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March 31, 1994

Taifa v. Bayh



PC-IN-006-002

Al Bronstein, Director
NATIONAL PRISON PROJECT
1875 Connecticut Ave., NW, #410
Washington, DC 20009

RE: Taifa v. Bayh (Indiana Supermax Prison)

Dear Al:

Enclosed please find a copy of the Agreed Entry in the above case. Also enclosed is the report and recommendation of Magistrate Pierce. We think the Agreed Entry represents the best result possible for the prisoners in this litigation. As Magistrate Pierce stated in his recommendations to the Judge: "The Agreed Entry represents an outcome at least comparable, if not far superior, to that which plaintiffs might achieve by proceeding to trial." Report and Recommendation, p. 10 (Jan. 5, 1994).

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The District Court summarized the decree's terms as follows:

"In general, the Agreed Entry would provide for: the assignment of prisoners to the MCC only under specified conditions; the transfer of prisoners out of the MCC after a specified period of time, provided that certain conditions are met; a commissary at the MCC, with a list of particular items to be made available; inmate access to radios and televisions under specified conditions and at inmate expense; expanded visitation and telephone privileges; the availability of additional reading materials for prisoners; increased opportunities for prisoner recreation; increased privileges with respect to keeping of personal property in cells and in the storage room; improvements in the condition of bedding; a decrease in the intensity of the 24-hour lights in the

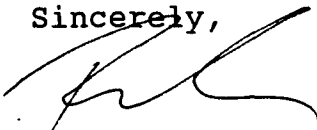
Al Bronstein
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cells; additional access by prisoners to personal hygienic items; the establishment of a policy concerning the use of force by DOC personnel; expanded provisions for medical care, including mandatory psychiatric evaluations for all prisoners upon their admittance to the MCC; an expanded law library containing specified reference materials, and provisions for greater access to legal materials by prisoners; increased educational opportunities for prisoners; a substance abuse program; and improvements in inmate grievance procedures."

Report and Recommendation at 6.

Thank you for your assistance in this case. Your willingness to share experts and ideas early on was invaluable. Also thank Elizabeth, Mark and Ed for their helpful comments and assistance. Could you please see that this Agreed Entry gets circulated to them as well, and to Jenny Gainsborough who recently inquired about the agreement. Take care and I hope all is going well.

Sincerely,



Richard A. Waples
Legal Director

RAW:vme
Enclosure

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

KATAZA TAIFA, PAUL KOMYATTI,
WILLIAM SAMPLEY, MARK S. DOUGLAS,
AARON ISBY, KEVIN SANDIFER,
JOHN CHARLES COLE, JR.,
PRESTON GARDNER, EDWARD BROADUS,
JAMES THOMPSON, NOLAN McDANDAL,
ROBERT SMITH, ROBERT JENKINS,
RICHARD MUMFORD, TILLMAN MORRIS,
MICHAEL HEGWOOD, TERRENCE DRAIN,
ERIC MALONE, MICHAEL HOLLAND,
ALBERT ESTEP, and ROOSEVELT
WILLIAMS, EDDIE SHROPSHIRE,
on their own behalf and on behalf
of all other individuals
similarly situated,

Plaintiffs;

v.

EVAN BAYH, individually and in
his official capacity as
Governor of the State of Indiana;
CHRISTOPHER DeBRUYN, individually
and in his official capacity as
Commissioner of the Indiana
Department of Correction;
NORMAN G. OWENS, individually and
in his official capacity as
Director of the Classification
Division of the Indiana
Department of Correction;
JOHN NUNN, individually and in
his official capacity as
the Senior Deputy Commissioner of
Operations of the Indiana
Department of Correction; and,
CHARLES E. WRIGHT, individually
and in his official capacity
as the Superintendent of the
Maximum Control Complex of the
Indiana Department of Correction,

Defendants.

Cause No. S-92-00429-M

AGREED ENTRY

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INTRODUCTION

The parties, having agreed that settlement of this class action is in the best interests of all concerned, but without admitting or acknowledging that the defendants are liable or that existing conditions at the Maximum Control Complex violate any Indiana or United States constitutional or statutory law, hereby submit to the Court the following terms which shall constitute the judgment of the Court in this action with respect to the plaintiffs' claims for injunctive relief:

The terms of this Agreed Entry [hereinafter Entry] shall apply to the defendants in their official capacities, their officers, agents, agencies, employees, successors in office, and all those acting in concert or participation with them. This Entry applies to the facility known as the Maximum Control Complex [hereinafter MCC], operated by the Indiana Department of Correction [hereinafter DOC], in Westville, Indiana.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

I. ASSIGNMENT TO MAXIMUM CONTROL COMPLEX

A. ASSIGNMENT CRITERIA

The following criteria are to be applied when considering an individual prisoner for assignment to the MCC.

The prisoner shall be:

1. A committed or court ordered male adult.

2. An individual with a proven and/or documented history of at least one of the following criteria during the current period of incarceration:

- (a) Escapes with attempts to cause physical harm to staff, other prisoners, and/or the public at large, or to cause serious destruction to the physical plant.
- (b) Assaultive behavior against staff and/or prisoners causing serious bodily injury and/or death.
- (c) Rioting or inciting to riot or violence causing the serious disruption of the orderly management of a facility or unit.
- (d) Intensive involvement in violent gang activities.
- (e) Aggressive sexual conduct and/or rape.

3. Prisoners diagnosed as mentally ill shall not be incarcerated in MCC.

4. These are the only criteria the DOC will consider in assigning prisoners to the MCC.

B. PROCEDURE FOR REFERRAL OF A PRISONER FOR ASSIGNMENT TO THE MAXIMUM CONTROL COMPLEX

The following procedure is to be used for referral of a prisoner for assignment to the MCC:

1. Upon determining that a prisoner meets the criteria for consideration for assignment to the MCC, the referring facility head must notify the prisoner in writing of the reasons he is being considered for assignment to the MCC. If the prisoner desires to contest the possible assignment he can do so either in writing or in person, or both, to the classification supervisor of the facility.
2. A facility head shall submit a written request for assignment which must include:
 - (a) A new Classification Designation Instrument and Transfer Report.
 - (b) A copy of an updated Progress Report.
 - (c) Copies of all Adult Disciplinary Policy and Procedure [hereinafter ADPP] Reports, Investigative Reports of acts which prompted the referral.
 - (d) A copy of an updated Mental Health Report (including Psychiatric Report).
 - (e) Copies of updated Medical and Dental Report.
 - (f) A copy of the prisoner's written response, if any.
3. The completed Designation Instrument along with the Transfer Report and all relevant materials are

to be forwarded to the appropriate Classification Analyst.

4. Upon receipt of the referral materials, the Analyst will review all materials to ensure that the prisoner meets the criteria for assignment to the MCC. The Analyst will also review the materials to ensure that all required materials have been included. (The Analyst will request additional information as needed.) Upon completion of the review, the Analyst will make a recommendation to approve or disapprove the assignment to the MCC, and forward the recommendation and all relevant materials to the Director of Classification.

5. The Director of Classification will review all materials and either approve or disapprove the assignment to the MCC.

(a) If disapproved, the materials will be returned to the Analyst, and the referring facility will be notified in writing. The prisoner will remain in his assigned facility.

(b) If approved, the material will be returned to the Analyst. The prisoner and referring facility will be notified in writing. The Analyst will assign the prisoner the

Security Classification Designation of Level 5, along with the appropriate Medical Code. This will cause the Transfer Authority to be issued to the referring and receiving facilities.

6. All assignments to the MCC must be approved by the Director of Classification.
7. Prisoners assigned to the MCC may appeal their assignment to the Commissioner of the Department of Correction. The prisoner's appeal shall be filed within ten (10) days after he receives notice of the reassignment. The appeal shall be determined within thirty (30) days after receipt. If the appeal is granted the prisoner will remain in his current facility. If the appeal is denied, the prisoner will be transferred to MCC. A prisoner shall not be transferred to MCC before his appeal is considered and decided.
8. If the prisoner is on Disciplinary or Administrative Segregation status, the status will be rescinded at the time of transfer to the MCC.

II. ASSIGNMENT FROM THE MAXIMUM CONTROL COMPLEX

1. Assignments from the MCC to a lower security level facility rest largely on the behavior of the

prisoner as reflected by the accumulation of vested months.

2. A vested month is a month in which the prisoner remains free of any disciplinary conviction for a Class A or B violation or three or more class C or D violations under ADPP. A prisoner who is entitled to a vested month, by virtue of being free of any convictions so noted, shall not be required to take any further steps, such as attending a hearing, in order to earn such vested month.

3. The DOC retains the discretion at any time to review and revise downward the security classification of any prisoner assigned to MCC and transfer the prisoner to a lower level security level facility within the DOC.

A. TWELVE-MONTH REVIEW

Within twelve months after confining a prisoner at MCC, the DOC shall reevaluate the appropriateness of the prisoner's classification and assignment, and make a classification-assignment decision based on that review. The Department shall consider the prisoner's accumulation of vested months in making its decision. The accumulation of twelve vested months at this review shall not require the reassignment of the prisoner to

a lower security classification, but the DOC shall consider this factor as positive progress on the part of the prisoner and shall make a good faith classification evaluation and assignment. In making this review, the Department shall interview the prisoner, discuss with him the information on which the decision will be based and allow him to challenge that information and present pertinent information of his own. The Department shall promptly notify the prisoner, in writing, of its classification-assignment decision and the reasons for it.

B. TWENTY-FOUR CONTINUOUS VESTED MONTH RECLASSIFICATION

A prisoner who has served twenty-four (24) consecutive vested months shall be reclassified to a lower security classification designation and transferred from the MCC to a lower security level facility within the DOC.

C. THIRTY-SIX VESTED MONTH RECLASSIFICATION

A prisoner who has served a total of thirty-six (36) vested months, the last six (6) of which the prisoner has served consecutively without a conviction for a class A or B infraction, shall be reclassified to a lower security classification designation and transferred from the MCC to a lower security level facility within the DOC.

D. HOUSING ASSIGNMENT UPON TRANSFER

1. All efforts shall be made to transfer a discharged prisoner to the prisoner's parent institution, unless there is a separatee problem or there exists a legitimate and demonstrable security concern.
2. Prisoners transferred from MCC to a lower level security facility within the DOC will be presumptively entitled to initial housing in the general population of that facility. If the classification committee of that facility concludes that general population is not appropriate housing assignment for the prisoner, then the DOC will make reasonable/sincere efforts to transfer the prisoner to another facility of the same or lower security rating where he can be housed in general population. Such efforts shall include a review by DOC's Director of Classification with an eye toward the transfer.

E. CONDUCT-BASED ADJUSTMENT TO VESTED MONTHS

Prisoners may be awarded additional vested months at the discretion of the DOC for exceptionally good behavior and/or for positive progress in educational and rehabilitative pursuits. Prisoners may lose

accumulated vested months only for CAB convictions, at the discretion of a CAB, and then only up to the number of months a CAB could otherwise order segregation of the prisoner for the violations under the ADPP.

F. NO DELAY IN ASSIGNMENTS

All reclassifications and transfers from the MCC in accordance with this Entry shall be effected within five (5) working days after the prisoner becomes eligible for the transfer.

G. RETROACTIVITY

The Provisions of this Entry relative to vested months and reclassification shall be retroactive to the members of the class. Upon entry of this Entry, the DOC shall review and reevaluate each prisoner's eligibility under these provisions for reclassification. For the purpose of retroactive application to the determination of vested month, a prisoner shall be deemed entitled to a vested month if the prisoner has been free of not more than seven bad day reports, a Class A or B violation, or not more than two Class C or D violations.

III. MAXIMUM CONTROL COMPLEX CONDITIONS

The Defendants agree to operate the MCC consistent with Indiana statutory, administrative and case law, the Indiana and United States Constitutions, and the standards outlined in this Entry as follows:

A. TELEVISION AND RADIO

1. All prisoners will be allowed to bring with them or acquire a radio upon admittance and shall be allowed to retrieve from their property or acquire a television, which will fit on the TV shelf in the cell, after acquiring three (3) months of vested time.
2. Radios and TV's brought in by the prisoners shall be subject to security and health inspection. If the prisoner consents and MCC agrees, MCC may take remedial action to bring the Radios and TV's, brought in by the prisoner, within the MCC's security and health guidelines.
3. All prisoners shall be allowed to use radios in their cells when they are not otherwise occupied with MCC programs. Prisoners with three vested months or more may watch television between the hours of 7 a.m. to 7 p.m. Prisoners with six or more vested months may watch television 24 hours a day.

4. The DOC will permit basic cable television service available to the cells if feasible and on the condition that the prisoners pay the financial cost of the cable service.
5. The DOC shall also operate a video cassette recorder and make educational programs and recreational movies available to the prisoners.
6. The low cost "Access" K-brand black and white televisions previously available to the prisoners shall remain on the list of available property. If this brand becomes unavailable to DOC, reasonable efforts will be made to replace it with a television of equivalent cost.
7. Televisions and radios removed from cells as discipline will be kept in the property room and returned to the prisoner when the suspension of the privileges is completed.
8. The DOC shall make reasonable efforts to obtain soft plastic headphones for purchase by the prisoners.

B. COMMISSARY

1. The following items will be available through commissary:
 - (a) Items currently on commissary:
 - (1) Small paperback dictionary
 - (2) Small paperback thesaurus

- (3) Postage Stamps
- (4) Chap Stick (plastic tube only)
- (5) Envelopes, including large envelopes (limit 20 weekly)
- (6) 8 1/2 x 11 White, Lined Tablet
- (7) Notebook filler paper
- (8) Greeting cards (2 per order)
- (9) Bar soap (as needed)
- (10) Mouthwash (plastic bottle)
- (11) Address book
- (12) Pocket folder
- (13) Walk-Man Radio
- (14) AA Battery
- (15) 13" Color or Black & White TV

- (b) Vitamins and supplements.
- (c) At least seven different food items (see attached commissary list)
- (d) Personal hygiene materials: soap, mouthwash, toothpaste, toothbrush, and deodorant.
- (e) Alkaline batteries.
- (f) Ink eraser.
- (g) Denture adhesives, containers, and hygiene supplies for prisoners with denture
- (h) Prosthetic device and hygiene supplies for prisoners with prosthetics.

- 2. The MCC will make a continuing reasonable effort to provide fruit juices on commissary if they are available in containers which meet the security concerns of the MCC.
- 3. Prisoners shall be allowed to order commissary items at least once a week.

4. Any prisoner with at least two (2) vested months shall be allowed to order food items from commissary.
5. Prisoners may not order or store more than seven (7) packages of commissary food items in their cells. Additionally, food items may not be stored in the personal property room.
6. A prisoner's access to commissary food items may be restricted for medical reasons, but only per a physician's or dietician's order.

C. PERSONAL HYGIENE

1. All toothbrushes will be modified by MCC for security purposes and may be kept in the cell.
2. Prisoners may keep their mouthwash in their cells.
3. MCC, at its expense, shall provide each prisoner with sufficient amount or quantity of soap, toothbrush, toothpaste, and deodorant, unless the prisoners chooses to purchase these items from the commissary.
4. Sufficient amount or quantity of body lotion, shampoo, and Q-tips will be provided to all prisoners, upon request, at DOC's expense.
5. Prisoners' shampoo, body lotion, safety-razor, and Q-tips shall be provided to them at shower time, upon request, and will not be kept in their cells.

6. Notwithstanding any other provisions in this Entry, MCC, at its expense, shall provide indigent prisoners with personal hygiene supplies.
7. Mirrors will be installed in the shower areas to assist prisoners who wish to shave.
8. Dental floss shall be available to the prisoners, upon request, at DOC's expense.
9. Monthly haircuts will be available to prisoners who desire them.
10. Prisoners shall be allowed ten (10) minutes of shower time on each day recreation is available to them. This provision neither limits nor requires MCC's ability to provide prisoners with additional shower opportunity.
11. Prisoners may possess sufficient amount of toilet paper in their cells.

D. OUT-OF-CELL TIME

1. Each prisoner at MCC shall be allowed out of his cell for at least six (6) hours per week.
2. Prisoners may recreate one hour per day, six days per week, consistent with the out-of-cell time provisions.
3. Other out-of-cell activities including, but not limited to the following activities, shall not be counted against out-of-cell time:

- (a) time required for prisoner movement,
 - (b) one sick call visit per week initiated by the prisoner, and any other appointments ordered by the medical staff,
 - (c) attorney telephone calls and visits, and
 - (d) the first two (2) law library visits per week.
4. All outside trips on a given day shall not count for more than one hour of out-of-cell time for that week. Outside trip means a trip outside of the MCC.

E. VISITATION AND TELEPHONE CALLS

1. Procedure:

- (a) Within two (2) working days from the admission of a prisoner to MCC, the prisoner shall be provided with the necessary form to designate his visitors.
- (b) The visits shall begin as soon as practicable and not later than ten (10) days after MCC receives the completed form or forms from the designated visitors.
- (c) Each prisoner shall be allowed to designate up to fifteen (15) visitors, excluding attorneys and clergy. Visitors need not be immediate family members. Visitors shall pass background and security check.

- (d) Subject to the limitations of paragraph (e), each prisoner shall be allowed to modify his visitor list every six months.
 - (e) Visiting hours are 9:00 to 10:30 a.m., and 1:00 to 2:30 p.m., seven (7) days a week.
 - (f) The duration of each visit may be up to 1 and 1/2 hours, unless there is a backup of visitors.
 - (g) The visits will be non-contact.
 - (h) Every visitor may re-visit the same prisoner every fourteen (14) days. Upon application to the MCC Superintendent and based upon the distance of travel (100 miles or more one-way) or upon personal hardship, permission may be granted to exceed the fourteen-day restriction.
2. There shall be no limitation on telephone calls to attorneys and all such calls shall be made on telephone lines which cannot be monitored internally by DOC and in areas where the prisoner's voice cannot be overheard. The time spent on these calls shall not be counted against a prisoner's recreation time.
3. Prisoners are allowed to make telephone calls during their recreation time on the telephones maintained in the recreation areas.

4. The attorney visiting rooms shall have a slot for exchanging materials directly between the prisoners and the attorneys. The attorney-client visitation areas shall be soundproof and conversations therein shall not be capable of being monitored by MCC staff or others.
5. Prisoners may be handcuffed, but with handcuffs with a longer chain than the standard handcuffs, during visitation. The MCC's compliance with the provisions of this paragraph is contingent upon the availability of handcuffs with a longer chain than the standard handcuffs. The MCC shall make reasonable efforts to obtain handcuffs with a longer chain than the standard handcuffs.
6. Nothing herein is intended to prevent a court, with appropriate jurisdiction, from entering any order with respect to visitation, including contact visitation, which it may deem appropriate in an individual case. Contact visits will be conducted in the Westville Correctional Center.

F. MAIL

1. There shall be no restriction on First Class or legal mail unless it contains prohibited items. Mail privileges will not be denied as a form of discipline.

2. The MCC will not prohibit mail based on its content unless the material is inflammatory and presents a demonstrable security threat to the institution. All decisions to prohibit written materials must be approved by the facility head. Prisoners must be notified of any censored material and be allowed to appeal the decision to facility head.
3. Articles about, or critical of, the Department of Correction, its facilities, including MCC, and their personnel shall not be considered, on that basis alone, to be prohibited materials.
4. No limit shall be placed on the number of stamps or envelopes a prisoner may purchase on commissary or have in his cell or the number of letters he may send or receive.
5. Defendants agree to comply with Indiana and federal law concerning correspondence including, but not limited to, Ind. Code 11-11-3-3 which provides:

If correspondence is to or from government officials, courts, attorneys, or representatives of the public news media, it may not be opened, read, censored, copied, or otherwise interfered with in regard to its prompt delivery or transmission. However, the department may open it in the presence of the confined person for the purpose of examining the contents for contraband or prohibited property. Upon conclusion of the inspection, the item of correspondence (other than any contraband or prohibited property) must be promptly delivered or transmitted without reading, censoring,

copying, or further interfering with its deliverance or transmission.

Any revisions to Ind. Code 11-11-3-3 will be incorporated into this agreement.

6. Further, Defendants agree to comply with Indiana and federal law concerning correspondence including, but not limited to, Ind. Code 11-11-3-4(b) which provides:

If correspondence is to a person not enumerated in section [11-11-3-3] of this chapter, it may be sealed by the confined person. If, however, the department has reasonable grounds to believe that the correspondence may contain contraband or prohibited property or poses an immediate danger to the safety of an individual or a serious threat to the security of the facility or program, it may be opened for inspection and removal of the contraband or the prohibited property, when appropriate, or reading and appropriate action.

Any revisions to Ind. Code 11-11-3-4 will be incorporated into this agreement.

7. Outgoing mail shall be deposited with the United States Post Office on the same date received from the prisoners. Incoming mail shall be distributed to the prisoners on the same day received from the United States Postal Service. These provisions shall not apply in the event of an emergency or in the event contraband is discovered in the mail. If

a day is not a regular business day, the action required to be taken herein may be postponed to the next business day.

G. WRITING UTENSILS

1. Writing instruments and materials shall be available to all prisoners twenty-four (24) hours per day, consistent with Ind. Code § 11-1-5-4.
2. DOC will endeavor to obtain for purchase on commissary better quality security pens.
3. Legal envelopes will be issued to prisoners upon request and there shall be no limit on the number of envelopes. Prisoners may mail as many legal envelopes per day as requested.

H. READING MATERIALS

1. Prisoners may order and/or receive books, magazines and similar publications from publishers, book clubs or bookstores. Catalogues from stores and merchants are also permitted.
2. Paperback books and magazines of all kinds shall be allowed subject to the provisions of Paragraph III(F)(2), above. A prisoner may have up to twenty-five (25) books and/or magazines in his cell at one time. The current restriction on books exceeding 1,000 pages shall not apply to legal

books, dictionaries, and religious books. Any other books exceeding 1,000 pages may be cut in half, by MCC. Both halves may be kept in the prisoner's cell. Each half shall be counted as a separate book. MCC may require that the covers of hardback books be removed by MCC, with the consent of the prisoner, and kept in the property room.

3. Prisoners may return books and magazines to the property room. The reading materials which are sent to the property room by a prisoner shall be returned to the prisoner, at his request, after thirty (30) days. There shall be no limit on the number of times a prisoner may request the return of the reading materials from the property room.
4. The MCC shall operate a bookcart and make available to prisoners, on a daily basis, a variety of books and magazines. Prisoners may donate their books (including legal books), magazines, and newspapers for use by other prisoners. The MCC staff shall immediately inspect the materials so donated and, if cleared, place them on the bookcart.

I. RELIGIOUS PRACTICES

Reasonable efforts shall be made to accommodate the religious practices of all prisoners at MCC. Prisoners may not be denied religious materials, including head-

gear, artifacts or medallions, unless these articles present a legitimate and demonstrable threat to institutional security. Nothing herein is intended to prevent a court, with appropriate jurisdiction, from entering any order with respect to visitation, including contact visitation, which it may deem appropriate in an individual case.

J. MEALS

1. Prisoners shall be issued a cup and spoon which they may keep in their cells unless they misuse them.
2. Prisoners shall be provided three meals a day, unless prohibited by pod- or institution-wide emergency conditions. In such an emergency, the prisoners shall be provided at least two meals per day with greater proportions of food than a regular meal as determined by a dietician. Additionally, in such an emergency situation, prisoners shall be allowed to keep the food in their cells until their next meal. Under all circumstances, prisoners shall receive daily nutritional requirements. Any such limitation on the number of meals may continue only so long as the emergency exists.
3. MCC will provide two extra beverage items per day with meals to each prisoner. Coffee will be

provided in the morning; coffee or juice will be offered in the evening. Prisoners may keep these beverages in their cups for consumption between meals.

4. Additional menu items to the regular menu shall be provided to prisoners who do not eat pork for religious reasons or who are vegetarians. All prisoners will be served meals which meet minimal dietary standards as approved by a dietician.
5. Salt shall be provided prisoners at meals.
6. Meals shall be prepared and served pursuant to conditions and regulations of the appropriate board of health.

K. RECREATION

1. A basketball shall be provided for outdoor recreation with accompanying basketball hoop.
2. An exercise bicycle will be placed in each one of the large indoor exercise rooms. All prisoners shall have the opportunity to use these bikes at least two times per week.
3. Additionally, MCC will undertake good faith efforts to provide the prisoners with other exercise and recreation equipment consistent with the security and safety of the institution.

4. Prisoners may choose either indoor or outdoor recreation. Prisoners will be permitted to choose outdoor recreation even when the temperature is below 32 degrees Fahrenheit, unless staff determines that weather conditions present a health or security threat. The DOC will provide prisoners with coats, hats, and gloves which they may wear during outdoor recreation.
5. Beginning on July 1, 1993, the MCC shall institute a prisoner recreation fund consistent with Ind. Code §§ 4-24-6-1 et seq. (attached).

L. CLOTHING

1. The DOC shall issue prisoners three (3) pairs of clothing in their cells. The current limitation on two pairs is rescinded.
2. Prisoners may purchase and/or possess non-DOC-issued footwear as approved by facility head so long as they pass security inspection. The DOC will provide slippers to prisoners to wear in their cells. Prisoners may possess their own shower shoes or soft slippers in their cells.
3. The DOC shall also issue long underwear to those prisoners who request it.
4. Clothing exchange shall be at least once per week.

M. BEDDING

1. Prisoners shall be provided extra blankets upon request, not to exceed three blankets in all.
2. All prisoners shall retain the bedding in their cells, unless they commit an infraction involving the bedding. Prisoners shall not be prohibited from getting under their extra blankets providing the bed had been made pursuant to MCC rules.

N. PRISONERS' PERSONAL PROPERTY

1. Prisoners shall be allowed to possess and display personal effects, calendars, greeting cards, photographs, pictures, postcards, and like materials so long as these materials are not obscene or create a security risk.
2. Prisoners may display these materials on a 2 by 3 foot section of one wall in their cell. Materials placed on the wall must be flexible enough to be lifted during a search without damage, shall not be larger than one foot by one foot, and may only be adhered to the wall at the top corners of the item. Prisoners may display these materials on the ledge in their cells also. MCC shall provide prisoners with an adhesive suitable for affixing items to the wall.

3. Prisoners' property boxes kept in their cells and in the property room shall be replaced by boxes no smaller than 18 x 18 x 24 inches. Televisions are not required to be kept in the property room box. There are no limitations on legal materials kept in the property room.

0. FACILITIES

1. The heating/air conditioning system at MCC shall be examined by an independent heating and air conditioning professional and repairs shall be made to correct any problems as approved by the Department of Public Works. The system shall be maintained in good operating condition. Defendants shall maintain cell temperatures no lower than 68 degrees Fahrenheit and no greater than 75 degrees Fahrenheit unless the system malfunctions in which case the Defendants shall make reasonable efforts to have it promptly repaired.
2. All plumbing materials shall be lead-free pursuant to State Regulation 675 IAC 16-1. The water in the cells shall be tested as required by the Indiana State Board of Health.
3. Plaintiffs, at their expense, will have the cell water supply at MCC tested by an independent reputable laboratory. If these tests indicate any

health concerns, the DOC will take any necessary corrective action.

4. If the result of Plaintiffs' independent laboratory examination, pursuant to Subsection 0(3), supra, or if a physician's examination of any of the plaintiffs, reveals any hazardous condition or defect in the water or the water supply system at MCC, then the plaintiffs' rights to pursue claims for money damages resulting from such hazardous condition or defect in the water or the water supply system at MCC prior to the date of this Entry are not precluded by this Entry.
5. The 13-watt fluorescent bulbs left on in the cells twenty-four hours per day shall be replaced with 7-watt fluorescent bulbs yielding no more than 50% of candle power or lumens of the existing lights.
6. Clocks shall be placed in such locations as to be viewable from all cells.

P. MISCELLANEOUS CONDITIONS OF CONFINEMENT

1. Prisoners with twelve vested months shall not be shackled at the feet during normal out-of-cell movements within a housing section.¹ A prisoner may lose this privilege, if after the prisoner is

¹A housing section includes cells, the recreation area, the shower, and a satellite law library.

granted this privilege the prisoner is convicted by a CAB of an offense involving violence. Further, this privilege may be suspended while such a charge is pending before a CAB.

2. Prisoners have the right to marry, consistent with the prevailing law, and the DOC shall make reasonable accommodations for any marriage ceremonies.
3. The previous indigency policy of \$30.00 is reinstated. Any system-wide increases of this amount will be incorporated into this Entry.
4. (a) All memoranda and like materials regarding the conditions, rules and information related to prisoners shall be posted in an area accessible to the prisoners for a period of not less than fifteen (15) days.
(b) All memoranda and like materials regarding the conditions, rules and information related to prisoners shall be kept in the satellite law libraries while they are in effect.
(c) The MCC shall provide each prisoner with a free issue of the prisoners' handbook, or like material, and any revisions and amended issues as they are published.
(d) Upon request, the MCC shall provide each prisoner with copies of every memorandum regarding conditions, rules and information

related to prisoners. Such copies shall be provided free of charge to indigent prisoners.

(e) The prisoners may send through the mail the originals, if available to them, or the copies of these materials without restriction.

5. Beginning on July 1, 1993, the MCC will offer time-installment contracts to prisoners who owe debts to the DOC and have accumulated two consecutive vested months since the incident giving rise to the debt. This Entry does not address or determine the legality of DOC's ability to freeze or seize a prisoner's trust account. All parties reserve all rights with respect to this issue.
6. Prisoners shall earn the DOC's standard rate of prisoner pay.

IV. USE OF FORCE POLICY

A. USE OF PHYSICAL FORCE

1. Physical force is not to be used as a means of reprisal against or punishment of a prisoner. Staff shall use only reasonably necessary physical force to maintain the custody, control, safety and security of a facility, institution or situation.
2. Equipment-assisted means of force, such as the use of water hoses, chemical agents, four-way

restraints, and cell extraction, may only be used when lesser degrees of physical force have failed to bring an unlawful incident under control and when prompt use is calculated to prevent or discontinue a serious offense involving violence or bodily harm.

3. The subject prisoner and all other prisoners who are exposed to chemical agents must be offered appropriate immediate medical care following the application of any chemical agent.
4. The subject prisoner and all other prisoners who are exposed to the application of a water hose must be dried off and provided dry clothing immediately following the application of the water hose.
5. MCC staff shall not use a high pressure water hose to wash a prisoner who has refused a shower.

B. LEATHER RESTRAINTS

1. Leather restraints shall not be used as a form of punishment. Leather restraints to control a prisoner in his cell shall be used only as long as necessary to control the prisoner.
2. Leather 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.

3. If leather restrictions are used, the prisoner shall be checked by the DOC personnel at regular intervals at least three times each hour. The prisoner shall be released at least once every four hours to attend to physical needs. The use of four-way restraints for longer than four hours must be approved by a licensed psychiatrist or, if a psychiatrist is not reasonably available, any licensed physician, which approval must be renewed every four hours thereafter.
4. Except as provided herein, use of mechanical restraints shall be prohibited.
5. Prisoners shall not be placed under four-way restraint in outside hospitals except for legitimate medical or security reasons.

C. USE OF CELL EXTRACTION TEAMS

1. In all instances, a prisoner must be given an opportunity either to allow handcuffs to be applied or to face a cell extraction. After a prisoner's initial refusal to be handcuffed, the prisoner must be given an explicit final warning prior to extraction that either he allows himself to be

handcuffed immediately or a cell extraction team will remove him from his cell. The warnings must be explicit and must be offered at least once by the officer who originally requests the prisoner to be handcuffed and once by the pod supervisor.

D. REPORTING THE USE OF PHYSICAL FORCE

1. Staff shall ensure that a complete and accurate record of the use of physical force is made in all appropriate log books. The log entry shall contain all pertinent information regarding the incident. In addition, each staff person involved in and/or witnessing any use of physical force shall make a full written report.
2. In the case of a cell extraction, or the use of a water hose or chemical agent, the use shall be videotaped if feasible. In the case of the use of leather restraints, the initial application of restraints and the hourly check of the prisoner's willingness to cooperate shall also be videotaped if feasible. Copies of the videotapes shall be forwarded to DOC Central office for review by the Regional Director and to Plaintiffs' counsel, upon request, during the monitoring phase of this Entry as set forth in Part XII, below. Copies of all reports of the use of physical force shall be

forwarded to Plaintiffs' counsel on a monthly basis.

V. MEDICAL CARE

1. Every prisoner shall be given a psychiatric evaluation prior to or upon admittance to the MCC and, if necessary, be provided with appropriate short-term care. Prisoners diagnosed as mentally ill shall not be incarcerated in MCC. If a MCC prisoner is diagnosed as mentally ill, the DOC shall transfer the prisoner to an appropriate mental health care facility within the DOC or petition a court to transfer the prisoner to the Indiana Department of Mental Health.
2. Any prisoner who displays signs of mental disturbance as determined by the mental health staff shall receive a mental health evaluation.
3. Confidential communications between prisoners and medical staff shall be conducted in a manner not to be overheard by others, including custody staff.
4. Prisoners are encouraged to treat MCC staff in a civil manner. MCC staff are encouraged to treat prisoners in a professional manner.
5. MCC shall have health care staff adequate to carry out daily rounds, to provide access to sick call at least twice weekly, to provide nursing evaluation

prioritized by level of need, to provide medical diagnostic evaluation and treatment for serious medical needs, to provide for medical screening, 24 hours a day, 7 days a week, and to provide for the availability of emergency services 24 hours a day, 7 days per week.

6. Prescription Drugs of all types shall be available to MCC prisoners when they are approved by DOC prescribers; determinations regarding methods of administration may be made locally in accordance with both medical and security considerations.
7. If medicine prescribed by an outside physician is denied or substituted by MCC medical staff, a record shall be created in the prisoner's medical packet to show such action and the reasons therefor. Prisoners shall not be denied pain medication simply because of their status as prisoners.
8. MCC shall provide prisoners with over-the-counter medicine, upon request, at DOC's expense, not to exceed the recommended dosage. A copy of the information sheet for the over-the-counter medicine shall be available for the prisoners' review or copying, upon request.

VI. LEGAL ACCESS

1. Prisoners shall be provided legal access which is adequate and sufficient as defined by statute and applicable case law. The DOC shall employ a trained paralegal to assist prisoners with their legal work. The paralegal and the prisoners shall be allowed to meet in confidence. The paralegal shall photocopy and provide to prisoners cases, statutes, and relevant research materials requested by them. The first photocopy of any legal material, including cases and statutes, provided through MCC paralegal shall be supplied free of charge to a prisoner who requests it.
2. The DOC shall also supplement the MCC satellite law libraries and maintain them with basic legal research materials including the most recent issues of, and supplements to, the following material:

Indiana law

Ind. Code Ann., Indiana and federal
Constitutions
Ind. Code Ann., Title 11
Ind. Code Ann., Title 34
Ind. Code Ann., Title 35
Ind. Code Ann., Ind. Rules of Court
Ind. Code Ann., General Index
Local Rules of Local Courts, including
Indiana district courts
Indiana Digest, All volumes

Federal law

42 U.S.C.A. §§ 1981-1985
28 U.S.C.A. §§ 1331, 1332, 1343, 1367,
2241-2255
28 U.S.C.A. FRCP & FRE

28 U.S.C.A. General Index
Federal Digest, Civil Rights
Federal Digest, Constitution
Federal Digest, Prisons
Federal Digest, Habeas Corpus
Federal Digest, General Index

Miscellaneous

Black's Law Dictionary
ACLU, Rights of Prisoners
Manville/Boston, Prisoners' Self-Help
Litigation Manual

3. In addition to the materials available in the satellite law library, the most recent issues of, and supplements to, the following materials shall be available to MCC prisoners upon request:

Indiana Law

Ind. Code Ann., All volumes
Northeastern Second or Indiana Cases, when applicable, volume 1 to current
Indiana Rules of Court -- State & Federal
Indiana Digest (2nd), All volumes
Indiana Law Encyclopedia, All volumes
Indiana Practice, All volumes

Federal Law

United States Code Annotated, All volumes
U.S. Supreme Court Reporter, all volumes
Federal Reporter 2nd, volume 1 to current
Federal Supplement, volume 1 to current
Federal Rules Decisions, all volumes
Federal Digest (2nd, 3rd, and 4th)
Federal Civil Judicial Procedure and Rules

Miscellaneous

Shepards for the U.S. Supreme Court, Circuit Courts, and District Courts
Shepards for the Indiana Appellate Courts
Wright, Fed. Practice and Proc., all volumes
Sokol, Fed. Habeas Corpus
Criminal Law Reporter, currently 2 volumes
F.L. Bailey & H. Rothblatt, Complete Manual of Crim. Forms, Federal and State
Black's Law Dictionary
Indiana Legal Directory

4. Prisoners have the right to leave copies of their legal materials in the satellite law libraries, for a period of six months, for use by the other prisoners. The DOC may discard any such materials after six months.
5. Prisoners, upon request, shall be allowed to visit the satellite law libraries twice per week for at least one hour each visit. Prisoners may stay in the satellite law library longer than one hour subject to its use by other prisoners and subject to staff availability for prisoner movement. It is the intent of the parties to allow prisoners the use of the satellite law libraries to the maximum extent feasible consistent with the security and resources of the MCC.
6. With respect to any prisoner who is functionally illiterate or has an intellectual mental or physical disability which would substantially impair the prisoner's ability to conduct legal research, prepare legal documents, or correspond with a court, the DOC shall allow such prisoner to be assisted by inmate law clerks or outside paralegals or law students at DOC option. Such visits will be conducted as a regular visit, and any materials passed shall be subject to search.

For purposes of out-of-cell time calculation, such visitation shall be treated as law library visits. For purposes of visitation, such legal assistant visits shall not be counted against the number of visitors the MCC prisoner is allowed.

7. Prisoners may photocopy their legal materials including any part thereof. The first copy of any legal material, including cases and statutes, provided through MCC paralegal shall be supplied free of charge to a prisoner who requests it.
8. Prisoners may request photocopies of legal materials on regular business days. The requested copies shall be provided to the prisoners no later than the next business day.
9. Carbon paper shall be available to the prisoners in the satellite law library.
10. Upon request, MCC shall provide prisoners with photocopies of their legal materials, at MCC's expense.

VII. EDUCATIONAL PROGRAMS

1. Prisoners shall be allowed to enroll in correspondence and educational courses, through institutions approved by DOC's Director of Education, upon incarceration at the MCC, consistent with restrictions on possession of

personal property. The DOC will pay the cost of such courses for indigent prisoners to the extent that equivalent courses are offered at Westville Correctional Center. These programs shall include the opportunity for prisoners to earn a GED.

2. MCC will designate a staff member to act as a coordinator for correspondence courses. This person will provide reasonable assistance with remedial education, applications for courses, and will serve as the proctor for any exams that are required for courses. In addition to correspondence courses and individual remedial education, MCC shall purchase a series of GED preparation video tapes that have been produced by Kentucky Educational Television. MCC will broadcast these tapes over the institutional television cable system. Any prisoner who has a TV in his cell shall have access to these GED videotapes.
3. MCC shall provide any available educational videos designed for the education of illiterate individuals.
4. Any DOC system-wide electronic media educational programs to be offered in the future will be provided to prisoners in the MCC.

VIII. SUBSTANCE ABUSE PROGRAM

The MCC will provide substance abuse programming to those prisoners who desire it. This program will include direct counselling with a clinician or counsellor who has received specialized training in substance abuse counselling. The MCC will also purchase video tapes focusing on drug education and prevention and will make them available to prisoners who wish to view them.

IX. DISCIPLINARY RESTRICTIONS

1. All discipline, including Conduct Adjustment Board hearings, shall be consistent with Ind. Code 11-11-5-1 et seq. (attached). This does not entitle prisoners to utilize the Court's contempt powers to challenge CAB convictions on a case by case basis. The contempt power shall be available to enforce this provision on a class-wide basis.
2. MCC shall set aside cells to be used as segregation cells, consistent with Ind. Code §§ 11-11-5-1 et seq. and the policies of the Department of Correction.
3. The status of isolation and "strip cell" not otherwise permitted as appropriate disciplinary measures under Ind. Code §§ 11-11-5-1 et seq., are eliminated. Prisoners will no longer have their clothing, including socks, personal items, or

bedding removed as a disciplinary measure that is unrelated to the abuse of these items.

4. The "Program Level System" as described in the MCC Prisoner Handbook is rescinded.

X. PRISONERS' GRIEVANCES

The MCC's grievance procedure shall be consistent with I.C. §§ 11-11-1-1 et seq., and regulations promulgated by the DOC. MCC shall provide prisoners with grievance forms upon request. Grievances shall be addressed fairly. No grievance shall be denied because the staff believe that a grievance does not contain the words of the prisoner making the grievance.

XI. MISCELLANEOUS PROVISIONS

A. FORMER POLICIES SUPERSEDED

This Entry preempts any official or unofficial policies, orders, memorandum, etc., to the contrary.

B. RETURN OF CONFISCATED MATERIALS

All materials confiscated from the prisoners under the MCC's prior policies shall be returned to the prisoners, upon request, if such materials are available in the prisoner's personal property and are no longer subject to confiscation under the provisions of this Entry.

be reduced to writing, signed by authorized representatives of each Party, and filed with this Court. In the event that the Parties are unable to resolve their disagreement, and one Party seeks to assert a violation of this Entry against the other Party, the Court, upon a properly filed motion in this cause, shall conduct an inquiry, and, if necessary shall hold an evidentiary hearing. At such hearing, the moving Party shall have the burden of proving the violation. This Entry may not be relied upon as a basis for another cause of action in a separate lawsuit.

2. If a significant number of prisoners abuse a privilege under this Entry in a manner which compromises the safety or security of the institution, the MCC staff, or other prisoners, then the DOC may seek to withdraw that privilege from the entire MCC prisoner population. If DOC determines that such a modification is necessary, it shall present Plaintiffs' counsel with documentation of the problem. Representatives of the parties shall meet and attempt to resolve the matter in good faith. Plaintiffs will not unreasonably withhold agreement to modify a privilege provided in this Entry, if Defendants can demonstrate the existence of a legitimate security

problem represented by the privilege. In the event the parties are unable to resolve the matter, then Defendants may seek to modify this Entry pursuant to Section 1, supra.

3. If a privilege not provided in this Entry can be extended to the prisoners in a manner which does not compromise the safety or security of the institution, the MCC staff, or other prisoners, then the class may seek to obtain that privilege. Representatives of the parties shall meet and attempt to resolve the matter in good faith. Defendants will not unreasonably withhold agreement to incorporate new privileges in this Entry if the privilege would not present a demonstrable and legitimate security threat. In the event the parties are unable to resolve the matter, then Plaintiffs may seek to modify this Entry pursuant to Section 1, supra.

G. ATTORNEY'S FEES

Plaintiffs shall be considered prevailing Parties pursuant to 42 U.S.C. § 1988 and entitled to an award of attorney's fees and costs for past hours and costs, and for future monitoring of the conditions under which the prisoner class members are incarcerated and the progress of the Defendants' compliance with this Entry over the

next two years, and for any length of time that the Court should decide to retain jurisdiction and supervision of this case under Part XII below.

XII. MONITORING AND REPORTING REQUIREMENTS

A. JURISDICTION -- IMPLEMENTATION AND MONITORING PHASES

The Court shall retain active jurisdiction and supervision of this case for a period of two years from the time this Entry 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 Entry. 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 Entry 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 comply with the terms of the

with written progress reports detailing the steps taken to comply with the respective provisions of this Entry on a quarterly basis and for two years.

E. DEFENDANTS' DUTY TO EDUCATE THEIR STAFF

Defendants shall, within two weeks of the date this Entry is approved by the Court, explain the terms of this Entry to their agents, servants, representatives, and employees (professional staff, correctional officers and other personnel), and the necessity for strict compliance therewith. Defendants shall thereafter periodically review the terms of the Entry with the MCC staff.

F. MONITORING BY PLAINTIFFS' COUNSEL

During the monitoring phase of this case, Plaintiffs' counsel and their staff shall have reasonable access to documents, facilities, personnel and MCC prisoners in order to monitor first-hand the progress of implementation. Plaintiffs' counsel and staff may visit MCC unannounced during regular business hours throughout the monitoring phase of this Entry. Upon arrival, they shall be allowed to tour the MCC facilities within a reasonable period of time.

3. All memoranda issued to MCC staff in compliance with ¶ XII(D) of this Entry;
4. Dispositions on conduct reports;
5. A report reflecting prisoners' vested months; and
6. A list of prisoners who underwent an annual classification review and the disposition thereof.

XIII. DISPOSITION

So Ordered.

RECOMMENDED for approval:

DATED: January 5, 1994

Robin D. Pierce
HON. ROBIN D. PIERCE
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT

Approved:

DATED: Feb 15, 1993

Allen Sharp
HON. ALLEN SHARP
CHIEF JUDGE
UNITED STATES DISTRICT COURT

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CHAPTER 6

FUNDS BELONGING TO INMATES AND PATIENTS—RECREATION
FUND CREATED

SECTION.		SECTION.	
4-24-6-1.	"Institution" defined.		fund — Indebtedness of inmate or patient to institution.
4-24-6-2.	Funds held in trust — Audit of accounts — Deposit or investment.	4-24-6-6.	Patients' or inmates' recreation fund — Use.
4-24-6-3.	Rules for withdrawal or deposit of funds — Payment upon discharge or release.	4-24-6-7.	Source of recreation fund.
4-24-6-4.	Use of interest or income of fund — Deficiencies in existing funds.	4-24-6-8.	Existing trust funds and recreation funds — Transfer.
4-24-6-5.	Death of inmate or patient — Escape — Disposition of trust	4-24-6-9.	Superintendent or warden to account for funds — Additional bond.
		4-24-6-10.	[Repealed.]
		4-24-6-11.	Interfund transfer of money.

4-24-6-1. "Institution" defined. — As used in this chapter, the term "institution" shall mean psychiatric, penal, correctional, benevolent, or special educational institutions owned and operated by the state of Indiana. [Acts 1957, ch. 242, § 1; 1963 (Spec. Sess.), ch. 7, § 1; P.L.5-1984, § 191.]

4-24-6-2. Funds held in trust — Audit of accounts — Deposit or investment. — (a) Subject to a designation of the specific purpose for the use of donated funds by a donor, the superintendent or warden of an institution shall hold in trust funds deposited with the institution for the use and benefit of, or belonging to, any inmate or patient.

(b) The superintendent or warden shall keep an accurate accounting of the receipts and disbursements of funds received under subsection (a) on books and records in accordance with the accounting procedure as prescribed by the state board of accounts.

(c) Trust funds created under this section are subject to periodic audits the state board of accounts considers necessary.

(d) Trust funds created under this section shall be:

- (1) Deposited in depositories whose deposits are insured by the Federal Deposit Insurance Corporation; or
- (2) Invested in government securities of the United States. [Acts 1957, ch. 242, § 2; 1959, ch. 253, § 1; P.L.3-1991, § 2.]

Opinions of Attorney General. Recreation funds coming into the hands of the superintendents of the various institutions should be invested in accordance with provisions of this section, where such money

lodged in the inmates' recreation fund or the patients' recreation fund is idle, non-income producing and not immediately needed for some legitimate expenditure. 1961, No. 10, p. 49.

4-24-6-3. Rules for withdrawal or deposit of funds — Payment upon discharge or release. — The chief administrative officer of the department, division or state agency having administrative control and supervision of any institution shall make rules and regulations concerning the withdrawal of money held in trust for any patient or inmate, and concerning the deposit of any money to be held in trust for any patient or inmate. Upon the discharge or release of any patient or inmate, the

superintendent or warden of the institution shall pay to the individual, or his legal guardian, all money due him from any trust account. [Acts 1957, ch. 242, § 3.]

4-24-6-4. Use of interest or income of fund — Deficiencies in existing funds. — Any interest or income derived from the deposit or investment of funds held in trust for any patient or inmate, shall be transferred from such trust fund to a special fund to be known as the "patients' recreation fund" or "inmates' recreation fund"; Provided, That in the event a trust fund has been established in any institution, which trust fund is in existence on July 1, 1957, and there is a deficiency in the amount of money that properly belongs in such trust fund, the income derived from any trust fund established under the provisions of this chapter shall be paid into the trust fund until the deficiency has been fully paid. [Acts 1957, ch. 242, § 4; P.L.5-1984, § 192.]

Opinions of Attorney General. In regard to restitution of patient's trust funds erroneously expended on behalf of another patient with the same name, if the fund in question was in existence after July 1, 1957, and was also deficient at that time, restitution may be made from the earnings of the "patients'

recreation fund" or "inmates' recreation fund." and if the fund held in trust for the patient came into existence or became deficient after July 1, 1957, the income from the patients' or inmates' recreation fund may not be used to pay the deficiency. 1969, No. 28, p. 91.

NOTES TO DECISIONS

Property Rights.

Prison inmates had no property right in the interest earned on their personal funds

deposited in an inmate trust fund. *Hendrix v. Evans*, 713 F. Supp. 397 (N.D. Ind. 1989).

4-24-6-5. Death of inmate or patient — Escape — Disposition of trust fund — Indebtedness of inmate or patient to institution. — (a) If any inmate of any penal or correctional institution, or any patient of any psychiatric institution, shall die, his lawful heirs or devisees shall be entitled to any money credited to and held in trust for such inmate or patient. If the heirs or devisees of such inmate or patient are unknown, the money in such trust account shall be kept intact to the account of the unknown heirs of such inmate or patient for a period of two [2] years from the date of death. If, at the expiration of the two-year period, no heir or devisee of any deceased inmate or patient shall appear to make claim to such money, such money shall be paid to the clerk of the circuit court of the county from which such inmate or patient was committed to said institution, said money to be held and disposed of by said clerk of court in the same manner as are other unclaimed funds in his office.

(b) If any inmate of a penal or correctional institution, or if any patient of a psychiatric hospital, shall escape from such institution, or shall make an escape while absent from such institution on parole or leave, any money credited to and held in trust for such inmate or patient shall be kept intact for such escaped inmate or patient for a period of two [2] years from the date of escape. If at the end of the two-year period the escaped inmate or

patient does not appear to make claim to such money, the money shall be paid to the clerk of the circuit court of the county from which such inmate or patient was committed to said institution, said money to be held and disposed of by said clerk of court in the same manner as are other unclaimed funds in his office.

(c) No money belonging to any patient or inmate shall be paid over to the clerk of any court as provided in this section if such inmate or patient is indebted to the state of Indiana for maintenance by such institution, in which case any money credited on the books of such institution to the account of any inmate or patient shall be applied against any indebtedness or maintenance, and the balance, if any, shall then be paid to such clerk.

(d) Notwithstanding any other law, when the department of correction has determined that an offender has escaped from custody, the department of correction:

- (1) May consider all of his property (except money) that is under the control of the department, to be abandoned property;
- (2) May dispose of the escaped inmate's abandoned property consistent with rules adopted by the department under IC 4-22-2; and
- (3) Is not civilly liable for the safekeeping of the escaped inmate's property. [Acts 1957, ch. 242, § 5; P.L.39-1983, § 1.]

4-24-6-6. Patients' or inmates' recreation fund — Use. — There is established in each psychiatric, benevolent, penal and correctional institution a fund to be known either as the "patients' recreation fund," "students' recreation fund" or as the "inmates' recreation fund." These funds shall be used, at the discretion of the superintendent or warden subject to the approval of the chief administrative officer of the department, division or state agency having administrative control and supervision over the institution, for the direct benefit of persons who are inmates or patients in such institutions, and shall not be used for any purposes which are covered by state appropriations: Provided, That such funds shall be expended for such purposes and in accordance with the policies of the department, division or state agency having administrative control over such institution. The expenditures may include, but shall not necessarily be limited to, purchased entertainment; magazine subscriptions for the libraries, wards or units of such institutions; special recreational equipment and supplies; special foods for parties or celebrations; phonograph records, televisions, radios, and similar items when the same cannot be purchased from regular appropriations; and such other purposes not covered by regular appropriations which will provide a direct benefit to the inmates or patients of such institutions. [Acts 1957, ch. 242, § 6; 1965, ch. 87, § 1.]

Opinions of Attorney General Law by prison authorities with money in the books for use by inmates may be purchased inmates' recreation fund. 1977, No. 15, p. 38.

4-24-6-7. Source of recreation fund. — Money may accrue to the patients' recreation fund or inmates' recreation fund from the following sources:

- (1) Gifts to the fund.
- (2) Profits from the operation of a commissary or canteen.
- (3) Interest earned by deposit of trust funds in public depositories, or income derived from trust funds invested in United States government securities as provided in section 2 [IC 4-24-6-2] of this chapter.
- (4) Sale of items produced in occupational therapy.
- (5) Income derived from any kind of benefit entertainment for the inmates or patients.
- (6) Any other money derived from any source that is not legally prohibited.
- (7) Any money derived from the income of any trust fund which has been deposited in any special fund of the institution. [Acts 1957, ch. 242, § 7; P.L.5-1984, § 193.]

Opinions of Attorney General. Wardens and superintendents of penal institutions have no authority to permit employees to place vending machines on institution prem-

ises with the view of retaining the profits for their own benefit as such profits must be placed in the "inmates' recreation fund." 1968, No. 45, p. 309.

4-24-6-8. Existing trust funds and recreation funds — Transfer. — All money held in trust for any inmate or patient of any institution on July 1, 1957, shall be transferred into a trust fund established under the provisions of this chapter. Any money in any recreational or activities fund in any institution, on July 1, 1957, shall be transferred to the "recreation fund" established under the provisions of this chapter. [Acts 1957, ch. 242, § 3; P.L.5-1984, § 194.]

4-24-6-9. Superintendent or warden to account for funds — Additional bond. — (a) The superintendent or warden of any institution shall be held in strict accounting for all money held in trust for any inmate or patient of such institution, and shall be held to a strict accounting for all money deposited in the recreational fund of the institution.

(b) In the event the superintendent or warden delegates to any officer or employee of his institution the authority to administer the provisions of sections 6 and 7 [IC 4-24-6-6 and 4-24-6-7] of this chapter, such officer or employee shall, jointly with the superintendent or warden, be held to a strict accounting for all money held in trust for any inmate or patient of such institution, and shall jointly with the superintendent or warden be held to a strict accounting for all money deposited in the recreation fund of the institution. No other bond except the general performance blanket bond given by the superintendent or warden of any institution, or by an officer or employee of the institution, shall be required, but such general blanket performance bond shall cover any misfeasance or nonfeasance, in the administration of sections 6 and 7 of this chapter, on the part of any superintendent, warden, officer, or employee of the institution. [Acts 1957, ch. 242, § 9; 1965, ch. 87, § 2; P.L.5-1984, § 195.]

4-24-6-10. [Repealed.]

Compiler's Notes. This section, repealing chapter 223 of the Acts of 1937, was repealed § 1 of chapter 28 of the Acts of 1931, and by P.L.3-1984, § 196.

4-24-6-11. Interfund transfer of money. — The chief administrative officer of the department, division, or state agency that has administrative control and supervision of an institution with a fund established under section 6 [IC 4-24-6-6] of this chapter may transfer money from the institution's fund to one (1) or more other funds established under section 6 of this chapter. The institution receiving the transferred money shall use the transferred money in conformity with section 6 of this chapter. [P.L.30-1988, § 1.]

CHAPTER 5
CONDUCT AND DISCIPLINE

SECTION.

- 11-11-5-1. Applicability of chapter.
- 11-11-5-2. Rules.
- 11-11-5-3. Authorized disciplinary action.
- 11-11-5-4. Prohibited disciplinary action.
- 11-11-5-5. Hearing.
- 11-11-5-6. Segregation of person charged

SECTION.

- with misconduct — Review of status.
- 11-11-5-7. Segregation upon finding of misconduct — Review of status.
- 11-11-5-8. Suspension of rights or procedures.

11-11-5-1. Applicability of chapter. — This chapter does not apply to persons released on parole. [IC 11-11-5-1, as added by Acts 1979, P.L. 120, § 4.]

Cited: *Mauricio v. Bronnenberg*, 668 F. Supp. 1206 (N.D. Ind. 1986).

11-11-5-2. Rules. — The department shall adopt rules for the maintenance of order and discipline among committed persons. These rules must describe the conduct for which disciplinary action may be imposed, the type of disciplinary action that may be taken, and the disciplinary procedure to be followed. These rules shall be made available to all committed persons. The disciplinary action imposed must be proportionate to the seriousness of the violation. For purposes of IC 4-22-2, the term "rule" as used in this section relates solely to internal policy and procedure not having the force of law. [IC 11-11-5-2, as added by Acts 1979, P.L. 120, § 4.]

Collateral References. 60 Am. Jur. 2d 72 C.J.S. Prisons § 27 et seq.
Penal and Correctional Institutions § 124 et seq.

11-11-5-3. Authorized disciplinary action. — The department may impose any of the following as disciplinary action:

- (1) A report, which may be made part of the person's record.
- (2) Extra work.
- (3) Loss or limitation of privileges.
- (4) Change in work assignment.
- (5) Restitution.
- (6) Change in security classification.
- (7) Transfer to another facility or program.
- (8) Segregation from the general population of the facility or program for a fixed period of time.
- (9) Reassignment to a lower credit time class under IC 35-50-6-4.
- (10) Deprivation of earned credit time under IC 35-50-6-5. [IC 11-11-5-3, as added by Acts 1979, P.L. 120, § 4.]

Collateral References. Withdrawal, forfeiture, modification, or denial of good-time allowance to prisoner. 95 A.L.R.2d 1265.

11-11-5-4. Prohibited disciplinary action. — The department may not impose the following as disciplinary action:

- (1) Corporal punishment.
- (2) Confinement without an opportunity for at least one-half (1/2) hour of daily exercise outside of immediate living quarters, unless the department finds and documents that this opportunity will jeopardize the physical safety of the offender, or others, or the security of the facility or program.
- (3) A substantial change in heating, lighting, or ventilation.
- (4) Restrictions on clothing, bedding, mail, visitation, reading and writing materials, or the use of hygienic facilities, except for abuse of these.
- (5) Restrictions on medical and dental care; access to courts, legal counsel, government officials, or grievance proceedings; and access to personal legal papers and legal research materials.
- (6) A deviation from the diet provided to other committed persons in that facility or program.
- (7) Extra work exceeding a total of twenty (20) hours for one (1) rule violation, or exceeding four (4) hours in any twenty-four-hour period. [IC 11-11-5-4, as added by Acts 1979, P.L. 120, § 4.]

Collateral References. Constitutionality of statutes in relation to treatment or discipline of convicts. 50 A.L.R. 104.

Liability for death of or injury to prisoner. 46 A.L.R. 94; 50 A.L.R. 268; 61 A.L.R. 569.

Liability of prison authorities for injury to prisoner directly caused by assault by other

prisoner. 41 A.L.R.2d 329.

Mistreatment of prisoner as contempt. 40 A.L.R. 1278.

Mistreatment of prisoner as ground for removal of sheriff or other police officer. 100 A.L.R. 1401.

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CHAPTER 5 CONDUCT AND DISCIPLINE

SECTION. 11-11-5-5. Hearing.

11-11-5-5. Hearing. — (a) Before imposing any disciplinary action, the department shall afford the person charged with misconduct a hearing to determine his guilt or innocence and, if guilty, the appropriate action. The charged person may waive his right to a hearing. Also, before a charge is made, that person and a departmental employee may agree to the types of disciplinary action enumerated in sections 3(2) and 3(3) [IC 11-11-5-3(2) and IC 11-11-5-3(3)] of this chapter if no record of the conduct or disciplinary action is placed in the person's file. In connection with the hearing, the person is entitled to:

- (1) Have not less than twenty-four (24) hours advance written notice of the date, time, and place of the hearing, and of the alleged misconduct, and the rule the misconduct is alleged to have violated;
- (2) Have reasonable time to prepare for the hearing;
- (3) Have an impartial decisionmaker;

- (4) Appear and speak in his own behalf;
- (5) Call witnesses and present evidence unless the person conducting the hearing finds that to do so would subject a witness to a substantial risk of harm, or would result in the admission of irrelevant or repetitive testimony;
- (6) Confront and cross-examine witnesses, unless the person conducting the hearing finds:
 - (A) That to do so would subject a witness to a substantial risk of harm;
 - (B) That to do so would result in the admission of irrelevant or repetitive testimony; or
 - (C) Based upon good cause stated on the record, that a witness is unavailable to attend the hearing;
- (7) Have advice and representation by a lay advocate of his choice, if that lay advocate is available in the institution at the time of the hearing, in those hearings based upon a charge of institutional misconduct when the department determines he lacks the competency to understand the issues involved or to participate in the hearing, or when the punishment may be that specified in:
 - (A) Section 3(5) [IC 11-11-5-3(5)] of this chapter if the restitution is more than two hundred dollars (\$200);
 - (B) Section 3(8) [IC 11-11-5-3(8)] of this chapter if the segregation is for more than fifteen (15) days; or
 - (C) Section 3(6), 3(9), or 3(10) [IC 11-11-5-3(6), IC 11-11-5-3(9), or IC 11-11-5-3(10)] of this chapter;
- (8) Have a written statement of the findings of fact, the evidence relied upon, and the reasons for the action taken;
- (9) Have immunity if his testimony is used in any criminal proceeding;
- (10) Have his record expunged of any reference to the charge if he is found not guilty or if a finding of guilt is later overturned; and
- (11) Be reimbursed for state wages lost due to action taken pending the hearing if he is found not guilty or if a finding of guilt is later overturned.

Any finding of guilt must be supported by a preponderance of the evidence presented at the hearing.

(b) The department may not charge a committed person with a disciplinary rule violation unless it does so within ten (10) days of the date it becomes aware of that person's alleged involvement in misconduct.

(c) Consistent with the objective of adequate and effective representation and the integrity of the hearing system the department may adopt regulations which may limit the pool of persons eligible to advise and represent accused persons to inmates in the general population. In any event, facility or program employees and inmates may not directly or indirectly charge for advice or representation.

(d) Any statement made by an accused person to departmental employees during the course of an investigation or hearing is not admissible against him in any criminal proceeding arising out of the same incident unless the accused:

- (1) Was informed:
 - (i) Of his right to remain silent;
 - (ii) That anything he says can and will be used against him in court;
 - (iii) Of his right to have an attorney present during any questioning;
 - (iv) His right to have an attorney appointed for him if he is unable to afford an attorney; and

(v) That if he decides to answer any questions, he may stop answering at any time during the interrogation; and
 (2) Voluntarily, knowingly, and intelligently waived his rights under subdivision (1) to remain silent or to have an attorney present, or both. [IC 11-11-5-5, as added by Acts 1979, P.L. 120, § 4; 1980, P.L. 37, § 7; P.L. 99-1986, § 3; P.L. 135-1993, § 4.]

Amendments. The 1993 amendment added "if that lay advocate is available in the institution at the time of the hearing" in subsection (a)(7); and substituted "subdivision" for "clause" following "waived his rights under" in subsection (d)(2).

Effective Dates. P.L. 135-1993 contains no effective date provision. Pursuant to IC 1-1-3-3, the amendment takes effect July 1, 1993.

NOTES TO DECISIONS

ANALYSIS

Witnesses.

—Appearance at hearing.

Witnesses.

—Appearance at Hearing.

The Indiana department of corrections' rule which provides that inmates and staff who are required to serve as witnesses in disciplinary hearings are not required to appear and testify violates the provisions of

subsection (a)(5) of this section and the Due Process Clause of the Fourteenth Amendment of the federal Constitution. *Forbes v. Trigg*, 976 F.2d 308 (7th Cir. 1992).

Even though the Indiana department of corrections' rule that permits correctional officials and inmates to refuse to appear at their whim is unconstitutional, it may not violate an inmate's due process rights if the matter at issue could be verified by documentary evidence, rendering any testimony from the witnesses repetitive and unnecessary. *Forbes v. Trigg*, 976 F.2d 308 (7th Cir. 1992).

11-11-5-6. Segregation of person charged with misconduct — Review of status. — Disciplinary action may not be taken against a person before a determination of guilt. However, a person charged with misconduct may be confined or separated from the general population of the facility or program for a reasonable period of time if his continued presence in the general population poses a serious threat to himself, others, property, or the security of the facility or program. The department must review the status of that person at least once every five (5) days to determine if the reason for segregation still exists. Any time spent confined or separated from the general population before a determination of guilt must be credited toward any period of disciplinary segregation imposed. [IC 11-11-5-6, as added by Acts 1979, P.L. 120, § 4.]

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Cross References. Involuntary segrega-
tion of criminal offender, IC 11-10-1-7.

Involuntary segregation of delinquent of-
fenders, IC 11-10-2-9.

11-11-5-7. Segregation upon finding of misconduct — Review of status. — (a) The need for and appropriateness of continued segregation of a person committed to the department under the laws of Indiana or another jurisdiction concerning custody of adults, and segregated from the general population upon a finding of misconduct, shall be reviewed by the department at least once every thirty (30) days.

(b) The need for and appropriateness of continued segregation of a person committed to the department under the laws of Indiana or another jurisdiction concerning custody of juveniles, and segregated from the general population upon a finding of misconduct, shall be reviewed by the department at least once every three (3) days. [IC 11-11-5-7, as added by Acts 1979, P.L. 120, § 4.]

Cross References. Involuntary segrega-
tion of criminal offender, IC 11-10-1-7.

Involuntary segregation of delinquent of-
fenders, IC 11-10-2-9.

11-11-5-8. Suspension of rights or procedures. — Any of the rights or procedures enumerated in this chapter may be suspended upon declaration by the official in charge of the facility or program that there exists an emergency situation threatening the general security of the facility or program. The rights or procedures again apply upon declaration by the official in charge of the facility or program that the emergency has been resolved. [IC 11-11-5-8, as added by Acts 1979, P.L. 120, § 4.]

MAXIMUM CONTROL COMPLEX

COMMISSARY PRICE SHEET

APRIL 19, 1993

NOTICE: USE ONLY BLACK PEN WHEN FILLING OUT ORDERS
\$20.00 LIMIT ON ALL ORDERS

HEALTH CARE:

1815	Pkg.	Breath Mints	\$.34
1830	Btl.	Vitamins, High Potency	6.56
1885	Pkg.	Hall's Cough Drops	.39
3240	Ea.	Chap Stick	.65

DENTAL CARE:

2005	Tube	Close-Up Toothpaste (No Pork) 4.6 oz.	1.10
2010	Tube	Colgate Toothpaste 6.4 oz.	1.65
2045	Ea.	Soft Toothbrush	.33
2050	Ea.	Medium Toothbrush	.33
2090	Btl.	Mouthwash (Plastic Bottle Only)	.90

THE HANDLE OF TOOTHBRUSHES WILL BE SHORTENED BEFORE DISTRIBUTION

SOAP:

2405	Bar	Irish Spring Soap	.43
2410	Bar	Dial Soap	.39
2430	Bar	Ivory Soap	.32
2480	Bar	Tone Soap	.46
2490	Bar	Zest Soap	.65

ALL BARS OF SOAP WILL BE CUT IN HALF BEFORE DISTRIBUTION

DEODORANTS:

3020	Btl.	Roll-on Deodorant	.97
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COOKIES & SNACK CAKES:

4015	Pkg.	Sugar Cookies	.84
4020	Pkg.	Windmill Cookies	.84
4025	Pkg.	Chocolate Chip Cookies	.84
4030	Pkg.	Peanut Butter Sandwich	.84
4035	Pkg.	Vanilla Sandwich Cookies	.84
4040	Pkg.	Iced Oatmeal Cookies	.84
4045	Pkg.	Chocolate Sandwich Cookies	.84
4060	Box	Granola Bars	1.23
4070	Pkg.	Cheese P'Butter Crackers	.19
4080	Box	Swiss Rolls	.98