Final
AO 450 (Rev. 5/85) Judgment in a Civil Case

United States District Court

NORTHERN DISTRICT OF INDIANA

ROGER W. ANDERSON, JR., et al

V.

G. MICHAEL BROGLIN, et al

FINAL
JUDGMENT IN A CIVIL CASE

CASE NUMBER: S83-481

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED BY CHIEF JUDGE ALLEN SHARP

that the Consent Decree shall be entered as the final judgment of this court.

April 4, 1989
Date

RICHARD E. TIMMONS
Clerk

Marilyn J. Keating
(By) Deputy Clerk

Docket

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

ROGER W. ANDERSON, JR., on his own behalf and o/b/o all prisoners who are, or may be in the future, confined at the W.C.C., Westville, IN, in the custody of the Indiana DOC, Plaintiffs, vs. G. MICHAEL BROGLIN, Superintendent; ROBERT ORR, individually and in his official capacity as GOVERNOR of the State of Indiana; GORDON H. FAULKNER, individually and in his official capacity as Commissioner of the Indiana Department of Correction, Defendants.	)	CIVIL NO. S83-481

ORDER

This Court held a hearing on March 28, 1989, in order to hear oral argument on the proposed Consent Decree filed with this Court on January 13, 1989. In accordance with the notice requirements of Rule 23(e) of the Federal Rules of Civil Procedure, a Notice of Proposed Settlement was sent to individual class representatives in conjunction with the posting of said notice in conspicuous locations at the Westville Correctional Center. All objections to the proposed Consent Decree have been reviewed by this

Court. Having heard oral argument on the proposed Consent Decree and the objections, it is hereby **ORDERED** by this Court that the proposed Consent Decree be and is hereby **APPROVED.** The Consent Decree shall be entered as the final judgment of this Court. **IT IS SO ORDERED.**

Dated this 31 day of March, 1989.

Allen Sharp, Chief Judge
United States District Court

cc: Smith
Albrecht/Beatty/Fila/Vocr
Krakoff/Lopez
Dabrowski/Arthur
Order Book

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

ROGER W. ANDERSON, et al.,

Plaintiffs,

v.

ROBERT ORR, et al.,

Defendants.

CIVIL ACTION
No. S83-0481

AGREED ENTRY

This class action, brought on behalf of all present and future offenders of the Westville Correctional Center, alleges that certain conditions and practices at the institution violate the United States Constitution. Although the defendants categorically deny that allegation, they believe it will be in the best interest of the residents of Indiana--including members of the plaintiff class--for there to be an expeditious, orderly, and comprehensive settlement of this case without the necessity of a trial. The plaintiffs share this belief. As a consequence, the parties now agree to forego a trial on the merits and to bring this litigation to a conclusion by submitting this Agreed Entry to the court for its review and ultimate approval.

With the full and informed consent of the parties, in order to resolve all claims asserted in this case, but without any acknowledgment or finding of liability or other determination on

the merits, it is agreed that the defendants, their officers, agents, agencies, employees, subordinates, successors in office, and all those acting in concert or participation with them shall be bound by and comply with the following provisions:

I. Westville Psychiatric Unit Provisions

1. The psychiatric unit (hereafter referred to as the "Psych Unit") shall be expanded by July 1, 1989 to provide each offender housed in it a minimum of fifty (50) square feet of dormitory space and thirty-two (32) square feet of dayroom space.

2. The practice of using dayroom space in the Psych Unit as a sleeping/observation area shall end upon completion of the expansion project referred to above. Thereafter, a section of the Unit dormitory shall be designated as a special observation area for the housing of suicide-prone and other patients who require particularly close observation.

3. Procedures consistent with those set forth in Appendix A shall govern the use of mechanical restraints and seclusion rooms in the Psych Unit.

4. The practice of housing mechanically restrained patients along the hallway of the Psych Unit shall cease after July 1, 1989.

5. A routine regimen of daily exercise shall be provided to patients who are in restraints or seclusion for more than 48 hours, unless a psychiatrist, psychologist, or physician determines that such exercise is contraindicated for a given patient. A minimum

of 45 minutes per day of exercise shall be made available unless medically contraindicated. After being in restraints seven (7) consecutive days--during the non-winter months--the exercise shall be held outdoors at least two days as week, weather permitting, unless a psychiatrist, psychologist or physician concludes that outdoor exercise is contraindicated for a given patient. The reasons a patient has not been provided exercise on a given day shall be documented in his psychiatric record. Patients in mechanical restraints shall be given the opportunity to shower and shave at least five days a week unless one of the above personnel concludes that doing so is contraindicated. If conditions permit, patients in mechanical restraints should be permitted to shower daily.

6. The Department of Correction shall modify its procedures for effecting mental health transfers to conform with the procedures set forth in Appendix B of this agreement.

7. Outdoor recreation shall be available to Psych Unit offenders during the non-winter months. A schedule shall be established and implemented by January 1, 1989, providing for reasonable periods of outdoor and indoor exercise five days a week on an alternating basis. The indoor exercise shall take place in a gymnasium or a functionally equivalent area of the prison. In the event of inclement weather, recreation shall be provided in the designated indoor recreation area, with outdoor recreation available the next week day weather permits. During the winter months, there shall be a reasonable amount of indoor exercise five (5) days a week.

8. Access to the institution infirmary shall be available to Psych Unit patients when deemed medically appropriate and upon orders of the attending physician.

9. Prison administrators shall undertake a ventilation assessment of the entire Psych Unit, and by September, 1989, shall increase ventilation in the seclusion rooms and in all other housing and dayroom areas of the Psych Unit to the levels specified in the American Public Health Association's Standards for Health Services in Correctional Institutions.

10. The following additional full-time equivalent personnel shall be employed at the prison to provide professional services in the Psych Unit:

a. One and one-half psychiatrists.
b. One Ph.D. psychologist.
c. Six Registered Nurses
d. Six Licensed Practical Nurses.
e. Five attendants.
f. One Medical Records Administrator and one clerk-typist.

At least one-half of each of the above full-time equivalent personnel shall be employed by March 1, 1989 and the remainder by August 1, 1989.

11. Consistent with the above increases in staffing, there shall be a total of two and one-half psychiatrists, two Ph.D. psychologists, five psychiatric social workers, 12 RN's, 12 LPN's, 48 attendants, one medical records administrator and one clerk-typist employed on a full-time equivalent basis in the Psych Unit beginning August 1, 1989 and thereafter. In the event the patient population of the Unit should increase to more than 200, sufficient additional personnel in each of the above disciplines

shall be employed to ensure that an equivalent staff/patient ratio is maintained for each discipline. This ratio shall thereafter be maintained by making equivalent corresponding staff adjustments as the patient population increases.

12. All full-time employees employed in the Psych Unit shall be adequately trained in the care and handling of psychiatric patients. A training program shall be established by March 1, 1989, for that purpose.

13. No anti-psychotic medication may be forced upon an offender against his wishes except in an emergency and, then, only upon orders of a psychiatrist or physician after an individual determination by the psychiatrist or physician that:

a. The offender in question is mentally ill as defined by applicable state law;

b. administration of the medication is necessary to prevent serious risk of injury to the offender, to other offenders, or staff; and

c. in the professional judgment of the psychiatrist or physician, the probable benefit to the offender from receiving the medication outweighs the risk of harm to, and the personal concerns of, the offender.

No offender shall be force medicated for more than twenty-four (24) hours without being personally evaluated by a psychiatrist or physician; however this limitation shall not apply to an offender who is under the continuing care of a psychiatrist at Westville Correctional Center and is currently on a regimen of anti-psychotic medication.

14. In the event anti-psychotic medication is forced upon an offender for a period of more than five (5) consecutive days, the Psych Unit shall submit the plan to a consulting psychiatrist for his consideration and determination as to whether it is appropriate under the above standard to continue the involuntary administration of the medication. The Unit personnel shall abide by that psychiatrist's determination which shall be based, in part, on a review of records and a personal evaluation of the offender in question. The forced administration of anti-psychotic medication may not exceed of eight (8) days in the absence of the approval of the consulting psychiatrist. The approval of forced medication by the consulting psychiatrist shall remain in effect until the next semi-annual review of the offender's treatment program. Upon admission to the Psych Unit, an offender shall be informed of this procedure.

15. The consulting psychiatrist shall be selected from a list of qualified psychiatrists with institutional experience prepared by the Indiana District Branch of the American Psychiatric Association and may not have been employed by the Westville Correctional Center within the two years immediately preceding the selection. In the event none of the psychiatrists whose names appear on the list are willing to function as a consultant, the Department may retain the services of another psychiatrist to act as a consultant subject to the prior approval of plaintiffs' counsel.

16. A separate written log or other central record of all instances of forced medication shall be maintained. It shall list the names and institutional numbers of the offenders who refused medication, the date of each occurrence, the psychiatrist who

ordered the medication to be administered and a summary of the reason(s) for administering the drug.

17. Psychiatrists shall conduct medication reviews at least once a month for each Psych Unit patient which shall include a personal evaluation of the patient. A summary of the findings shall be written in the patient's chart.

18. Adequate space shall be provided for group and individual therapy by July 1, 1989.

19. Offenders who have been approved by the Psych Unit staff for discharge from the Unit shall be transferred to a living area off the Unit within ten (10) days after the approval has been made.

20. Modifications shall be made by July 1, 1989 in the toilet facilities of Five Dorm of the Psych Unit to create a reasonable degree of privacy for the patients.

21. Sufficient seating accommodations shall be provided in the dayroom areas of the Psych Unit for the patients.

II. General Population Psychiatric Provisions

1. A full-time psychiatrist shall be employed at Westville to provide psychiatric services for general population offenders (as well as offenders housed in the institution's segregation unit). At least one half of this full-time equivalent position shall be obtained by March 1, 1989 and the remainder by August 1, 1989. This position shall replace the part-time psychiatrist position that currently exists for those areas of the institution.

2. An additional full-time Ph.D. psychologist shall be employed at Westville to provide psychological services for general population and segregation offenders. At least one-half of this full-time equivalent position shall be obtained by March 1, 1989 with the remainder obtained by August 1, 1989. With this addition, the institution shall employ a total of two full-time equivalent psychologists for the general prison population.

3. An additional behavioral clinician or psychiatric social worker shall be employed at Westville to provide counseling services for general population and segregation offender by January 1, 1989. With this addition, the institution shall employ a total of four behavioral clinicians or the equivalent.

III. Medical Care Provisions

1. There shall be a minimum of four (4) full-time licensed physicians employed at Westville no later than August 1, 1989.

2. The physicians employed at Westville shall be reasonably conversant in English so that they will be able to adequately communicate with offenders, staff, and outside medical consultants.

3. One of the staff physicians shall be designated as the medical director of the institution. The medical director shall:

a. have input into budgetary decisions;

b. have input into medical-related staffing decisions;

c. be the final authority on health-related matters;

d. be responsible for the establishing a medical reference library; and,

e. be responsible for developing and implementing by October 1, 1989, comprehensive written medical policies, procedures and practices for the delivery of medical care at the institution. These policies, procedures and practices shall relate to, among other things, triage and other aspects of the institution's sick call system; emergency health care; medical record-keeping; follow-up after outpatient consultations with medical specialists and outside medical facilities (including a system for screening offenders returning from consultations or hospitalizations, where medically appropriate, and the timely recording of reports or instructions received from those sources); the establishment of death and quality assurance committees; a system to monitor medications for offenders who have serious communicable and chronic diseases; special diets; prescribing medication; radiology; admissions to and the operation of the in-patient infirmary and chronic care units; specialty clinic referrals; sexually transmitted diseases; and tuberculosis testing and treatment.

4. Two full-time clerks assigned to medical records shall be employed at Westville by September 1, 1989 to work in the medical department.

5. A sick call system shall be developed and implemented at Westville by August 1, 1989, whereby each offender in general population shall have access to sick call at least four (4) days per week. When an offender signs up for sick call, he shall

have the opportunity to consult a licensed health care provider for diagnosis and treatment and, when medically indicated, to be seen by a physician for those purposes. Staffing of nurses for coverage of sick call shall assure continuous supervision of nursing functions by a registered nurse. Licensed medical personnel shall be available to respond to medical complaints on a twenty-four (24) hour basis. Routine referrals to a physician (i.e. those involving non-emergency matters) ordinarily may proceed on a schedule whereby the offender shall be seen by a physician within five (5) working days. However, referrals to physicians involving medical problems of a non-emergency nature must proceed on a time-schedule commensurate with the nature of the medical problem and the risk posed by the problem to the offender and/or others in the institution. Therefore, in those cases where it is medically indicated, non-emergency conditions shall be seen by a physician on a more expedited time schedule than five days.

6. Sick call shall be available to each offender housed in the segregation unit a minimum of four (4) days per week and shall follow the same procedures prescribed above. A room suitable for medical examinations shall be made available for that purpose.

7. Sick call shall be provided to offenders in the Psych Unit a minimum of four (4) days per week and shall follow the same procedures prescribed in paragraph five of this section. In the event the institution elects to have its psychiatrists conduct a sick call in the Unit, Westville's non-psychiatric physicians shall be available to consult with and, when necessary, to assist the psychiatrists.

8. Sick call shall be provided in the institution's chronic care unit a minimum of four (4) days per week and shall follow the same procedures prescribed in paragraph five of this section.

9. Physician's rounds shall be conducted in the institution's infirmary at least five (5) days a week.

10. A registered nurse shall staff Westville's Central Services Department five (5) days per week during the day shift (8:00 a.m. to 4:00 p.m.). Moreover, there shall be a registered nurse on the premises of the Westville Correctional Center twenty-four (24) hours per day, seven (7) days per week.

11. A chronic care unit for the housing and supervision of physically handicapped and chronically ill offenders whose conditions seriously restrict their ability to function adequately in the prison's general population shall be established by March 1, 1989. Appropriate physical therapy shall be made available to offenders housed in the unit as prescribed by attending physicians. There shall be no obligation for the Unit to be staffed by medical personnel. However, the Unit shall be monitored and supervised by the infirmary's licensed medical personnel. Medical care, sick call, the dispensing of medication, and meals shall routinely be provided on the Unit.

12. Any isolation rooms at Westville utilized for the housing of offenders with contagious diseases shall be equipped with a sink, a toilet, and a ventilation system to adequately vent air to the outside. Ventilation levels shall conform to the APHA Standards for Health Services in Correctional Institutions.

13. Oral physician orders that are recorded and implemented by nurses shall be reviewed and signed by a physician as soon as practicable, but in no event later than the close of the next business day.

14. All offenders 50 years of age and over shall be given comprehensive annual physical examinations and all other offenders shall receive comprehensive physical examinations and least every two years.

15. All individuals entering custody at Westville shall be medically screened by health-trained or qualified health care personnel upon arrival at the institution and the findings shall be recorded on a printed screening form. The screening process shall include the areas of inquiry and physical observations specified in the American Correction Association's Standards for Adult Correctional Institutions relative to medical, dental and psychological issues.

16. Each individual entering custody at Westville shall receive a thorough physical examination within fourteen (14) days of entrance unless his medical records reflect the fact that he has received such an examination within the past six months and the medical staff determines that there is no need to conduct an additional examination at that time.

17. A properly equipped crash cart shall be maintained in the institution's Central Services Department for use in medical emergencies.

18. The position of Special Attendant may be maintained on a limited basis in the prison's general population and on a more

expansive basis in the Psych Unit. However, after August 1, 1989, attendants shall not perform any functions which appropriately should be performed only by licensed medical personnel.

19. Vigorous recruitment efforts targeting the positions of registered nurse and licensed practical nurse shall be made and, in conjunction with those efforts, the tuition reimbursement program as set forth in Appendix C shall be implemented.

20. All health care staff shall be certified in CPR. A reasonable number of custody staff in each housing complex on each work shift shall be certified in CPR as well.

IV. General Conditions of Confinement

1. Offenders housed in the General Services Complex shall have access to the gymnasium and/or outdoor recreation area (weather permitting) at least six (6) days per week. The implementation of this requirement shall not diminish the other recreational opportunities that are now available to offenders (e.g., weightlifting, arts and crafts, etc.) or the amount of access to the gymnasium now available offenders who are housed in the Educational and Industrial Complexes. An additional gymnasium for Westville Correctional Center shall be completed by July 1, 1990.

2. A sufficient number of operable smoke detectors and fire extinguishers shall be installed and maintained in appropriate locations throughout the institution, including the housing units, as determined by the Indiana State Fire Marshal.

3. An aggressive rodent extermination program shall be

maintained at the institution.

4. Appropriate measures shall be undertaken to assure that Westville offenders when traveling in the underground tunnels are adequately protected from physical assault by other offenders.

5. In addition to the existing law library located in the General Service Complex, law libraries shall be established by July 1, 1989, in the Educational and by March 1, 1989, Industrial Complexes of the prison. All libraries at Westville shall be staffed by a sufficient number of trained law clerks to assist offenders in their legal research, shall include, at a minimum, the books identified in Appendix D, and shall be open a reasonable number of hours, five (5) days a week, to assure offenders a meaningful opportunity to conduct legal research.

6. An adequate training program shall be established by July 1, 1989 to train all clerks who are assigned to work in the institution's law libraries.

7. A dormitory shall continue to be available at Westville for the housing of handicapped and chronically ill offenders who are able to function adequately in the general population. The dormitory will be modified for the use of handicapped offenders and provide the maximum possible integration with the general population. Appropriate institutional programs and activities will be accessible to handicapped inmates housed in the dormitory. An offender will not be excluded from the work release program solely on the basis of handicap. Appropriate physical therapy shall be provided to offenders housed in the dormitory as prescribed by attending physicians.

8. All friable asbestos in the tunnel of the General Services Complex shall be abated no later than April 15, 1989, either by the removal or encapsulation of the Asbestos Containing Material. Offender traffic in the corridor shall be halted while work is in progress and shall not resume until the abatement has been accomplished.

9. All mechanical rooms at Westville that have Asbestos Containing Material in them shall by February 1, 1989, have notices prominently posted at their entrances warning of that fact and prohibiting the entry of offenders into those areas unless properly equipped or until all friable asbestos in that area has been properly abated through encapsulation or removal. Abatement in the mechanical rooms shall be completed by January 1, 1990.

10. All pipes known to have asbestos on them which are accessible to offenders shall have notices of the presence of the asbestos prominently posted on them as soon as practicable and in no event later than September 1, 1989.

11. An offender working in a mechanical room, the power plant, or on plumbing shall be informed on the dangers of working in close proximity to asbestos and shall not be required to work in the mechancial rooms, the power plant, or on plumbing, in close proximity to asbestos, unless he shall sign an acknowledgment that he has been informed and agrees to so work.

12. No offender shall be utilized to abate, repair, maintain, or clean up asbestos-containing materials unless he has been properly trained and is properly equipped for the procedure.

13. The asbestos-containing material in the power plant shall be abated by September 1, 1989.

14. Defendants shall prepare a comprehensive Operations and Management Plan (hereafter referred to as "O & M Plan") to address the existence of and problem associated with the presence of Asbestos Containing Materials in the institution. The plan shall be prepared by October 1, 1989. Among other things, it shall identify and describe all asbestos-related problems existing at the prison, shall specify what remedial action such as removal or encapsulation is necessary to address those problems, and shall provide time-tables for implementing each stage of the remedial program.

15. The O & M Plan, within fourteen (14) days of its preparation, shall be provided to the plaintiffs for their review and approval. If the plaintiffs express no objection to the plan, it shall be implemented according to its expressed time table. If, however, the plaintiffs do object to the plan within fifteen (15) days after receiving it, the parties shall have another twenty-one (21) days in which to attempt to resolve their differences through negotiation. If a resolution is not achieved, plaintiffs may present the matter to the Court for its resolution.

16. A minimum of six (6) members of the prison's maintenance department staff shall be trained and certified in the repair and abatement of minor asbestos-related problems and in the implementation of the O & M Plan.

17. Plaintiffs' counsel and their own expert(s) shall have the right to reasonably inspect, photograph, or otherwise monitor compliance with the terms of the asbestos abatement project and implementation of the O & M Plan.

V. Implementation and Other Provisions

1. The Court shall retain active jurisdiction and supervision of this case for a period of at least two years from the time this agreement is entered as an order. At that time, the Court shall terminate supervision and transfer this case to its inactive docket unless the plaintiffs move for the continuation of jurisdiction and active supervision due to an alleged failure by defendants to fully implement and comply with the terms of this agreement. In that event, there shall be a hearing to determine whether or not jurisdiction and supervision shall continue. If the Court determines not to close the case, it shall retain jurisdiction until this agreement is fully implemented and compliance has been demonstrated by the defendants in all substantive areas. At such time, the defendants may move the Court to terminate its supervision and transfer this case to the inactive docket, subject to plaintiffs moving at a later time for reinstatement of this action based upon an alleged failure by defendants to maintain compliance with the terms of the decree and underlying agreement. However, prior to initiating any court action to revive the case, plaintiffs' counsel shall bring any allegations of non-compliance to the attention of the defendants' counsel so that the parties can first attempt in good faith to resolve all such disputes between themselves.

2. Defendants' counsel shall notify plaintiffs' counsel in advance of any attempt to modify the court decree that implements this agreement. The parties shall then attempt to resolve all disputes concerning the proposed modification(s) before resort is made to the court.

3. Beginning March 1, 1989, the defendants shall provide the Court and plaintiffs with written progress reports detailing the steps taken to comply with the respective provisions of this Agreed Entry. The reports shall be made every three (3) months thereafter until the court's jurisdiction over this case ends.

4. During the implementation phase of this case, plaintiff's counsel and their paralegals shall have reasonable access to documents, facilities, personnel and offenders of the prison in order to monitor first-hand the progress of implementation.

5. Defendants shall within two months of the date this agreement is approved by the Court explain the terms of this agreement to their agents, servants, representatives, and employees (professional staff, correctional officers and other personnel), in order to ensure their understanding of the requirements of this agreement and the necessity for strict compliance therewith. Defendants shall thereafter periodically review the terms of the agreement with the above persons.

6. By entering into this agreement, members of the plaintiffs' class are not waiving any right they might otherwise have to pursue individual claims for damages against defendants or Westville personnel. The only claims settled herein are those for injunctive relief of a general nature which are applicable to more than the individual circumstances of a particular class member.

7. The existing complaint in this action, which was drafted prior to the completion of discovery, does not raise a

number of issues that are addressed and resolved by this agreement. To avoid the necessity of again amending the complaint in order to reflect the full scope of this case, the complaint shall be deemed or treated as though it has been amended to cover all of the issues contained in the agreement.

8. The parties agree that nothing in this agreement precludes the defendants from relocating the Psych Unit or the Chronic Care Unit to another facility, from implementing new programs, or from making other operational changes that do not have an affect of diminishing or altering rights secured by this agreement.

9. The parties to this agreement shall promptly submit it to the court for its approval and entry of a consent decree.

10. The parties, shall attempt to negotiate a settlement on attorney's fees and costs. However, should the parties be unable to reach a settlement as to attorneys' fees and costs within 60 days of entry of the decree, the matter shall be submitted to the court for its determination; provided, however, that this time period may be extended by stipulation of the parties if approved by the Court.

Agreed to this 12th day of January, 1989

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APPROVED AND ORDERED THIS 17 DAY OF January 1989.

Chief Judge, United States District Court

Procedures for the Use of Mechanical Restraints and Seclusion

The following procedures shall govern the use of mechanical restraints and seclusion in the Psychiatric Unit:

1. Mechanical restraints may only be used if an offender presents himself as an imminent threat of inflicting serious harm to himself or others by assaulting a person, engaging in significant destruction of property, attempting suicide, inflicting wounds upon himself, or displaying other signs of imminent violence.

2. Mechanical restraints may only be used at the direction of a psychiatrist or other physician. Although approval for the imposition of mechanical restraints may initially be obtained by telephone--when no psychiatrist or other physician is available to personally evaluate the offender before their imposition--a psychiatrist or physician must personally evalute the offender within twenty-four (24) hours of the imposition and approve of their use in writing or the offender shall be released from all restraints.

3. All renewal orders approving the continued use of restraints, with the exception of weekends and holidays, must be preceded by a personnel evaluation by a psychiatrist or other physician. Unless the examining psychiatrist or physician determines within twenty-four (24) hours of the last order that

the offender continues to meet the criteria set forth in paragraph one of this appendix for the use of restraints and expresses that determination through a written renewal order, the offender must immediately be released from all restraints. However, on weekends, a renewal order based upon a personal evaluation may occur either on a Saturday or a Sunday and need not occur on both days. A telephone approval must occur, however, if the restraints are to be continued on the day no personal evaluation occurs. Telephone approval will suffice on holidays as well.

4. The reason or reasons the psychiatrist or other physician determines that restraints are necessary in each case shall be factually documented in writing each time the determination is made. This information shall be made part of a record which shall include the restrained offender's name and DOC number, a brief description of the incident(s), event(s) or behavior that precipitated the restraint, the reason for the application of restraints, the name of the staff member who assisted in the application of restraints, the specific type of restraints that were applied, the number of limbs restrained, the date and time the psychiatrist or medical doctor authorized the application or continuation of restraints, and an indication as to whether the authorization was made after a personal evaluation or by telephone, and the date and time the offender was released from restraints. This report shall be made a part of the offender's medical packet, and a copy shall be sent to the

Assistant Superintendent of Programs.

5. In addition to the above documentation, a central record such as daily log book shall be maintained listing the names of all offenders who are in restraints on each shift.

6. All offenders who are in mechanical restraints shall be observed by personnel at least every fifteen (15) minutes and each observation shall be documented in writing by noting in a log book the time the rounds occurred.

7. Soft mechanical restraints shall be used at all times unless it is determined by the person in charge of the Unit that soft restraints will not provide the necessary degree of security. In that case, the reasons for the determination shall be fully documented in writing.

8. Mechanical restraints shall be utilized in a particular case only if they are the least restrictive way to achieve the necessary degree of protection or security.

9. The least restrictive number of limbs consistent with adequate security shall be restrained. That is, when three-way restraints would suffice, four limbs shall not be restrained and so forth. Mechanical restraints shall be lessened and completely removed at the direction of a psychiatrist or to the physician earliest opportunity the offender's behavior and condition permit.

10. An offender who is mechanically restrained shall be released to perform necessary bodily functions at least every four (4) hours, unless he is sleeping or release is

contraindicated as determined by the medical staff. Restrained offenders, except during the evening shift (between approximately 11:00 p.m. and 7:00 a.m.) shall be allowed use to a bathroom for bowel movements unless allowing them to do so is contraindicated. During the evening shift, a lessening of restraints shall be sufficient for purposes of bowel movements.

11. Mechanical restraints shall never be used as method of punishment or for administrative convenience.

12. Mechanical restraints shall not be applied around the neck or head of the offender or in a way that causes unnecessary pain or discomfort or restricts the offender's blood circulation or breathing.

13. No offender shall be mechanically restrained without proper clothing or bedding except when it is necessary to prevent injury. In the absence of such necessity, an offender in restraints shall be permitted to wear the same articles of clothing that non-restrained offenders are permitted to wear and to have the same bedding.

14. No offender shall be mechancically restrained in a seclusion room except by an order of a psychiatrist or physician who determines in accordance with the standard articulated in paragraph one that restraint is necessary.

15. The procedures prescribed above--relating to authorization, documentation, observation and release-- shall apply with equal force to assignments to seclusion rooms without restraints except in those contexts identified below in paragraph

sixteen (e.g. a request by the offender and disciplinary segregation).

16. These procedures do not apply to the use of mechanical restraints to transport an offender within or outside the Westville Correctional Center, to situations where the patient is confined in a seclusion room at his own request (without mechanical restraints) or where a patient is housed in a seclusion room on disciplinary custody status (without mechanical restraints) pursuant to the Adult Authority Disciplinary Policy of the Department of Correction. However, such patients shall still be observed every fifteen (15) minutes in accordance with paragraph six and, in the case of a disciplinary confinement, shall periodically be observed by a psychiatrist to monitor their conditions.

Procedures Governing Involuntary Mental Health Transfers

I. The Standard

A patient may involuntarily be transferred to the Psychiatric Unit at Westville, to any other mental health facility of the Department of Correction or to a facility operated by the State Department of Mental Health if he is mentally ill under applicable state law, is in need of psychiatric treatment, and either poses a danger to himself or to other persons or is gravely disabled.

II. The Procedures

A. An offender who is believed to be in need of care and treatment in a mental health facility shall be referred to a psychiatrist for examination.

B. If, under the standard articulated above, the examining psychiatrist concludes that a mental health transfer is appropriate, he shall submit a signed written report to the administration of the facility in which the offender is confined containing a summary of the offender's psychiatric history, his impressions of the offender's condition and symptoms, his diagnosis, and his recommendation with respect to a transfer.

C. If transfer to a mental health facility is recommended, a hearing shall be conducted prior to the offender's removal from his place of confinement unless the offender's condition is perceived by the psychiatrist to require an emergency removal to a mental health facility--in which case the hearing may follow the actual removal in accordance with the timetable specified in Section E of this appendix.

D. Non-Emergency Transfers

1. In this category of cases, the offender shall be afforded an opportunity to have a hearing prior to being transferred to a mental health facility. The hearing shall be convened before an impartial hearing officer no sooner than ten (10) days but no later than fourteen (14) days after the psychiatrist's recommendation of a transfer unless the offender elects to waive his right to a hearing. Any waiver must be signed in the presence of an attesting witness.

2. At the hearing, the offender has the right to appear in person, to speak in his own behalf, to call witnesses, to present documentary evidence, to confront and cross-examine witnesses (provided he requests the opportuntity to do so in advance of the hearing), and to be represented by counsel at his own expense or to have a competent and independent person assigned without cost to represent him at the hearing (who shall not be another offender unless the offender so requests). A written form for requesting representation shall be provided by

the Department of Correction. There shall be a place on the form for the offender either to request or waive representation which shall be witnessed at the time of its execution. The superintendent at each institution shall designate a permanent group of competent persons from which the institutional representatives are to be selected in a given case. The group shall include only counselors, behavioral clinicians and other treatment personnel who shall receive adequate substantive and procedural training to prepare them for the handling of such cases. Institutional representatives shall be assigned to cases in a timely manner.

3. The offender shall be given at least ten (10) days advance written and oral notice of the hearing. The notice shall specify: (a) the date, time and place of the hearing; (b) state the reason(s) for the contemplated transfer including a statement of the facts that constitute the basis for the referral; (c) inform the offender of his right to request a hearing or to waive it in writing should be choose to do so; and (d) inform him of each of the prodedural right identified in the preceding paragraph.

4. A copy of the psychiatrist's report shall be furnished to the offender at the time he is presented the notice of the hearing if the offender wishes to receive a copy.

5. At the request of the offender, all Department of Correction personnel who have prepared documentation for submission at the hearing shall be present for cross-examination absent a finding of good cause for their absence. Failure of the

preparer to be present shall result in the exclusion of the document from evidence.

6. After the hearing, the hearing officer shall prepare a written statement containing his recommendations as to transfer, findings of fact, the evidence relied upon and the reason(s) for his recommendations. The offender shall be given a copy of the statement within three working days after the conclusion of the hearing.

7. The recommendation shall immediately be forwarded by the facility where the hearing was conducted to the Director of Offender Placement Services for the Department of Correction who shall within seven (7) days from the date of the recommendation render a decision as to whether the transfer is warranted under the standard for such transfers.

8. A finding that an offender is mentally ill and either dangerous or gravely disabled must be based on clear and convincing evidence.

E. Emergency Transfers

1. When an offender is transferred on an emergency basis to a mental health facility he shall be entitled to all of the procedural safeguards set forth in Section D for non-emergency situations. However, in the case of an emergency, the physical removal of an offender to a mental health faciltity or Psych Unit may precede a hearing.

2. In addition to the general procedural requirements, the following procedural requirements

also apply to emergency transfers.

a) Following an emergency transfer to the Psych Unit or other mental health facility, the offender shall be examined by a psychiatrist at the facility within three working days of the transfer.

b) If a determination is made that there is no basis for involuntary psychiatric treatment under the standard expressed in Section A of this appendix, the offender shall be released from the Unit or facility within a reasonable period of time not to exceed five (5) working days.

c) If, however, a determination is made that treatment is appropriate under the standard expressed in Section A of this appendix, a post-transfer hearing under the procedure described above shall be held within ten (10) working days of the examination, unless the offender waives his right to a hearing.

F. Voluntary Transfers

1. This agreement does not preclude an offender from voluntarily initiating a transfer to a mental health facility.

2. In cases of voluntary transfers, the hearing procedure prescribed above does not apply.

3. An offender who believes himself to be mentally ill and in need of care and treatment in the Psych Unit or other mental health facility may submit a written request for a transfer.

4. In that event, the offender shall be referred to a

psychiatrist for an examination to determine whether he is mentally ill and in need of treatment.

G. Periodic Review Procedures

1. Each offender who is involuntarily confined in the Psych Unit or other mental health facility shall be reviewed every six (6) months to determine whether he continues to meet the standard articulated in Section A for involuntary confinement in a mental health unit. Upon admission to the psych unit, each offender shall be informed of his right to periodic review and the procedure for such review.

2. A written report shall be prepared at the conclusion of the review by the psychiatric staff which shall recommend whether or not to continue treatment in the facility. The report shall contain a psyciatric history, a summary of the offender's progress and behavior during the previous six months and a clinical diagnosis.

3. If the recommendation is to continue treatment, the offender shall be entitled, if he chooses, to have the determination reviewed within fourteen (14) days by a panel composed of two members of the psychiatric staff (including the psychiatrists who made the recommendation) and an independent psychiatrist or clinical psychologist who shall conduct a personal evaluation of the offender, review the offender's clinical records, and afford the offender an opportuinty to explain why he believes he no longer is in need of treatment in the Psych Unit or other mental health facility. The panel shall issue a written decision within ten (10)

days as to whether the offender continues to meet the standard articulated in Section A for involuntary confinement in a mental health unit, specifying the reason(s) for its decision. A decision to continue treatment in the Unit shall require only the concurrence of two of the three panel members.

INDIANA DEPARTMENT OF CORRECTION

State Office Building
100 North Senate Avenue
Indianapolis, IN 46204
317-232-5711

TO: David P. Patterson, Director
Public Safety and Conservation

FROM: John T. Shettle
Commissioner

DATE: August 2, 1988

SUBJECT: **Request for Authorization to Initiate Tuition Reimbursement Program**

For some time, this department as well as other state agencies which utilize nurses have had an extremely difficult time in the recruitment and retention of nursing staff at various state mental health and correctional institutions. It appears that this department, because of the nature of its mission, has even a greater difficulty in recruiting and retaining qualified nursing staff to meet necessary standards of healthcare services to confined offenders. This particular situation has been brought about by numerous circumstances, most notibly the nursing shortage throughout the United States. Throughout the country, private and not-for-profit hospitals have experienced an intense competition to attract and retain qualified nurses. The competition has become so extreme that numerous bonuses, incentives and fringe benefits have been given to applicants to insure their employment at a particular hospital.

In the various discussions which have occurred in the last several months, it has become obvious that this department is ill equiped to compete with the recruitment and retention of nursing staff when considering the inducments offered by private and public hospitals. The State Budget Agency as well as the State Personnel Department and the Governor's Office have been extremely helpful in recognizing this need and have approved salary and recruitment differential plans to attract nursing staff. As is well documented, these efforts, though made in good faith and in the right direction, have fallen short to hire staff necessary to insure the standard of quality healthcare services which this department must provide to the confined offender. The situation is further compounded by the fact that in the absence of the individual recruitment and retention of nurses, it has become necessary to contract with registries and/or nursing corporations to insure adequate nursing coverage. This has proven to be a fiscal catastrophe, in that these contracts typically are two and three times more expensive than the employment of nurses on regular manning table positions.

In a continuing effort for this department to recruit and retain nurses, it has been suggested that a tuition reimbursement program be established to attract and retain LPNs and RNs in this department. Authorization is therefore requested from the State Budget Agency to initiate such a tuition reimbursement program initially limited to LPNs and RNs. Though it would be desirable to extend this tuition reimbursement program to all staff of all classifications, the nursing shortage has created the biggest crisis which must be addressed immediately. If authorization is approved, a tuition reimbursement program pilot project, would be initiated at the Indiana State Prison, Westville Correctional Center, Indiana Reformatory, Indiana State Farm, Indiana Women's Prison, Indiana Youth Center, and the Branchville Training Center as each institution could identify available funds from within existing "other operating" appropriations. Such a tuition reimbursement program would include minimally the following criteria:

- The recipient must be an LPN currently employed by the department who wishes to enroll in classes which would qualify the person as a registered nurse.

- Any employee of the department would be eligible for tuition reimbursement if that person in addition to working a regular shift was enrolled and passed appropriate course work to complete an LPN or RN degree.

- A commitment of minimally one year would be expected from an employee to satisfy the tuition reimbursement award.

- That any tuition reimbursement award would be made in arrears after successful completion of the course.

It has been determined that the typical LPN course requires seventy-four (74) quarter hours of course work at an average cost of $2200.00 for the completion of the LPN degree. The average course work for an RN license involves a minimum of sixty-five (65) hours of course work at $61.45 per credit hour, or approximately $4,000.00 for completion of the RN degree. Neither costs involve books, or other incidental fees. I would

be more than happy to personally discuss this matter with any representatives of the State Budget Agency at your convenience. Your favorable review and approval of this request would be appreciated.

JMH:gb
attachment

cc: James E. McCart
Cloid L. Shuler
Thomas D. Hanlon
Norman G. Owens
John L. Nunn
Walter E. Martin
Michael C. Cross
Esther Furbee

Contents of Educational/Industrial Complexes Law Libraries

1. Indiana Code (statutes related to criminal law, habeas corpus, the state consitution, family law, and state rules of criminal and civil procedure).

2. Indiana Cases or Northeastern Reports (1960 - present)

3. Indiana Digest

4. United States Code Annotated

   Title 18
   Title 28 §2241-2254
   Title 28 Rules of Appellate Procedure
   Title 28 Rules of Civil Procedure
   Title 42 §1891-2010

5. Supreme Court Reporter (1960 - present)

6. Federal Supplement (1960 - present)
   Federal 2d (1960 - present)

7. Black's Law Dictionary

8. Sokol: Federal Habeas Corpus

9. LaFave and Scott: Criminal Law Hornbook (2 copies)

10. Cohen: Legal Research

11. Shepards (for Federal and State Reporters)

12. Palmer: Consitutional Rights of Prisoners

13. Federal Practice Digest 3rd

14. Patients and the Law (ed. by Ira Robbins) Clark Boardman & Co. 1985

15. Manville and Boston: Prisoners' Self-Help Litigation Manual (Oceana Publications) (2 copies)

16. Cohen & Gobert: Rights of Prisoners (Shepards/McGraw Hill)

APPENDIX D