

- Consent Decrees -

DRAFT DRAFT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DWIGHT DURAN, LONNIE DURAN,
and SHARON TOWERS, and all
others similarly situated,

Plaintiffs,

vs.

No. Civil 77-721-C

JERRY APODACA, Governor of the
State of New Mexico, et al.,

Defendants.

AGREEMENT

COME NOW the parties and stipulate and agree as follows:

1. The parties have reached agreement on several areas of policy and procedure for operation of the Penitentiary of New Mexico and any other State correctional facility which will house class Plaintiffs, except for minimum security facilities. These areas of agreement are more fully set forth in partial consent decrees on file herein and in various policy statements which are attached to this agreement as Exhibits A through H. These policy statements will be adopted by the Defendants within seven (7) days from the date the Court Order approving this agreement becomes final.

2. These policy statements and the partial consent decrees on file herein may include specific requirements and procedures beyond what is required by the Constitution of the United States, the Constitution of the State of New Mexico, the Federal Civil Rights Act, the New Mexico Tort Claims Act, or any other constitutional, statutory, or common law requirement. This agreement and the policies attached hereto and the partial consent decrees on file herein are not to be construed to establish or change the standard of culpability for civil or criminal liability of

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any official, employee, agent, or representative of the State of New Mexico other than for the sole and limited purpose of enforcement of this agreement and the policies attached hereto and the partial consent decrees on file herein.

3. This agreement and the policies attached hereto and the partial consent decrees on file herein were voluntarily and mutually agreed upon by the Defendants and Plaintiffs as a compromised settlement of disputes between the parties and neither the partial consent decrees, nor this agreement and the policies attached hereto constitute admissions that any previous or existing condition, policy, procedure, or acts or omissions of the Department of Corrections and the Penitentiary of New Mexico or any state official, employee, or agent was, or is, in any way improper, negligent, unconstitutional, or in violation of any rights of the Plaintiff class. Nothing in this agreement or the partial consent decrees on file herein constitute findings of fact or law with respect to the claims or defenses of the parties in Duran v. Apodaca.

4. This agreement should not be admissible in evidence in any proceedings or trials other than for the sole and limited purpose of enforcement of this agreement and the policies attached hereto and the partial consent decrees on file herein. Specifically, it is understood and agreed that Rules 407 and 408 of the Federal Rules of Evidence and the Advisory Committee's notes to Rule 407 and 408 and of Rules 407 and 408 of the New Mexico Rules of Evidence are applicable to this agreement and the policies attached hereto and the partial consent decrees on file herein.

5. In the event of an emergency caused by a riot, fire, or other events at the facility not caused by the Defendants, their agents, employees, successors in office, and those acting in concert with them which make compliance with the terms of this agreement and the policies

attached hereto and the partial consent decrees on file herein impossible, it may be necessary to temporarily suspend certain provisions of this agreement and the policies attached hereto and the partial consent decrees on file herein. In such event, the Defendants must formally declare a state of emergency, and, as soon as practical, but no later than five (5) days after such declaration, notify the Plaintiffs and their counsel of the reasons which necessitated the suspension of such suspended provisions. The Defendants will also notify counsel for Plaintiffs of the expected duration of such suspension and the plan of the Defendants to restore said provisions. If the Plaintiffs or their counsel believe those suspensions and/or their duration are unjustified, unreasonable, or taken in bad faith, then they may request appropriate relief from this court.

6. Other than in times of emergency, changed circumstances may, in the future, justify some changes in this agreement and the policies attached hereto and the partial consent decrees on file herein. No change or changes may be made which will lessen the benefits provided by the agreement and the policies attached hereto and the partial consent decrees on file herein. Notice will be given to the lawyers for the Plaintiffs at least thirty (30) days prior to the proposed implementation date. Said notice will contain the proposed change or changes and the reasons therefore. Counsel for the Plaintiffs will ascertain whether, in their opinion, the proposed change or changes in any way lessen the benefits provided by this agreement or the policies attached hereto and the partial consent decrees on file herein. If so, they will notify Defendants of their objections and the reasons therefore within fifteen (15) days. Efforts will be made to informally resolve the matter. If the dispute cannot be resolved, it will be submitted to the court. The burden will then be on the Defendants to justify that the change or changes should be made and will not lessen the benefits provided by the agreement and the

policies attached hereto and the partial consent decrees on file herein before the change or changes will be allowed.

7. Noncompliance with the agreement and the policies attached hereto and the partial consent decrees on file herein shall result in disciplinary action against any noncomplying state employee(s). This provision in no way limits remedies otherwise available to the parties to enforce this agreement and the policies attached hereto and the partial consent decrees on file herein.

8. The parties further agree that as of the date of this agreement, the Plaintiff class in Duran v. Apodaca shall be defined as "all persons who are now, or in the future may be, incarcerated in the Penitentiary of New Mexico at Santa Fe or at any maximum, close or medium security facility opened for operation by the State of New Mexico after June 12, 1980." All provisions of this agreement will be followed at those institutions except those provisions which are not generally applicable and which are required by unique conditions at the Penitentiary of New Mexico at Santa Fe.

9. The Defendants will appoint a responsible person to report on compliance with the agreement and the policies attached hereto and the partial consent decrees filed herein. Such reports will be sent quarterly to counsel for Plaintiffs.

10. The parties shall submit this agreement to the Court in full settlement of all remaining issues in this case, except costs and attorney's fees and the parties shall request that the Court retain jurisdiction for such time as the Court deems necessary to enforce compliance with this agreement and the policies attached hereto and the partial consent decrees on file herein.

II. Any modification of the Order of the Court which may be made in the future shall modify this agreement and the policy statements to be consistent with this Order, as so modified.

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EXHIBIT A

POLICY STATEMENT

SUBJECT: CLASSIFICATION

1. The Intake and Classification Center (ICC) has the overall responsibility to classify, test and monitor all inmates committed to the Department of Corrections and to develop data for Department planning and budget.

2. The policies and procedures which govern the actions of the ICC will be written and, at least annually, reviewed. Relevant policies and procedures, including a description of criteria for programs and general classification will be made available to all inmates and employees as part of their orientation. The classification manual will contain all classification policies and procedures for implementing those policies. The manual will be made available to all staff and will be updated as needed, but at least annually.

3. Custody classification will be guided by rational, objective standards derived from behavioral criteria. Inmates will not be disqualified from any custody classification solely by virtue of arbitrary and rigid criteria such as detainers, consecutive sentences, etc. Classification will be based on an evaluation of the accumulation of identified, relevant and rational factors and standards.

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Methods of continuing validation of those factors and standards will be developed and implemented. No classification change shall be based solely on a finding of fact by the disciplinary committee of a disciplinary infraction, but all changes must be based upon a consideration of the inmate's entire record under the standards and criteria adopted pursuant to this agreement.

4. No inmate shall be classified under a more restrictive security designation than is required by legitimate security requirements.

5. No inmate shall be subjected to more restrictive conditions of confinement, including but not limited to freedom of movement within the institution and out-of-cell time, than those justified by the inmate's security designation. However, the Department of Corrections will use its best efforts to insure that no inmate be housed for more than 30 days in facilities designed or designated to house persons under restrictions and/or security more secure or stringent than that determined to be needed for the inmate by the rational classification system. In the event that an inmate is housed for more than 30 days in such a facility, he/she will be housed under conditions of confinement within that institution which are substantially similar to those justified by the inmate's security designation.

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6. Jobs, program assignments, housing and services will be distributed in a rational, fair and equitable manner.

7. Each inmate's educational, vocational, medical and psychological needs shall be identified and the needed programs shall be made available to inmates consistent with the provisions in Duran v. Apodaca.

8. Provision will be made for appropriate programs and services for inmates with special needs, e.g., inmates who are drug addicts, drug abusers, alcoholics, emotionally disturbed, mentally retarded, or who pose high risks or require special protection. Regular data will be collected and maintained on such populations and programs. Services will be adapted as needed.

9. During intake and classification, the inmate will be provided services and resources comparable to those available to the general population, including correspondence, visitation, recreation, social activities and religious services.

10. All classification decisions provided for in this agreement will be made by classification committees. Each institutional classification committee will consist of three persons, including a member of the psychological staff, a member of the program staff and a representative of the correctional security staff. The ICC classification committee will be composed of appropriate professional staff.

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11. Inmates will be allowed maximum involvement in the classification process, which will include an opportunity to know the reasons for their classification and an opportunity to respond in person. Inmates will be carefully screened upon their commitment to the Department and will be regularly evaluated thereafter. Inmates will participate in assessing their needs and in selecting programs to meet those needs. Classification decisions will not be based upon confidential information which inmates have no reasonable opportunity to rebut.

12. The classification (custody and program) of each inmate who is serving a sentence of less than five years will be reviewed at least every ninety (90) days. The classification of inmates serving sentences of five years or longer will be reviewed at least annually. Reviews will be based on behavioral observations and analysis over a reasonable time period. Rational criteria and procedures consistent with the other general principles in this agreement will be developed and implemented. Inmates will also be allowed to initiate reviews of their progress, status and programming.

13. Inmates may not be required to participate in programs with the exception of work assignments.

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14. Interviews with inmates in the classification or reclassification process shall be conducted in places that afford privacy from other inmates or irrelevant staff.

15. The defendants, with assistance from qualified consultants from the National Institute of Corrections, will develop a draft plan within 45 days of the implementation of this policy statement to meet the terms of this policy statement. Said plan will include criteria for classification and reclassification, including standards for the utilization of personality inventory testing, personnel, resources and equipment needed, and timetables for implementation of the plan within a reasonable period of time. The draft plan will be circulated to counsel for the parties who may make comments or objections within 10 days. Within 70 days of the signing of the date of implementation of this policy statement a final plan will be submitted to the Court and the parties and will be implemented by the defendants within the time limits established by the plan. If the Plaintiffs are not satisfied that the plan will bring the Defendants into compliance with this policy statement within a reasonable period of time, they may apply to the Court for further relief.

EXHIBIT B

POLICY STATEMENT

SUBJECT: LIVING CONDITIONS

1. No more than one prisoner will be housed in any cell or single occupancy room. However, if there is an emergency caused by a riot, fire, or other disaster making living units unusable, and no other reasonable option is available, two people may be housed in said cells or rooms for a period of short duration while arrangements are made for alternative housing.

2. Each cell or single occupancy room will have a floor area of at least sixty square feet, except cells which are presently in use at PNM at Santa Fe. Those cells may continue to be utilized if they meet the other provisions of this order; inmates will not be housed in said cells for more than 10 hours per day except those confined in disciplinary segregation and those classified as maximum security who are governed by the provisions of the maximum security classification standards and other orders in this case.

3. Each single cell or room will contain at least: A. Lavatory with hot and cold running water; B. Toilet flushable by the prisoner; C. Bunk; D. Desk; E. Chair or stool; F. A locker or other storage space; G. Natural light; H. Artificial lighting which is both occupant and centrally controlled and which is of at least 30

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footcandles at 30 inches above the floor. In cells which do not currently have lighting which is occupant controlled, such lighting will be provided no later than the completion of the renovation authorized by Laws 1980, Chapter 24; I. Ventilation which circulates at least 10 cubic feet of fresh or purified air per minute with 1/3 fresh outside air, and; J. Acoustics that ensure noise levels that do not interfere with normal human activities and are normally less than 65 decibels, A scale, (dBA) during the day and 45 dBA during sleeping hours; K. Adequate heating to provide temperatures within a normal comfort range.

4. If dormitories or multiple occupancy rooms are utilized, they will provide a minimum of:

A. 60 square feet of living space per person, excluding shower and lavatory facilities and dayroom space.

B. Thirty footcandles of light at a level of 30" from the floor for reading purposes;

C. Ventilation which circulates at least 10 cubic feet of fresh or purified air per minute per person with 1/3 fresh outside air;

D. Flush toilets and lavatories in the ratio of 1 to 8 inmates; however, this requirement will not apply to unrenovated dormitories so long as the existing toilets and lavatories are

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maintained in working order;

E. Shower facilities in the ratio of 1 to 15 minutes;

F. Hot and cold water with appropriate mixing devices in the showers and lavatories;

G. Mirrors over lavatories;

H. Sanitary type drinking fountain or single service drinking cups for each dormitory and cellblock;

I. Personal lockers and/or other adequate space for personal belongings;

J. Noise levels normally no more than 65 decibels, A scale, (dBA) during the day and 45 dBA during sleeping hours;

K. Ready access during non-sleeping hours to desks, tables, and/or other furniture suitable for use in reading and writing;

L. Adequate heating to provide temperatures within a normal comfort range;

M. There will be no double-bunking in dormitories.

5. Every prisoner will be provided with a sanitary mattress and at least two sheets, two blankets, a pillow and pillow case. Linen will be exchanged at least weekly and blankets, pillows and mattresses will be cleaned on a routine basis and maintained in a sanitary condition. Mattresses or mattress covers will be sanitized before reissue.

6. All prisoners will be provided clothing that is properly fitted, climatically suitable, durable, economical, easily laundered

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and repaired, and presentable. Said clothing will include outer-garments, undergarments, and shoes.

7. Prisoners will be provided sufficient clean clothes to be able to change underwear and socks daily and other clothes at least 3 times per. week except for coats, jackets and shoes. Additional clothes must be provided for work and recreation.

8. Each prisoner will be provided with adequate amounts of necessary personal hygiene items, cigarettes and/or tobacco and two clean towels which are exchanged at least twice a week.

9. Each prisoner will be allowed to shower daily, except those in maximum security housing units.

10. Measures will be taken by the Department of Corrections to provide maximum access to and utilization of the currently available activity space. Adequate equipment for a variety of leisure time activities will be provided.

11. The Secretary of Corrections will continuously maintain accurate data as to the maximum number of prisoners who can be housed at PNM pursuant to the provisions of Duran v. Apodaca. The allowable maximum number of prisoners will not be exceeded at PNM.

12. A written routine daily housekeeping plan will be executed which includes at least the following: (a) the areas to be cleaned and procedure for cleaning said areas; (b) the frequency of cleaning each area; (c) the specific person or persons assigned to supervise

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the cleaning of each area; (d) the procedure for procurement and maintenance of housekeeping equipment and supplies.

13. A qualified person, familiar with health and safety standards and practices, will oversee health and sanitation conditions at PNM.

14. Cleaning activities will be supervised at all times by particular assigned civilian staff.

15. A written checklist will be utilized for a daily inspection to be done of all areas by a specific employee to assure that all areas are clean and sanitary. The employee will sign the document certifying that he/she conducted the inspection and that the report is accurate.

16. (a) Screens will be maintained on all windows and doors; (b) window panes will be continually maintained in all areas; (c) structural defects which allow rodents to enter the buildings will be cured; (d) an effective vermin and pest control program will be implemented.

17. A comprehensive written preventive maintenance manual will be prepared and utilized which includes an inventory of all equipment and systems at PNM along with a schedule for regular inspection and maintenance of said equipment and systems which includes the maintenance requirements of the manufacturer's specifications. The manual will specifically state the employees responsible for executing

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the plan and specific measures to be taken in maintaining each machine or system. Those persons will be adequately trained for said duties.

18. A checklist will be developed for the inspection and maintenance of each machine or system and the person responsible for inspection and maintenance will certify that the facts stated on the checklist are true.

19. An adequate inventory of parts regularly needed will be maintained to prevent unnecessary delays in major repairs.

20. A comprehensive fire safety plan will be prepared and executed for the Penitentiary of New Mexico which includes: (a) specific provisions for adequate fire protection service; (b) the specific equipment such as fire extinguishers and fire hoses to be located at specific appropriate places within the institution and inspection and preventive maintenance schedules for said equipment; (c) the specific responsibilities of staff and prisoners in the event of a fire, and; (d) the training to be given staff and prisoners in fire safety. This plan will be certified by the state fire marshal or another qualified authority as adequately providing for the safety of the prisoners at PNM.

21. PNM will have available to it on a regular basis a qualified fire safety officer to ensure that the institution meets fire safety and prevention standards including those provided by the Life Safety Code (1976, National Fire Protection Association Document No. 101 or

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any superseding standards promulgated by that association). Said person will have a minimum of three years experience in fire prevention and safety work.

22. The institution will be inspected at least twice a year by the State fire marshal or other qualified fire safety expert. If the facility in any way does not meet state fire safety standards or the standards of the Life Safety Code, curative actions will be immediately taken.

23. The institution has a written evacuation plan prepared in the event of fire or major emergency which is certified by an independent inspector trained in the application of the Life Safety Code. (current edition). The plan is reviewed annually, updated if necessary, and reissued to the local fire jurisdiction. The plan includes:

- a. location of building/room floor plans;
- b. use of exit signs and directional arrows for traffic flow;
- c. location of publically posted plan;
- d. at least quarterly drills for all inmates and staff, except that drills may be limited to staff when evacuation of extremely dangerous inmates would be involved. In such cases, the inmates will be fully instructed as to all aspects of the evacuation plan.

EXHIBIT C

POLICY STATEMENT

SUBJECT: INMATE ACTIVITY

General Purpose:

One part of the statutory mandate to the Department of Corrections and Criminal Rehabilitation is to "try to rehabilitate" offenders committed to its custody and care. This statutory mandate will be implemented through the following policies and procedures:

1. After classification, a comprehensive program will be designed for each inmate. The program will include an appropriate housing assignment and provision for medical and mental health needs. The program will also include, consistent with orders or policy statements in the Duran case, vocational training, educational programs, work programs, and any special problem needs.

2. The inmate's progress in his or her program will be monitored by the intake and classification center and the institutional classification committee.

3. Programs will be linked to community resources if possible.

4. Vocational and educational testing will be provided to all newly committed inmates and as necessary during the inmates' imprisonment. Vocational and educational counseling will be

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coordinated with the testing.

5. All inmates classified as needing and desiring some type of education will be provided an appropriate educational program. The institutional educational program shall be comparable to that in the public school system in New Mexico in quality, staff, supplies, equipment, institutional materials and programs including special and bilingual educational programs. Staff will be provided in quantity and expertise to insure access by all inmates classified to educational programming. Educational and vocational programming will be available on a year round basis. However, the adoption of this policy statement does not entitle inmates covered by it to rights under state or federal education or education financing laws and/or regulations to which they would not otherwise be statutorily entitled.

6. The Corrections Department will maintain a certified, comprehensive, and continuous educational program for inmates that extends through high school level. Counseling to inmates will be provided under the supervision of the ICC initially upon their commitment to the Department of Corrections and periodically to insure proper program placement.

7. If the ICC evaluation indicates that vocational programming is appropriate, an opportunity to participate in such programming will be provided. Vocational and educational programming will be designed to develop marketable skills. All inmates determined by

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classification as needing some type of vocational or pre-vocational training and indicating interest in such training will be given the opportunity to participate in training. To qualify as a full time vocational or pre-vocational program, the program must meet for a minimum of 4 hours a day, 5 days a week except for recognized holidays and vacations. Inmates participating in a vocational or pre-vocational program on less than a full time basis shall have the opportunity to participate in other programs or be employed in a job for the remainder of the day. The provisions of this section shall be implemented as soon as possible, but no later than July 1, 1981.

8. Inmates will not be excluded from access to programming based on race, religion, nationality, sex or political belief.

9. Inmates working as teachers' assistants or paraprofessionals need not be licensed by the State of New Mexico but shall receive training and supervision from appropriate persons.

10. To qualify as a full time educational program for an inmate, other than college, the program must meet for a minimum of 4 hours a day, 5 days a week. Inmates participating in the educational program on less than a full time basis shall have the opportunity to participate in other programs or be employed in a job for the remainder of the day.

11. Inmates who are qualified shall have a reasonable opportunity to participate in an appropriate college or college

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extension program when such programs are reasonably accessible.

12. Recreational programming will be supervised by a full time, qualified recreation director. The director, in coordination with other institutional staff and community resources, will implement a comprehensive recreational program including leisure time and athletic activities. An appropriately qualified person designated by the warden will develop and implement comprehensive social programs and activities for all segments of the inmate population.

13. Inmates will be provided access to a minimum of one hour per day exercise and access to recreational opportunities including, when weather permits, outdoor exercise.

14. The inmate work program will provide the opportunity for full time employment to all inmates excluding those in full time educational or vocational programs or those in maximum security status or disciplinary segregation. Jobs will include prison industries, vocational training and institutional assignments. A job or assignment shall be considered full time if it provides for no less than 5 hours work per day, 5 days per week.

15. Prior to release or discharge, all inmates will enroll in a program to prepare them for their re-entry into society within statutory limitations. Pre-release programming will combine lectures with family and individual counseling, and survival skills training.

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Institutional staff and community volunteers will be used as appropriate.

16. The Department will make good faith efforts to provide work and school release, pre-release and other community based programming and/or housing for inmates appropriately identified by the classification process.

17. All inmates will be provided with at least 8 hours a day of meaningful activity except those in disciplinary segregation and those classified as maximum security who are governed by the terms of the policy statement on maximum security.

18. The parties recognize that the requirements of this policy statement cannot be met at the present time. The Department of Corrections will act in good faith to utilize staff, facilities and services to meet those requirements. Further, as soon as practicable, a comprehensive plan with timetables will be produced by the National Institute of Corrections in coordination with the Department of Corrections to come into total compliance with the provisions of this policy statement. Said plan will be filed with the Court. The recommendations of said plan will be executed unless the Department can show cause why compliance would not be in the best interest of meeting the principles of this policy statement. If the Plaintiffs consider the plan or the timetable to be inadequate, they may request further relief from the Court.

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19. The provisions of the policy statement relating to inmate activity are not applicable to prisoners confined in disciplinary segregation.

20. Inmates may refuse to participate in institutional programs except work assignments.

21. At the completion of the current renovation, indoor dayroom or leisure activity space of no less than 35 sq. ft. per inmate will be provided to all inmates.

EXHIBIT D

POLICY STATEMENT

SUBJECT: MEDICAL CARE

1. All inmates shall be provided with adequate medical and dental services needed to maintain basic health.

2. The medical care delivery system will be under the supervision of a full time licensed medical doctor who is normally on-site at the Penitentiary of New Mexico at Santa Fe at least forty hours per week. The doctor will report to an appropriate designee of the Secretary of the Department of Corrections in the central office.

3. A licensed medical doctor will be on-call 24 hours a day. In addition, substitute coverage by a licensed medical doctor will be provided for those times during which the regular on-site doctor is not available (e.g., vacation time). Written contracts, as appropriate, will be entered with those persons performing these duties.

4. In addition, written contracts will be entered into for the provision of medical specialists to provide any and all necessary specialty consultation or services either on-site or in outside facilities. Such arrangements will include, but not be limited to, a general surgeon; an ear, nose and throat specialist; an orthopedic surgeon and a general internist. An obstetrician and gynecologist will be added if women are housed in the facility. Specialty consultation and reports shall be on specific consultation forms which

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shall be included in the medical record. Specialty services must be provided in a timely manner as prescribed by the medical staff.

5. At a minimum, the present staff complement of four licensed physician's assistants and three infirmity technicians or equivalent personnel will be maintained.

6. There will be personnel on each shift with basic training in first aid and basic life support cardiopulmonary resuscitation who are continually within voice contact range of all inmates in living or operational units.

7. Adequate medical equipment and supplies will be provided for medical care delivered at the facility.

8. On or before September 1, 1980, the on-site medical doctor at the Penitentiary of New Mexico at Santa Fe will produce a written evaluation of the personnel, facilities and equipment necessary to provide adequate medical care to the inmates. All such personnel, facilities and equipment will be promptly provided unless the Defendants show cause to this Court why they should not. Copies will be provided to counsel for the Plaintiffs who may apply for relief from this Court if the plan is deemed inadequate or if the plan is not executed within a reasonable time.

9. Entrance examinations which at least meet the requirements of Exhibit A of this policy statement will be provided all prisoners committed to the custody of the Department of Corrections. Screenings and evaluations will be conducted by a licensed physician or an

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appropriately trained medical staff member under the close supervision of a licensed physician. A licensed physician will review within seven days the file of each inmate who was examined by a physician's assistant.

10. At the time of entry to the prison, each inmate will receive written and verbal instructions explaining the procedures for gaining access to medical and dental care. Such instructions may be incorporated into the Inmate Handbook. Medical care services and dental care services will be fully available to all inmates regardless of custody status or other factors.

11. At the Penitentiary of New Mexico at Santa Fe or at any facility which houses more than 250 inmates, sick call will be conducted by a licensed physician or an appropriately trained physician's assistant on a daily basis. Inmates who request to be seen by the doctor or physician's assistant will be seen as soon as is practical and/or necessary. Appropriate examination rooms which guarantee privacy will be provided and utilized for interviews and examinations.

12. There will be a licensed physician or physician's assistant on duty at the Penitentiary of New Mexico at Santa Fe 24 hours a day. If at any time during the day or night an inmate states to any member of the staff that he/she is sick or injured and is in need of care or if any member of the staff receives information to that effect, the staff member will promptly notify the designated physician, medical technician, or physician's assistant who will promptly provide

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appropriate care. All such requests and the actions taken will be recorded and maintained in a medical log and the medical file of the inmate. If information that an inmate may be sick or injured and in need of medical care is transmitted to the designated physician, medical technician, or physician's assistant and the inmate is not promptly examined, the reasons therefor will be noted in the log and the inmate's medical file.

13. Physical and dental examinations of every inmate will be conducted by a licensed physician or dentist at least once every two years.

14. As soon as possible after July 1, 1980, the Department of Corrections will have a full-time licensed dentist who will be in charge of dental care for the entire system. The dentist's primary duty will be dental care for the inmates at the Penitentiary of New Mexico at Santa Fe. Adequate dental facilities, equipment and support staff will be provided. Written agreements will be made with dental surgeons and other specialists to provide necessary services which cannot be provided by the dental staff at the facility.

15. On or before September 1, 1980, a licensed dentist with experience in full-time dental care delivery in prisons will produce a written evaluation of the personnel, facilities and equipment necessary to provide adequate dental care to the inmates. Copies will be provided to counsel for the Plaintiffs who may apply for relief from the Court if the plan is inadequate or if the equipment is not purchased within a reasonable time.

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16. There will be 24-hour emergency medical and dental care availability as outlined in a written plan which includes arrangements for: emergency evacuation of the inmate from the facility; use of an emergency medical vehicle; use of one or more designated hospital emergency rooms or other appropriate health facilities; and security procedures providing for the immediate transfer of inmates when appropriate.

17. Eyeglasses, dentures and other usual prosthetic devices will be provided to those prisoners who need them as soon as is practicable.

18. Physical therapy will be provided by appropriately trained persons to those inmates deemed by the physician to need such care.

19. Detoxification from alcohol, opioids, stimulants and sedative hypnotic drugs will occur under the care and supervision of the licensed physician.

20. Individual treatment plans will be developed by a physician for persons identified as chemically dependent. Those plans will be promptly carried out by appropriate personnel.

21. Inmates who need health care beyond the medical resources available at the penitentiary, as determined by the responsible health authority, will be transferred to a facility where such care is available. Adequate transportation vehicles and staff will be made available so that said needed health care will not be delayed.

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22. The use of physical restraints for medical or psychiatric purposes will only be done pursuant to a written policy and defined procedure under the direct supervision and control of a physician. Handcuffs will not be used for restraint in such cases. Only those methods of restraint which are appropriate to the general population will be allowed. When restraints are used, they will only be used for the shortest period of time necessary and the use, type of restraint, length of use and reason therefor will be fully documented in a medical log and the inmate medical file. Any person in such restraints will be monitored at least every thirty minutes.

23. No inmate will be deprived of rights or normally given privileges or be punished because of the request for or receiving of medical or dental care except where a limitation of activity is a necessary part of the prescribed medical or dental care.

24. Special therapeutic diets will be prepared and served to those inmates who need them as determined by the physician.

25. All drugs and narcotics will be prescribed and administered pursuant to state and federal laws. Psychotropic medications will be prescribed and monitored by a licensed psychiatrist pursuant to the standards of the American Psychiatric Association. All psychotropic medications and prescription drugs subject to abuse by inmates will be distributed by physicians and physician's assistants under the unidose system.

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26. A "problem-oriented medical records" structure will be utilized which will include:

The completed receiving screening form;

Health appraisal data forms;

All findings (negative as well as positive, when pertinent),
diagnoses, treatments, dispositions;

Prescribed medications and their administrations;

Laboratory, x-ray and diagnostic studies;

Signature and title of documentor;

Consent and refusal forms;

Release of information forms;

Place, date and time of health encounters;

Health service reports, e.g., dental, mental health and
consultations;

Treatment plan, including nursing care plan;

Progress reports; and

Discharge summary of hospitalization and other termination
summaries.

27. The medical files will be separate from the confinement record and the medical files will be secured under the principle of doctor-patient confidentiality.

28. Adequate clerical assistance will be provided to the medical staff to carry out the terms of this order.

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29. Inmates will not be utilized in the health care delivery system except for assignments which are essentially janitorial in nature.

30. Except in emergency situations which immediately threaten the life or health and in which the inmate is unable to give informed consent, informed consent will be received in writing and with a witness prior to surgical and non-routine treatments and examinations. Verbal informed consent will be received prior to other examinations, treatments or medical procedures. Informed consent requires that the inmate receives the material facts regarding the nature, consequences, risks and alternatives concerning the proposed treatment, examination or procedure.

31. In addition to the above, women prisoners will during the initial health assessment receive the following:

1. Inquiry about:
 - a. The menstrual cycle and unusual bleeding;
 - b. The current use of contraceptive medications;
 - c. The presence of an I.U.D.;
 - d. Breast masses and nipple discharge;
 - e. Pregnancy.
2. The physical assessment shall include:
 - a. A pelvic examination which must be conducted with the maximum concern for human dignity and which must not be subverted for security purposes;
 - b. A breast examination.

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3. Specimens collected shall include a culture for gonorrhea, an appropriate test for cancer and a serological test for syphilis.
 4. Provision shall be made for the special dietary and housing needs of pregnant women, and the continuation of contraceptives for therapeutic reasons. Women classified into community programs shall be offered family planning services.
32. In addition to the health care provided all inmates, women inmates shall receive the following care:
- a. Particular health problems of women, such as menstrual irregularities, shall receive appropriate gynecological care. Feminine hygiene items will be supplied. Douching will be made routinely available and will be accompanied by proper education and precautionary advice.
 - b. A pregnant inmate will have the equivalent medical care as she would have were she not incarcerated.
 - c. Health maintenance procedures shall be established including, but not limited to, an appropriate test for cancer, venereal disease screening, breast examinations, etc.

EXHIBIT A

1. Receiving screening will be performed by trained staff on all inmates (excluding intra-system transfers) upon arrival at the facility with the findings recorded on a printed screening form approved by the health authority. The screening includes at least:

Inquiry into:

Current illness and health problems, including venereal diseases and other infectious disease, and those health problems specific to women;

Medications taken and special health requirements;

Use of alcohol and other drugs which includes types of drugs used, mode of use, amounts used, frequency used, date or time of last use, and a history of problems which may have occurred after ceasing use (e.g., convulsions);

Past and present treatment or hospitalization for mental disturbance or attempted suicide;

Identification will also be made of those persons who need immediate care for serious and urgent mental health problems, such as overt psychosis, severe depression, or suicidal ideation;

Other health problems designated by the responsible health authority official.

Observation of:

Behavior, which includes state of consciousness, mental status, appearance, conduct, tremor and sweating;

Body deformities, ease of movement, etc.;

Condition of skin, including trauma markings, bruises, lesions, jaundice, rashes and infestations, and needle marks or other indications of drug abuse.

2. Medical screening will be performed immediately upon arrival at the institution for all intra-system transfers which includes, at a minimum:

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Inquiry into:

Whether the inmate is being treated for a medical problem;

Whether the inmate is presently on medication;

Whether the inmate has a current medical complaint;

Observation of:

General appearance and behavior;

Physical deformities, evidence of abuse and/or trauma;

3. Health appraisal for each inmate (excluding intra-system transfers) will be completed within 14 days after arrival at the facility. In the case of an inmate who had documented evidence of a health appraisal within the previous 90 days, a new health appraisal is not required except as determined by the designated health authority. Health appraisal includes:

Review of the earlier receiving screening;

Collection of additional data to complete the medical, dental, mental health and immunization histories;

Laboratory and/or diagnostic test results to detect communicable disease, including venereal disease and tuberculosis;

Recording of height, weight, pulse, blood pressure and temperature;

Other tests and examinations as appropriate;

Examination including review of mental and dental status;

Review of the results of the examination, tests, and identification of problems by the appropriate health authority officials.

Initiation of therapy when appropriate, and

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Development and implementation of treatment plan including recommendations, where medically appropriate concerning housing, job assignment, and program participation.

4. The collection and recording of health appraisal data will be consistent with the following:

The process is completed in a uniform manner as determined by the health authority;

Health history and vital signs are collected by qualified health personnel; and

Collection of all other health appraisal data is performed only by qualified health personnel.

5. The program of dental care for all inmates will consist of:

Dental care provided by a dentist licensed in the state;

Dental screening and written or verbal instructions on hygiene within 14 days of admission;

Dental examinations, supported by x-rays, based on information from the screening and performed within 30 days after arrival at permanent facility;

Treatment in accordance with a treatment plan not limited to extractions that is considered appropriate for the needs of the individual as determined by the institutional dentist; and
Consultation with referral to recognized specialists in dentistry.

EXHIBIT E

POLICY STATEMENT

SUBJECT: MENTAL HEALTH CARE

1. All inmates who, by reason of mental illness or mental retardation, require special housing and/or programs, will be identified and arrangements will be made for such housing and/or programs.

2. All inmate members of the Plaintiff class who are in need of mental health care, as determined by a qualified practitioner, will be identified and the needed care and/or treatment programs will be provided when needed. Services will be available to those who need them in a context of varied modalities which will include, but not be limited to: Crisis intervention; brief and extended evaluation/assessment; short-term therapy (group and individual); long-term therapy (group and individual); therapy with family and significant others; counseling; medication; detoxification; and drug and alcohol counseling.

3. In order to aid in compliance with the principles of Paragraphs 1 and 2 above, arrangements will be made to procure within 60 days from the date of adoption of this policy statement a written comprehensive evaluation of the personnel, facility and programmatic needs of the Penitentiary of New Mexico by a person or persons trained and skilled in the area of mental health care delivery in prisons. The evaluation will contain recommendations for the implementation of the terms of this policy statement. Said person or persons .

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will include at least one licensed psychiatrist who will be jointly agreed upon by the parties.

The written evaluation will be provided to the Department of Corrections and counsel for the plaintiffs. Within 30 days of the receipt of said document, the Department of Corrections will prepare a comprehensive plan with reasonable timetables to comply with the recommendations of the report. Said plan will be presented to counsel for the plaintiffs and filed with the Court.

The Department of Corrections will comply with the recommendations in the report unless it can show cause to the Court why compliance would not be in the best interest of meeting the principles of Paragraphs 1 and 2 above.

If the plaintiffs are not persuaded that the plan will meet the requirements of Paragraphs 1 and 2 within a reasonable time, they may petition the Court for further relief.

4. Good faith efforts will begin immediately to hire a licensed and otherwise qualified psychiatrist to be employed at the Penitentiary of New Mexico to provide needed psychiatric care and to be responsible for the mental health delivery system at the Penitentiary and the Department of Corrections' system. Until that time, contract psychiatric services will be provided on-site sufficient to meet the psychiatric needs of the population, including

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the prescription and monitoring of psychotropic medications, according to the principles of the American Psychiatric Association and accepted modern practice in the general community.

5. Inmates who need immediate care for serious and urgent mental health problems, such as overt psychosis, severe depression, or suicidal ideation will be screened and evaluated by a licensed psychiatrist, a qualified psychologist, or other qualified practitioner of medicine. Immediate and appropriate mental health care will be provided to such inmates.

6. All newly committed inmates will be given a routine mental health appraisal by mental health staff within 30 days of admission. Such evaluations are brief and include at least:

Group or individual interview;

Behavioral observation;

A records review;

Group assessment to screen for emotional and/or intellectual abnormalities;

A written report of the findings;

Referral, by said mental health staff where appropriate, for a comprehensive individual mental health evaluation.

The comprehensive individual mental health evaluation on specially referred inmates will be completed within 14 days after the date of referral and include at least:

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Review of mental health screening and appraisal data;

Collection and review of additional data from staff observation, individual diagnostic interviews and tests assessing intellect and coping abilities;

Compilation of individual's mental health history; and

Development of an overall treatment/management plan with appropriate referral.

7. All mental health services will be provided by mental health professionals who meet education and licensure/certification criteria specified by their respective professional disciplines (i.e., psychiatrists, psychologists, psychiatric nurses, social workers). All such persons will be limited in their functioning to their demonstrated areas of professional competence.

8. If mental health services staff believe some psychotropic medication program is needed, they will refer the inmate to the psychiatrist for evaluation, diagnosis, prescription and monitoring.

9. Written policies and job descriptions will be produced which comprehensively define the duties and limitations of the entire mental health services program and each member of that staff.

10. Inmates will not be utilized in any way in the mental health care delivery system except for assignments which are essentially janitorial in nature.

MENTAL CARE

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11. Upon commitment to the Department of Corrections, all inmates will be informed verbally and in writing of the mental health care services available and how to request mental health assistance. The inmate handbook will also include that information. The information will be conveyed in a language which can be understood by the inmate.

12. All correctional officers will have training in basic mental health screening, including the recognition of symptoms of mental disturbances most common to the inmate population.

13. If at any time during the day or night an inmate states to any member of the staff that he/she is in need of mental health care or services or if any member of the staff receives information that such care or services are needed, the staff member will promptly notify an appropriately designated professional of the mental health staff who will promptly take all necessary action to provide any needed examination and services. All such requests and the actions taken will be recorded and maintained in a mental health log and the inmate's mental health file. The mental health file may be included in the medical file. If no action is taken, the reason therefor will be similarly recorded.

14. A written treatment plan which specifies the particular course of therapy and the roles of all personnel in carrying out the

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plan will be prepared by a psychiatrist or a qualified clinical psychologist for each inmate requiring mental health services. Similarly, a specific psychiatrist or qualified clinical psychologist will be responsible for monitoring the plan and assuring that it is being appropriately executed.

15. Members of the mental health staff and their agents or people working in concert with them will be bound by professional standards of psychiatrists and psychologists in the community as well as state law and may not divulge information gained from inmates except as is consistent with such standards and laws. Those standards will be enunciated in particular as a part of the plan provided by paragraph 3 above. Records of the mental health staff will not be available to other institutional staff or inmates.

16. Members of the mental health staff will only make recommendations about an inmate to the parole board, the Governor concerning executive clemency requests, the classification committee or the disciplinary committee consistent with standards of psychiatrists and psychologists in the community as well as state law and may not divulge information gained from inmates except as is consistent with such standards and laws. Those standards will be enunciated in particular as a part of the plan provided by paragraph 3 above.

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17. Upon commitment to the Department of Corrections, inmates will be informed as to the policy concerning mental health patient confidentiality.

18. Psychological test protocols and other "raw data" will not be available to anyone but qualified mental health professionals on the mental health staff or consulting staff. "Raw data" is test information not accompanied by interpretive statements made in a report by qualified mental health professionals. Computer generated statements are considered raw data. "Qualified mental health professionals" in this paragraph include only qualified psychiatrists and clinical psychologists with appropriate education and training in psychological test interpretation.

19. All Inmates committed to the Department of Corrections and Criminal Rehabilitation may only be given mental health treatment without his/her informed consent pursuant to the standards of the New Mexico Health and Developmental Disabilities Code.

20. Aversive therapy will not be utilized.

21. Any involuntary transfers of prisoners to mental hospitals or to other special living units for the treatment of mental health problems will be conducted consistent with the due process requirements outlined in Vitek v. Jones, 48 U.S.L.W. 4317 (March 23, 1980).

22. One member of the mental health staff will be designated as the official liaison person with the New Mexico forensic hospital.

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That person will be responsible for assuring that all appropriate documents are transferred between institutions concerning the past and future care and treatment of the inmate and to assure that the appropriate follow-up care is provided when inmates are returned from the hospital to the penitentiary.

23. Good faith efforts will be made to hire qualified mental health professionals who speak the same language as segments of the inmate population.

24. Special psychiatric units in the infirmary or psychiatric area can be used only under the direct supervision of a doctor or psychiatrist and only for legitimate medical or psychiatric reasons.

EXHIBIT F

POLICY STATEMENT

SUBJECT: STAFFING AND TRAINING

1. Adequate staff and staff training will be provided to reasonably assure the safety and protection of inmates and to allow the Department of Corrections to comply with all other orders or policy statements in Duran v. Apodaca.

2. At least one correctional officer will be stationed in each cellblock so that all inmates will have voice contact with a correctional officer at all times. In addition, irregular rounds of the entire cellblock will be made at least one time per hour.

3. As soon as possible, but no later than September 1, 1980, at least one correctional officer will be stationed between the inner gate and outer gate of each dormitory at the Penitentiary of New Mexico at Santa Fe at all times that any inmates are housed in said dormitories. The said officers will position themselves in such a manner that they may have visual observation of inmates at all times.

4. Training will be provided to all staff which is equivalent to that required by the Manual of Standards for Adult Correctional Institutions of the Commission of Accreditation for Corrections.

5. As soon as is practicable, a qualified person or persons selected by the Department will review the current facility and its

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use; all plans for future renovation or building; all plans for future jobs, activities, programs, and services to members of the Duran class; and the requirements of the orders or policy statements in Duran v. Apodaca; and will make comprehensive recommendations as to the number of correctional staff needed under the various conditions presented to meet the requirements of those orders and policy statements. Those recommendations will be provided to the parties.

Within 30 days of receipt of said recommendations, the Department of Corrections will file with the Court and with the plaintiffs a plan for complying with said recommendations, including the extent, or that show cause why they should not comply.

If the plaintiff's desire the recommendations, the plan, or the tractables to be interpreted by the Court, the Court has the right to call for relief.

EXHIBIT G

POLICY STATEMENT

MAXIMUM SECURITY

1. Maximum security classification is used when inmates require closer supervision and separate housing from the general population. Every effort shall be made to return maximum security inmates to the general population as soon as practicable, but some inmates may spend relatively extensive periods of time in this status. Maximum security classification is not for the purpose of punishment. This policy statement has no application to those inmates confined in disciplinary segregation.

2. The words "threat to the security of the institution" or their equivalent, as used in any order in Duran v. Apodaca, means a substantial threat of an act or acts of violence upon others, substantial destruction of state property, escape or attempted escape, riot or inciting a riot, or taking of hostages. When action is taken based upon a finding of a threat to the security of the institution, the specific reason(s) comprising the threat will be documented.

3. An inmate may be placed involuntarily in maximum security by the classification committee pursuant to the criteria stated in one or more of the following five subsections:

(a) The classification committee specifically finds the following:

(i) The Disciplinary Committee has recently found that the inmate has committed an act of violence, substantial destruction of state property, escape or attempted escape, riot or inciting a

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riot, or taking of hostages, and as a result of such finding has been sentenced to disciplinary segregation; and

(ii) Because of such finding, considered along with all other classification and other relevant data, there is a substantial likelihood that if released to the general population the inmate would present a substantial threat to the security of the institution or to the safety of others.

(b) The classification committee specifically finds, based upon recent overt acts, that an inmate presents an imminent threat of serious bodily harm to others or an imminent threat of escape. Pending action of the classification committee under this subparagraph, the ranking shift officer may temporarily house an inmate in maximum security status until the next working day, at which time the classification committee shall determine whether the inmate will remain in maximum security status as set forth above. The ranking shift officer who temporarily detains an inmate under this section will document the reasons for the action and will give a copy of the document to the inmate within eight hours.

(c) The classification committee specifically finds that the inmate is a victim of a violent act and there is clear and convincing evidence that if he remains in general population he will be subjected to additional violent acts.

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(d) The classification committee specifically finds that the inmate's safety is jeopardized by an immediate life threatening conflict with other inmates in the general population which requires temporary separation from the general population because he cannot otherwise be provided with adequate protection.

(e) The classification committee specifically finds that the inmate has demonstrated a continuous, substantial and documented violation of institutional rules. This sub-section cannot be used in combination with disciplinary action for the same acts. An inmate may not be classified in this category for more than 5 days at a time.

4. An inmate may also be placed in maximum security if the inmate believes that housing in the general population places the inmate in jeopardy of serious bodily harm and requests placement in maximum security. Inmates requesting assignment to maximum security may be required to sign a written request slip, stating their desire for assignment to maximum security. Inmates requesting assignment to maximum security may be placed therein immediately without waiting for the formal hearing before the classification committee.

Any inmate who has voluntarily placed himself in maximum security status will be reclassified within 5 working days of a request to be reclassified. However, the inmate may be reclassified into maximum security status involuntarily if any of the conditions of paragraph 3 above are met.

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5. A statement detailing the alleged specific facts and specific reasons for classifying an inmate into maximum security shall be given to the inmate at least 24 hours prior to the classification hearing. If the basis for placing the inmate into maximum security involves the testimony of a confidential informant, the disclosure of which would place such informant in jeopardy of serious bodily harm, the inmate shall be given a summary of the facts upon which maximum security classification is being requested sufficient to allow him to challenge the truthfulness of the facts and/or the need for maximum security status.

6. Prior to placing an inmate in maximum security, the classification committee must make a finding of fact based upon a preponderance of the evidence that the requirements of paragraph 3 above have been met. Prior to classifying an inmate in maximum security status, the classification committee shall explore alternatives other than specialized housing and shall prepare a statement of the alternatives explored and the reason for rejecting each of them. If an inmate is placed in maximum security housing, the inmate will be housed in a single occupancy cell or room that provides safety and comfort and shall be allowed to participate in institutional programs as set forth herein; however, if there is an emergency caused by riot, fire or other disaster making living units unusable, two people may be housed in said cells or rooms for a period of short duration while arrangements are made for alternate housing. Each case shall be reviewed on the basis set forth in paragraph 7,

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with the goal of terminating the separate housing assignment as soon as practicable.

7. The classification committee shall review the status of each inmate at least every 7 days for the first two months and at least every 30 days thereafter. More frequent reviews may be scheduled based on the request of the case manager or the inmate. At each review, the classification committee shall determine whether there is substantial evidence to indicate that the initial reasons for classification into maximum security still exist. If they do not, the inmate shall be reclassified out of maximum security status. The inmate can appear before the classification committee at each review and make a statement. In cases where the inmate refuses to appear, the committee members shall sign and document the specific reasons for the inmate's absence and make an evaluation for the inmate's working file. Nothing in this paragraph shall prevent the classification committee from making additional findings pursuant to the standards and procedures set forth above, to the effect that an inmate should be classified into maximum security status.

8. If an inmate is classified maximum security under the provisions of paragraph 3(b) hereof, the inmate's status must be reviewed by the classification committee within 7 days after the initial classification and every 7 days thereafter, and inmates shall not be housed in such status for more than 30 days. At each review, the classification committee must make a specific finding of the

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behavior justifying continued classification to maximum security and document that there is substantial evidence to indicate that the reasons for the initial placement still exist.

9. In each case of an inmate classified maximum security involuntarily for over 60 days, the classification committee shall establish a set schedule of personal and program objectives involving gradual reintegration into the general population, the completion of which without an overt act evidencing an actual threat of serious bodily harm to others or escape should result in the inmate's reclassification from maximum security within an additional 60 days. However, if the classification committee documents compelling evidence that reclassification from maximum security would produce serious injury to the inmate or others or present a substantial threat to the security of the institution, then neither reclassification nor reintegration is required. Said evidence must include:

- (a) A murder within the previous two years; or
- (b) Activity in a prison riot within the preceding two years in which persons suffered serious bodily harm as a direct and intended result of action of the inmate; or
- (c) At least two recent previous overt acts causing serious bodily injury during reintegration or immediately after reclassification from maximum security under these provisions; or

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(d) An escape or attempted escape within the previous six months; or

(e) The inmate meets the terms of paragraph 3(c) or (d) above.

10. Prisoners classified maximum security may be denied or removed from a program, job, activity, or canteen privileges generally available to the population only upon a specific, documented finding by the classification committee of demonstrated necessity for each such action based upon the recent particular behavior of the prisoner or actions of other prisoners. In any event, every prisoner in maximum security status shall receive an opportunity for a minimum of one hour of recreation (outdoors, weather permitting) daily. In addition, as soon as practicable, consistent with the plan developed relating to inmate activity, every prisoner in maximum security status will receive an opportunity for at least five additional hours, five days a week, of meaningful programmed activities determined by the classification team. In the interim, good faith efforts will be made to provide additional meaningful programmed activities for all inmates housed in maximum security status, including, for example, expanded recreational activity, individually prescribed education and other individual or group activities utilizing staff or community resources.

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11. Inmates who have been classified as maximum security will be provided with the following:

- (a) Clothing and linen issue and exchange similar to that provided to the general population;
- (b) Meals provided to the general population;
- (c) Correspondence privileges similar to that provided to the general population;
- (d) Showers and shaving five days a week;
- (e) Hair grooming and barbering;
- (f) A minimum of two hours visitation per week.

12. Access to legal resources for maximum security inmates will be provided pursuant to the consent decree in Duran v. Apodaca.

13. Provision will be made for prisoners in maximum security status to have access to the general library or a library cart to check out as many as five books at least every seven days.

14. Inmates in maximum security status will be allowed to retain in their personal living area at least five books and all legal papers.

15. Inmates classified in maximum security housing will be housed in single occupancy cells or rooms; however, if there is an emergency caused by riot, fire or other disaster making living units unusable, two people may be housed in said cells or rooms for a period of short duration while arrangements are made for alternate housing. They may retain their personal property, as permitted in general population, unless the classification team finds that in the case of

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an individual inmate, the removal of specific designated items of personal property is essential to protect the safety of the inmate or others, a fire hazard would be created, or the amount of the personal property would be excessive so as to cause violation of health, sanitation, or fire safety standards. If property is removed, it will be stored in a safe place and an inventory will be maintained. All inmates in maximum security status may have basic items needed for personal hygiene, as well as items such as eyeglasses, dentures and writing material.

16. A case manager will visit five days per week all areas in which maximum security inmates are housed and will be available to help each inmate who desires assistance or information. A qualified medical professional will conduct sick call daily in each maximum security living area and will examine every inmate who so requests to determine what medical care, if any, is required. A log will be maintained documenting each visit and each inmate contact.

17. A qualified clinical psychologist or psychiatrist will assess the status of each person classified as maximum security at least once each 30 days. Said assessment will include a personal interview with the inmate.

18. Visitation by religious personnel to inmates in the maximum security living areas will be governed by the terms of the visitation consent order in Duran v. Apodaca. Inmates in the maximum security

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living areas will be provided with access to appropriate religious services.

19. Correctional officers assigned to maximum security living areas should be tolerant and trained to meet the needs of inmates so classified. Each supervisor will supervise and evaluate the on-the-job performance of employees assigned to maximum security living areas.

20. The Warden will designate an official to be responsible for the administration and operation of maximum security living areas who will monitor and evaluate the entire program in the areas as often as necessary to insure compliance with all applicable policy statements. The following personnel shall visit maximum security living areas:

1) Warden	Weekly visit
2) Deputy Warden	Weekly visit
3) Associate Warden/Inmate Management	Daily visit ¹
4) Superintendent Correctional Security	Daily visit
5) Chief Psychologist	Weekly visit
6) Medical Personnel	Daily visit
7) Caseworker	Daily visit
8) Chief, Classification and Programming	Weekly visit
9) Chaplain	Weekly visit
10) Shift Captain	Once per tour of duty

¹ Daily visit means once per each normal working day; days off are excluded.

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21. A systematic records system will be maintained for all inmates assigned to maximum security living areas. A general activity log will be maintained for inmates and activities within such areas. In addition, a log will be maintained for all personnel entering for inspection and treatment of each inmate. A safety and sanitation officer will inspect the areas daily to insure that they are sanitary. These inspections will be recorded.

EXHIBIT H

POLICY STATEMENT

SUBJECT: INMATE DISCIPLINE

1. POLICY: It is the policy of this institution to provide a safe environment for both inmates and staff and to offer programs for all inmates who wish to develop their potential for maintaining a successful community adjustment following their release. In order to implement this policy it is essential that reasonable standards of control and discipline are established and maintained. Inmates and staff will be provided with complete copies of this policy and procedure and additions/revisions as they are adopted.
2. PURPOSE: The purpose of this policy statement is to provide written guidelines to insure that inmate control and discipline are established and maintained in accordance with the following objectives:
 - (a) Require individual inmate compliance with reasonable behavior standards and limitations.
 - (b) Insure the general welfare and safety of all persons living and working within the institution.
 - (c) Establish and maintain fair disciplinary procedures and practices based on due process.

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3. GENERAL PRINCIPLES: The following general principles shall be applicable in every disciplinary action taken against any inmate:

- (a) The action shall be reasonable and proportionate in relation to the violation.
- (b) The action shall be taken in an impartial and non-discriminatory manner.
- (c) The action must never be arbitrary or retaliatory.
- (d) Physical abuse is strictly prohibited.
- (e) Accurate, detailed reports of all disciplinary actions shall be maintained in accordance with this policy statement.
- (f) The words "threat to the security of the institution" or their equivalent, as used in any orders in Duran v. Apodaca, means a substantial threat of an act or acts of violence upon others, substantial destruction of state property, escape or attempted escape, riot or inciting a riot, or taking of hostages. When action is taken based upon a finding of a threat to the security of the institution, the specific reason(s) comprising the threat will be documented.

4. INFORMATION TO INMATES: Each inmate will be provided, in writing, at the time of his or her arrival, with the following information:

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- (a) Policy Statement on Inmate Discipline.
- (b) Policy Statement on Grievance Procedures.
- (c) Policy Statement on Correspondence Regulations.
- (d) Policy Statement on Visiting Regulations.
- (e) Criteria for work release - school release.
- (f) Criteria for transfer among institutions.
- (g) Criteria for furloughs.
- (h) Policy Statement on Good Time.
- (i) Policy Statement on Maximum Security Status.

This information will be issued at the Intake and Classification Center and a signed, dated receipt for same will be obtained and placed in the central file of each inmate.

5. GENERAL PRINCIPLES:

- (a) Any act, although not specifically listed in this policy, that would be either a felony or misdemeanor under the Criminal Code of the State of New Mexico or the laws of the United States of America, will constitute a major or minor violation, depending on its status as a felony or misdemeanor.
- (b) In those cases where an inmate allegedly commits an act

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covered by statutory law, the case will be referred for evaluation for possible criminal prosecution to the local District Attorney.

- (c) An attempt to commit a major offense will not ordinarily be treated with the same severity and sanctions as the actual commission of the underlying offense.
- (d) Any portion of a sanction may be suspended for a specified period of time. Inmates will be informed in writing of the conditions under which the suspended sanction may be invoked in the future.
- (e) At the request of the inmate, he or she may receive a continuance of their disciplinary hearing when criminal prosecution is pending.
- (f) It is understood that the time limits in disciplinary segregation are exclusive of time spent in maximum security status due to reclassification. Disciplinary action does not preclude reclassification into maximum security status pursuant to the policy statement in maximum security after time spent in disciplinary segregation.

6. MAJOR OFFENSES AND SANCTIONS (Category A)

- (a) Riot or inciting a riot, confinement in disciplinary segregation for up to 30 days; loss of good time not to exceed all good time.

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- (b) Taking of hostages, confinement in disciplinary segregation for up to 30 days; loss of good time not to exceed all good time.
- (c) Arson, confinement in disciplinary segregation for up to 30 days; loss of good time not to exceed all good time.
- (d) Assault with a weapon on an employee, civilian or inmate, confinement in disciplinary segregation for up to 30 days; loss of good time not to exceed 365 days.
- (e) Sexual assault, confinement in disciplinary segregation for up to 30 days; loss of good time not to exceed 365 days.
- (f) Unjustified killing of any person, confinement in disciplinary segregation for up to 30 days; loss of good time not to exceed all good time.
- (g) Escape, confinement in disciplinary segregation for up to 30 days; loss of good time not to exceed all good time.
- (h) Forging or altering official facility paper or documents, confinement in disciplinary segregation for up to 30 days; loss of good time not to exceed 180 days.
- (i) Threatening others who refuse to participate in a work stoppage or work strike or participating in a work stoppage or work strike, confinement in disciplinary segregation for up to 30 days; loss of good time not to exceed 180 days.
- (j) Giving or offering any official or staff member a bribe, confinement in disciplinary segregation for up to 30 days;

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loss of good time not to exceed all good time.

- (k) Possession, introduction, or manufacture of a firearm, explosive or ammunition, confinement in disciplinary segregation for up to 30 days; loss of good time not to exceed 365 days.

OFFENSES AND SANCTIONS (Category B)

The offenses in Category B shall be considered to be major, only if one or more of the following factors is found to be present by the Disciplinary Officer and/or Disciplinary Committee:

- (a) A life threatening incident is involved.
- (b) A showing of a malicious state of mind, which threatens the security of the institution.
- (c) A direct and substantial threat to the security of the institution.
- (d) The behavior is repeated or has previously been the subject of major disciplinary action.
- (e) Substantial property damage has occurred.
- (f) Any injury received was not of a minor nature and required medical attention.
- (g) The offense was committed by more than one person, excluding offenses in which more than one person is required to commit the offense.

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If evaluated as a Major Report, the sanctions in the succeeding subparagraphs will be applied. If evaluated as a Minor Report, the minor offense sanctions listed in paragraph 7 will be applied.

CATEGORY B

These principles apply to the following offenses:

- (a) Consensual engagement in sexual acts with others; confinement in disciplinary segregation for up to 15 days; loss of good time not to exceed 30 days.
- (b) Willfully refusing to obey a lawful order of any staff member; confinement in disciplinary segregation for up to 15 days; loss of good time not to exceed 90 days.
- (c) Stealing; confinement in disciplinary segregation for up to 25 days; loss of good time not to exceed 180 days.
- (d) Possession of money without authorization; confinement in disciplinary segregation for up to 15 days; loss of good time not to exceed 90 days.
- (e) Failure to report to an institutional assignment, refusing to accept a work assignment, or failing to perform work as properly instructed by a supervisor; confinement in disciplinary segregation for up to 15 days; loss of good time not to exceed 60 days.
- (f) Possession, introduction, or manufacture of a sharpened

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- instrument, tool, or knife; confinement in disciplinary segregation for up to 20 days; loss of good time not to exceed 120 days.
- (g) Failure to follow posted safety or sanitation regulations resulting in damage or personal injury; confinement in disciplinary segregation for up to 15 days; loss of good time not to exceed 90 days.
 - (h) Use of abusive words or gestures to a staff member or other inmate that are intended to provoke a fight, cause the violation of other institutional regulations or threatens the security of the institution; confinement in disciplinary segregation for up to 15 days; loss of good time not to exceed 45 days.
 - (i) Intentionally interfering with count; confinement in disciplinary segregation for up to 20 days; loss of good time not to exceed 60 days.
 - (j) Possession, manufacture, or introduction or use of any narcotic, narcotic paraphernalia, drugs or intoxicants not prescribed for the individual by the medical staff, or refusal to submit to an authorized drug test; confinement in disciplinary segregation for up to 25 days; loss of good time not to exceed 180 days.
 - (k) Possession, alteration, using, or being under the influence of alcohol or other intoxicants, or refusal to submit to an alcohol test upon request from authorized personnel; confinement in

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- disciplinary segregation for up to 15 days; loss of good time not to exceed 60 days.
- (l) Willful destruction or sabotage or altering of state property or property of another person; confinement in disciplinary segregation for up to 25 days; loss of good time not to exceed 180 days and/or restitution.
 - (m) Possession of contraband items (i.e., anything not allowed to be received through the mail, not sold at the canteen or issued by the State); confinement in disciplinary segregation for up to 15 days; loss of good time not to exceed 60 days.
 - (n) Conduct with a visitor in violation of posted visiting regulations; confinement in disciplinary segregation for up to 15 days; loss of good time not to exceed 30 days.
 - (o) Violating a condition of furlough, school or work release; confinement in disciplinary segregation for up to 15 days; loss of good time not to exceed 90 days.
 - (p) Knowingly making a false statement to a staff member which causes the violation of other institutional regulations or threatens the security of the institution; confinement in disciplinary segregation for up to 15 days; loss of good time not to exceed 60 days.
 - (q) Gambling; confinement in disciplinary segregation for up to 15 days; loss of good time not to exceed 90 days.

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- (r) Violation of correspondence regulations; confinement in disciplinary segregation for up to 15 days; loss of good time not to exceed 60 days.
- (s) Possession of another's property without written approval of shift supervisor, demanding, receiving or giving or bartering of property belonging to others; confinement in disciplinary segregation for up to 15 days; loss of good time not to exceed 90 days.
- (t) Loaning of property or items of value for profit or increased return; confinement in disciplinary segregation for up to 15 days; loss of good time not to exceed 60 days.
- (u) Extortion, blackmail, or demanding or receiving money or anything of value in return for protection from the individual or others to avoid bodily harm, or under threat of informing; confinement in disciplinary segregation not to exceed 25 days; loss of good time not to exceed 90 days.
- (v) Fighting with another person, without weapons, not causing injury requiring medical treatment; confinement in disciplinary segregation for up to 30 days; loss of good time not to exceed 180 days.
- (w) Giving or offering any staff member or official anything of value, confinement in disciplinary segregation for up to 10 days; loss of good time not to exceed 30 days.

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- (x) Self-mutilation not caused by psychiatric or psychological problems; confinement in disciplinary segregation for up to 15 days; loss of good time not to exceed 60 days.
- (y) Attempt to commit a major misconduct offense as defined in this Policy Statement (this must include an overt act in furtherance of said attempt); confinement in disciplinary segregation for up to 25 days; loss of good time not to exceed 90 days.

7. MINOR REPORTS AND SANCTIONS: Minor reports are reports of violations in which none of the criteria listed in Major Offenses and Sanctions (category B) are present or which were reduced from major reports.

The following prohibitive acts are minor reports:

- (a) Smoking where prohibited.
- (b) Using any machinery or equipment contrary to instructions or posted safety standards.
- (c) Improper or unauthorized use of equipment or machinery.
- (d) Failure to follow safety/sanitation regulations.
- (e) Failure to perform work as properly instructed by a staff member.
- (f) Intentional unexcused absence from work or school assignment.

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- (g) Mutilating or altering clothing.
- (h) Possession of gambling paraphernalia.
- (i) Willfully failing to keep one's person, living area or work station in accordance with written, official institutional standards.
- (j) Tattooing.

Disciplinary authority for minor report disposition is delegated to the Disciplinary Officer. When the Disciplinary Officer receives a report of inmate misconduct, and following review and hearing within seven working days, he has the authority to impose minor sanctions. His decision is subject to review by the institutional superintendent who may approve, reduce or modify, refer for further investigation or dismiss. The superintendent may refer the case to the Disciplinary Officer where there is new evidence of a violation of institutional policy, or the sanction is inappropriate. The sanctions for a minor report can only consist of: dismissal of the charges; reprimand and warning; extra duty not to exceed one hour per day for no more than 30 days; confiscation; restitution; apology; restriction from social activities, e.g., movies and similar social entertainment not to exceed 30 days.

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8. MISCONDUCT REPORTS: Informal resolution of minor incidents is encouraged, however, when any employee witnesses a serious violation of institutional rules or regulations, or has reasonable belief that a serious violation has occurred, the employee has a responsibility to prepare a misconduct report.

The initial misconduct report shall contain the date and time of the violation, the date and time the report was written and the date and time the report was submitted to the shift supervisor for review. The report shall include the specific rules violated; a formal statement of the charge; any unusual inmate behavior; any staff or inmate witnesses; disposition of any physical evidence; any immediate action taken, including the use of force; and the reporting officer's signature.

Following the initial investigation by the reporting employee, the misconduct report must be submitted for supervisory review and a copy given to the inmate within 24 hours (or one regular working day) from the date of the incident, or when it was reported to the reporting officer. Where additional investigation is required by the reporting employee, written approval can be obtained from the warden. The written approval must be obtained in advance of the filing of the report and attached to the report. The warden

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may grant up to a 48 hour (or two working days) extension for good cause shown, i.e., where there is a showing of extenuating circumstances such as the perpetrator is not identified; co-conspirators are unidentified; there is a criminal investigation controlled by other agencies; or in which the inmate requests a delay in order to protect his right to remain silent); or there is a work stoppage or mass action. In all cases, however, the report will be provided to the inmate within 24 hours from the date of the incident or when made known to the reporting officer. A dismissal will be entered in the case where these time requirements are not met and extensions are not granted.

However, in the event of a continuing emergency, such as a riot, which prevents notice and hearing as required, said notice and hearing will be provided as soon as is practical.

Whenever an incident and/or inmate poses an immediate threat to employees, inmates or the security of the institution, the shift supervisor and/or other appropriate supervisor must be notified immediately by the reporting employee so that prompt, appropriate steps may be taken to control the situation.

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An inmate may not be placed in disciplinary segregation prior to a hearing. However, if the inmate poses a substantial threat to the security of the institution, other inmates, or staff, he may be housed pending a disciplinary hearing as if he were classified as maximum security. When such circumstances are found to exist, the officer placing the inmate(s) in prehearing detention will document the reasons and submit them with his report to the supervisor. The shift supervisor will immediately review the report and the circumstances surrounding the incident and determine whether such confinement is necessary. On the next working day, the Disciplinary Officer will review the need for continued maximum security housing pending a disciplinary hearing. The review will be based on the criteria outlined in this Policy Statement.

9. SUPERVISORY REVIEW: The shift supervisor must conduct an independent review of all misconduct reports within 24 hours (or one working day) after reviewing the report from the reporting officer. Upon receiving the report, the reviewing supervisor must record the date and time the review was begun and completed.

The supervisory review may be delegated to a lieutenant, subject to the shift or area supervisor's approval, but no portion of the

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review may be conducted by the reporting employee or a non-supervisory employee. The reviewing employee or a non-supervisory employee may consult with any persons during his review, except the chairman and/or members of the Disciplinary Committee.

During the review, the supervisor must inform the inmate that he has the right to remain silent, and if criminal charges appear likely to be filed, the inmate will be given the Miranda Warnings. The reviewing supervisor must file the report with the Disciplinary Officer within eight hours after receiving the report from the reporting officer.

10. DISCIPLINARY OFFICER: Within two working days or 48 hours after receiving the misconduct report from the reviewing supervisor, the Disciplinary Officer will investigate the report, question all known witnesses, collect evidence, documents and statements, and will prepare a report of his findings and recommendation for submission to the institution superintendent.

All misconduct reports and actions shall be carefully reviewed by the Disciplinary Officer and if it meets the criteria of a major report, the inmate will be instructed to appear before the Disciplinary Committee at the next scheduled meeting. The inmate

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will receive a copy of the report and the action, and the grounds for his finding the report to be a major report. The entire report will be forwarded to the Central Records Office.

In the case of a minor report, the Disciplinary Officer will conduct a hearing within seven days of the incident or the reporting of the incident. The inmate may request that witnesses be examined, statements taken, may present his own statements and any relevant evidence. A written decision with findings will be provided to the inmate. When an inmate is found not to have committed the alleged offense, the disciplinary report will be removed from all files on the inmate. All such removed disciplinary reports will be maintained in a separate file for litigative or other non-institutional purposes only, but such reports will not be made available to or utilized by PNM staff or the Parole Board, except at the request of the inmate. All disciplinary reports, regardless of disposition, may be kept and used for statistical or research purposes providing all identification is removed. A dismissal will be entered in a case where the time limitations are not met or extensions are not granted unless a continuing emergency precludes normal time limits from being followed.

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11. MAJOR REPORT DISPOSITION: Disciplinary authority for the disposition of major misconduct reports is delegated only to the Disciplinary Committee. The committee shall consist of the following: staff member appointed by the institutional superintendent (chairman); institutional or Department employee (as assigned); casemanager or other Department employee (as assigned). Any other Department employee may be called by the committee as a resource to provide information or counsel. No employee may sit as a member of the committee if he had any role in the case being referred to the committee or if he or she reported or investigated the case before the committee, or if he or she was a witness to any alleged actions leading to the charge.

The committee will conduct hearings, make findings and impose appropriate sanctions for inmates found guilty of major misconduct. This committee may also reduce the report to a minor misconduct report and impose appropriate sanctions. However, only the Disciplinary Committee can, as a result of a major misconduct report, order that an inmate be placed in disciplinary segregation, recommend to the Classification Committee that an inmate's program assignment be modified, that the inmate be

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transferred from one institution to another, or recommend to the classification committee that an inmate's MGT or SGT be withheld or forfeited in accordance with PNM's Good Time Policy.

12. DISCIPLINARY COMMITTEE PROCEDURES: The Disciplinary Committee will conduct its proceedings according to the following guidelines:

- (a) The Disciplinary Committee will meet each Monday, Wednesday, and Friday and at other times as designated by the chairman and will prepare a record or written summary of its proceedings.
- (b) A record or written summary of the entire proceedings will be maintained by the institution and shall clearly document that the inmate was advised of his rights, including the appeal procedure. A tape recording will be made of the hearing. Excluded will be any reference to confidential sources that include identifying facts. The committee's findings will document the specific evidence relied upon and the reasons for the action taken should be specifically described, unless doing so would jeopardize institutional security.
- (c) An inmate will be given advance written notice of the charge(s) against him by the shift supervisor or Disciplinary Officer not less than 24 hours before his appearance before the Disciplinary Committee. Inmates will receive a hearing within seven regular working days from the time they receive

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notice of the charges, the time the incident was reported, or the time the incident occurred, unless they make a written request for a continuance. A continuance may be granted by the Disciplinary Committee to either the inmate or the institution in order to prepare their case or where additional evidence is necessary.

- (d) The inmate may request the assistance of another inmate or staff member to assist in the preparation and/or presentation of his case. Inmates are not entitled to be represented by legal counsel at hearings before the Disciplinary Committee. If the inmate being charged cannot read and write English adequately to comprehend and defend the charge, assistance will be provided by a person capable of communicating with the inmate and the Disciplinary Committee. If an employee declines a request to represent an inmate, the inmate may select alternates. Employee representation may not include members of the Disciplinary Committee. The employee or inmate representative will be given a reasonable amount of time to consult with the inmate and investigate the incident prior to proceeding with the hearing.

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(e) The inmate charged will be present throughout the hearing except during deliberations or when in the opinion of the committee the presence of the inmate would jeopardize the physical safety of staff or inmates or his disruptive behavior during the hearing prevents the hearing from proceeding in an orderly fashion. When the inmate is excluded, the reasons for this action will be stated on the record. A summary of the evidence introduced in his absence, excluding any reference to confidential sources, will be provided.

(f) An inmate will be permitted to make his own statement, to call witnesses and to present documents in his behalf, providing the calling of witnesses and/or the disclosure of documentary evidence does not jeopardize the physical safety of staff and inmates. The committee chairman will also call those witnesses he deems necessary and reasonably available and may exclude witnesses whose testimony is irrelevant or cumulative. The chairman will state these reasons for the record. Inmate witnesses may be questioned by the members of the committee and/or the inmate or his representative.

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- (g) At the conclusion of the hearing, the committee chairman will provide the inmate with an oral summary of the charges, evidence and testimony which have been presented. Information which would jeopardize the security of the institution will be excluded from this summary. Where information obtained from a confidential, reliable informant is used, the committee will evaluate the reliability of the informant and state on the record their grounds for finding the informant reliable. The reliability of the informant shall be based on: the informant having provided reliable information in the past, the information being offered is based on first hand observations, or there is corroboration either from another source or through physical evidence showing the reliability of the informant's information. No inmate shall be found to have committed the offense solely on the testimony of a confidential informant. A summary of evidence so obtained, excluding identifying information, will also be given orally to the inmate.
- (h) The chairman will provide a written summary of the evidence, including documents, statements, physical evidence which were used as a basis for filing the misconduct report and all the evidence on which the committee based its decision and reasons for the action taken. The decision will be based

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only on the evidence presented at the hearing. Decisions will be based on a preponderance of the evidence. A copy of this report will be given to the inmate within five days of the committee's decision. The appeal forms will be attached to the written summary provided to the inmate. Inmates will be allowed to obtain assistance in preparation of these forms.

- (i) A hearing may be conducted in the absence of the inmate charged when the inmate refuses to appear and cannot be brought to the hearing without the use of force. In such cases, the refusal must be obtained in the presence of two officers, who will submit written reports attesting to the refusal to the Disciplinary Committee.
- (j) When an inmate escapes from custody, the Disciplinary Committee may conduct a hearing in the inmate's absence. When the inmate is returned to the institution, he may request another hearing before the committee on the escape charge if sanctions such as loss of Good Time were imposed at the initial hearing. Following the rehearing, the committee may dismiss the charges, or modify the disposition, but may not increase the sanctions imposed at the initial hearing.

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14. DISCIPLINARY COMMITTEE DISPOSITION: The committee may take any or a combination of the following actions:
- (a) Dismiss any charge.
 - (b) Impose any sanctions appropriate to a minor report, where the committee has reduced the report accordingly.
 - (c) Direct that an inmate be placed or be retained in disciplinary segregation unit for a specified period up to the allowable maximum period.
 - (d) The Disciplinary Committee may recommend that an inmate be reviewed after his term in disciplinary segregation for classification into maximum security status.
 - (e) Recommend to the Classification Committee that a specified amount of Meritorious and/or Statutory Good Time be forfeited.
 - (f) Suspend visiting privileges with the visitor involved in the incident when the violation involves these privileges, not to exceed 30 days.
 - (g) suspend the allowable punishments.
15. FINAL APPROVAL OF DISCIPLINARY ACTIONS: Actions taken by the Disciplinary Committee must be approved by a majority of the committee and forwarded to the superintendent for review. Decisions will be based on a preponderance of the evidence. The

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chairman of the committee will inform the inmate, at the conclusion of the hearing, that the action is subject to review and revision by the institution superintendent. The inmate will also be informed that the institution superintendent may approve, reduce or modify the decision, reverse the decision and order a new hearing within 72 hours, or three regular working days, from the date of the initial hearing if the warden reasonably determines that the decision was not based on substantial evidence or was based on incomplete information or there is newly discovered exculpatory evidence which was not available to the committee at the time of the hearing. When an inmate is found not guilty, the disciplinary report will be removed from all files on the inmate. All such removed disciplinary reports will be maintained in a separate file for litigative or other non-institutional purposes only, but such reports will not be made available to or utilized by PNM staff or the Parole Board, except at the request of the inmate. All disciplinary reports, regardless of disposition, may be kept and used for statistical or research purposes providing all identification is removed.

16. APPEALS FROM DISCIPLINARY ACTIONS: At the time the Disciplinary Committee gives an inmate notice of the decision, the committee will advise the inmate of his right to appeal the

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decision to the Secretary of the Department of Corrections and Criminal Rehabilitation (hereinafter secretary).¹ The inmate will give signature verification of this advisement, and if he waives the right to appeal, he will sign an appropriate statement to that effect. Within five days the committee will provide the inmate with the written summary, including findings of fact, referred to in 12(h). A copy will also be submitted to the superintendent for his approval at this time.

- (a) Any inmate who feels he has received an unjust decision from the Disciplinary Committee may appeal to the Secretary for final adjudication of the matter.
- (b) The inmate will have 10 working days from the day he receives the written findings to outline, in writing, the basis for the appeal and the names of any witnesses required to substantiate the appeal contention(s). Failure to submit written notice of appeal within the deadline will indicate that no appeal has been requested. Inmates housed in segregation will submit required forms to the casemanager within the 10 day time period, who will refer them to the chairman of the Disciplinary Committee.

¹ The Secretary may delegate to the Corrections Commission the authority to consider inmate appeals. The Secretary retains the final authority, however, to decide inmate appeals.

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- (c) After the inmate has submitted the completed appeal form, the misconduct report, record of disciplinary action and all related statements or documents will then be forwarded to the Corrections Commission Hearing Officer for review within five working days by the institutional superintendent.
- (d) Upon receipt of the appeal materials, the Hearing Officer will determine whether the appeal should be considered on-the-record or de novo. In reviewing the appeal, the Hearing Officer will consider the following factors:
 - 1) Compliance with disciplinary policies.
 - 2) Was the decision of the Disciplinary Committee based on substantial evidence and facts?
 - 3) Was the disciplinary sanction proportionate to the offense?
 - 4) New evidence or witnesses.
- (e) The burden of proof is on the inmate to prove the contentions stated in his notice of appeal. Appeals based on frivolous contentions (i.e., without a rational claim or basis in fact or policy) will be heard only on-the-record.
- (f) If an appeal is to be considered on-the-record, the Hearing Officer will review the record and make a recommendation as to the disposition of the appeal to the Secretary.

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(g) If an appeal is to be considered de novo, the Hearing Officer will set a date for the hearing. The witnesses for the inmate, and the institution, will be notified of the date, time and place of the hearing. Witnesses will be provided with notice at least seven days prior to the hearing.

17. APPEAL HEARING PROCEDURES: At a de novo hearing, the witnesses for the institution will appear before the Hearing Officer, will be sworn in, and will be responsible for the presentation of all relevant testimony, information, statements, documents and evidence necessary to support the original decision of the Disciplinary Committee. If new or additional information or evidence in the case is acquired after the appeal hearing, the witnesses are responsible for submitting the information to the Hearing Officer. If witnesses for the institution do not appear at the hearing, the Hearing Officer, at his discretion, may recommend the report be dismissed. At least seven days' notice will be provided to witnesses. After the witnesses for the institution have testified, the inmate will appear before the Hearing Officer. The Hearing Officer will summarize the case and inform the inmate of the evidence presented. The inmate will then be sworn in and present his basis for the appeal, and introduce affidavits or documents and any other information relevant to his

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case. Inmates will not be represented by attorneys, but inmates may request witnesses from the staff or prison population to appear on their behalf, providing the calling of witnesses and/or the disclosure of the documentary evidence does not jeopardize the physical safety of staff or inmates. Witness testimony of an irrelevant or repetitious nature may be refused by the Hearing Officer at his discretion. Reasons for the exclusion of such witnesses or testimony will be stated on the record. Employee witnesses for the institution will not be interrogated or cross-examined by the appealing inmate and/or in the presence of the appealing inmate. A tape recording will be made of the appeal hearing.

The Hearing Officer will not reinvestigate the case, but may request additional information or documents be submitted by witnesses for the institution or by the witnesses for the inmate within reasonable time limits after the appeal hearing.

The Hearing Officer will inform the inmate of the date that the Corrections Commission is expected to take action on the appeal, and the approximate date that the inmate should expect to be notified of that action. The Hearing Officer will prepare a

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narrative summary of the case, findings of fact, and conclusions and recommendations and forward same to the Secretary.

The Hearing Officer's report and recommendation(s) will be presented to the Secretary for review. The Secretary may accept, reject, modify, or refer for further investigation, the recommendations of the Hearing Officer. The Secretary or his designee will notify the appellant in writing of the decision within five (5) regular working days of the decision. The decision of the Secretary is final.

18. EFFECTIVE DATE. The provisions of this Policy Statement apply to offenses committed after implementation of the Policy Statement, which implementation date may be determined by court order. The Corrections Department may provide explanatory language to staff and inmates to make the language of this policy statement more readily understandable so long as the explanation is consistent with the language of this policy statement.