates, as well as first-time
18 inmates who disclose protection issues or those
19 independently identified by staff, are immediately
20 housed with other prospective PS inmates. While
21 Alhambra's older design does not permit total
22 visual separation, ADOC has undertaken to move
23 pending PS inmates out of this location more
24 quickly, to reduce the amount of time they are
25 exposed to non-PS inmates in this setting. As ADOC
26 is aware of the undesirability of this situation,
it is exploring options for a new reception center.
There are, however, no immediate solutions to the
problems of Alhambra.

- Detention Unit Operations - Inmates undergoing DI-67 PS reviews are housed in detention units where the procedures inherent in their operation provide total physical separation. Visibility, which is kept to a minimum, is limited to when the inmate is being escorted in or out of the area. Since food prepared for CDUs is prepared in an anonymous manner (other than for special diets) and is handled only by staff once placed on trays, opportunities for contamination are minimized. In some units, contract food service staff prepare all inmate meals and in others all special diets are prepared by staff.
- Separation from GP inmates in other housing facilities - Level 5 PS inmates are confined in totally separate pods, in which safeguards are in place to preclude physical contact with GP inmates during normal activities. Movement to visiting, medical, and other areas of the facility is done with complete separation as well. The use of the Lewis facility for level 2, 3, and 4 PS inmates provides near-total physical and visual separation, as described elsewhere in this Plan. Moreover, to the extent possible, meals in Lewis will be prepared by PS inmates themselves, thereby reducing the likelihood of contamination.
- Transportation - All identified PS inmates (both confirmed and pending DI-67) are moved separately from non-PS inmates. This includes transfers to and from other institutions, court appearances, and medical appointments. Screening safeguards are in place to ensure that PS inmates are not transported with GP inmates.

1 Communications and Training

2 ADOC understands that communications and training will be vital
3 to convey its philosophy and expectations to lower level staff.
4 Exhibit 8 provides a sample of the kind of instructive content on PS
5 issues that has been added to post orders to reinforce training
6 provided all personnel. Moreover, ADOC has added PS information to
7 its academy and annual refresher training for all staff. Such
8 training includes not only the mechanics of DI-67 and DI-125, but also
9 the philosophical underpinnings of these policies. Exhibit 9 provides
10 a sample of the content now presented in the Correctional Officer
11 Training Academy.
12
13

14 In order to assure consistent operations, ADOC is also
15 developing a brief standardized training package at the local level
16 for all staff assigned to PS units. This will ensure employees who
17 work with PS inmates are familiar with the practices and procedures
18 that apply to such inmates and will further safeguard against
19 inadvertent lapses in practice. Exhibit 10 provides a sample of these
20 local training materials.
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23 As a final communications enhancement, ADOC is aware of the
24 need to better inform inmates about protection issues. Whereas the
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26

1 agency's inmate orientation had not previously contained information
2 on the issue of PS, it will in the future. Inmates will be advised
3 that the PS process exists as an option for their safety when a
4 legitimate need arises. They also will be informed that the conditions
5 of confinement for PS inmates may, by necessity, sometimes be less
6 desirable than those in GP. Copies of representative orientation
7 materials are provided as Exhibit 11.
8

9 Auditing

10
11 ADOC has an effective method for auditing performance on a
12 variety of security and management issues. This audit program relies
13 on Data Collection Instruments (DCIs) that guide auditors in their
14 review of facility operations. In the past, however, PS-specific
15 issues were not separately audited.
16

17 As a direct result of ADOC's PS initiative, auditing for PS
18 issues has been organized into a separate DCI, which uses a new and
19 improved format. The new tabular DCI format for PS issues incorporates
20 sections describing:

- 21 • Each relevant policy requirement;
- 22
- 23 • Specific information that the auditor should review
24 to ascertain policy compliance;
- 25

- Suggested individuals to interview regarding compliance; and
- Sections for describing findings.

This format will make it easier for those being audited to know how they will be evaluated and for the auditors to systematically cover all relevant policy aspects. Provisions of DI-67 and DI-125 will be incorporated into this DCI format, and copies of relevant portions of the DCI format for DI-67 are provided as Exhibit 12.

Conclusion and Proposed Resolution

This Plan makes an important statement about the state of corrections in Arizona. ADOC has not only demonstrated its responsiveness to this Court, but also that it is capable of meeting the safety needs of the public, its staff, and all inmates. Most importantly, it shows that Arizona corrections is capable of developing a comprehensive and innovative approach to a complex and highly difficult problem.

This Plan represents a massive undertaking by the Arizona Department of Corrections. Its provisions not only resolve the issues raised in Does v. Stewart, but also reflect recent upgrades in many related areas of security and management concern. It has been developed and implemented while the agency has simultaneously been

1 carrying out a major expansion program and dealing with an influx of
2 thousands of new inmates.

3 Given the immensity of this undertaking, it is unlikely that
4 perfection can be achieved in every minute detail. Because of the
5 complexity of the Plan, the changing nature of the criminal justice
6 system, and the essential need for management flexibility within a
7 correctional agency, it is certain that some details of DI-67 and
8 other elements of the Plan will have to change over time. It would be
9 unreasonable to hold agency staff to an immutable position for an
10 extended period. Nonetheless, the Department is committed to carrying
11 out all elements of the Plan outlined herein and to not making any
12 substantive changes to DI-67 and DI-125 and their implementation
13 without prior Court notification.

14 To further establish the Department's good faith approach to
15 this issue, ADOC's counsel has discussed with Plaintiffs' counsel a
16 proposed resolution of this lawsuit under which the parties would
17 agree to its conditional dismissal pursuant to FRCP, Rule 41(a)(2),
18 coupled with periodic independent reviews by a mutually agreeable
19 outside party. This person would audit PS issues every 90 days over
20 a period of time, using a methodology to be agreed upon. At the end
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1 of the monitoring period, if the Department is found to be in
2 substantial compliance with all provisions of the Plan, the parties
3 would agree to the final dismissal of Does. On the other hand, the
4 lawsuit could be reinstated, with injunctive relief imposed upon ADOC,
5 if it fails to substantially comply with the commitments made herein.
6

7 ADOC believes that its comprehensive approach to addressing
8 protective segregation issues can be a model for corrections
9 nationwide. Arizona's new PS program responds to concerns identified
10 by the Court and Plaintiffs in this case, moving far beyond merely
11 overcoming any inference of deliberate indifference, by seeking to
12 achieve the goal of having the best PS program possible. ADOC is
13 willing to subject its approach to independent scrutiny and believes
14 that a monitoring period will confirm its commitment to the success
15 of its new PS policies.
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19 Terry L. Stewart, Director
20 Arizona Department of Corrections

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23 Bruce L. Skolnik
24 Assistant Attorney General

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