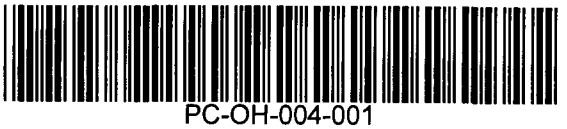
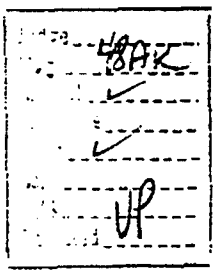


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JUAN DUNN, et al.,	:	
	:	
Plaintiffs,	:	CASE NO. C1-93-0166
	:	
vs.	:	JUDGE SPIEGEL
	:	
GEORGE V. VOINOVICH, et al.,	:	MAGISTRATE JUDGE STEINBERG
	:	
Defendants.	:	



CONSENT DECREE

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I. INTRODUCTION

a) This is a class action brought under 42 U.S.C. §1983 seeking declaratory and injunctive relief.

b) The Plaintiff class challenges the constitutional adequacy of the delivery of mental health services to seriously mentally ill adult inmates in the actual physical custody and control of the Department of Rehabilitation and Correction ("DRC").

c) This Court has jurisdiction over this class action pursuant to 28 U.S.C. §§1331 and 1343(a)(3).

d) On June 7, 1995, this Court certified this action as a class action under Rule 23(b)(2), Federal Rules of Civil Procedure.

II. PARTIES

a) The representative inmate Plaintiffs are Juan Dunn, Jeffrey D. Hartwell, Marco Henderson, Donald J. Hall, Eugene T. Lemmons, Donald M. Glenn, Lewis Williams, Jr., Jose H. Machin and Thomas Ruffing.

b) The Defendants named in Plaintiffs' amended complaint filed on October 6, 1993 are: George Voinovich, Governor of the State of Ohio; Reginald Wilkinson, Director of the Department of Rehabilitation and Correction; the Department of Rehabilitation and Correction; Michael F. Hogan, Director of the Department of Mental Health; and the Department of Mental Health.

c) By agreement of the parties, the Department of Rehabilitation and Correction, Director Michael F. Hogan, and the Department of Mental Health are dismissed as party defendants in this action.

III. GENERAL PROVISIONS

a) This Consent Decree resolves all issues between Plaintiff class and the Defendants, including the Defendants dismissed in Section IIc of this Consent Decree, arising out of the claims for declaratory and injunctive relief set forth in Plaintiffs' amended complaint.

b) The terms of this Consent Decree shall be applicable to and binding upon the Plaintiff class and the Defendants in their official capacities, and their officers, agents, employees, assigns and successors.

c) By entering into this Consent Decree, the Defendants, including the Defendants dismissed in Section IIc of this Consent Decree, do not admit to any liability regarding the allegations asserted in this action. Moreover, this Consent Decree may not be used as evidence of liability in any other legal proceeding.

IV. SCOPE OF THE CONSENT DECREE

a) This Consent Decree applies to adult male inmates in Ohio who are in the actual physical custody and control of DRC within the following facilities: Allen Correctional Institution, Lima; Belmont Correctional Institution, St. Clairsville; Chillicothe Correctional Institution, Chillicothe; Corrections Medical Center,

Columbus; Correctional Reception Center, Orient; Dayton Correctional Institution, Dayton; Grafton Correctional Institution, Grafton; Hocking Correctional Facility, Nelsonville; Lebanon Correctional Institution, Lebanon; Lima Correctional Institution, Lima; London Correctional Institution, London; Lorain Correctional Institution, Grafton; Madison Correctional Institution, London; Mansfield Correctional Institution, Mansfield; Marion Correctional Institution, Marion; Montgomery Education & Pre-Release Center, Dayton; North Central Correctional Institution, Marion; Oakwood Correctional Facility, Lima; Orient Correctional Institution, Orient; Pickaway Correctional Institution, Orient; Ross Correctional Institution, Chillicothe; Southeastern Correctional Institution, Lancaster; Southern Ohio Correctional Facility, Lucasville; Trumbull Correctional Institution, Leavittsburg; and the Warren Correctional Institution, Lebanon.

Adult women inmates in Ohio who are in the actual physical custody and control of DRC within the Franklin Pre-Release Center, Columbus; Northeast Pre-Release Center, Cleveland; and the Ohio Reformatory for Women, Marysville.

This Consent Decree applies to all of the above facilities as well as any new facilities which perform the same functions and which become operational and confine inmates during the life of this Consent Decree.

b) Mental health services as defined and described throughout this Consent Decree are those services which are to be provided to those inmates in the actual physical custody and control of DRC during the time that they may experience "serious mental illness" as defined in Section VIIIa, *infra*.

V. INTERPRETATION OF THE CONSENT DECREE

a) It is the intent of the parties that this Consent Decree be interpreted in a manner consistent with the August 1994 document prepared for Dr. Michael Hogan, Director, Department of Mental Health ("DMH") and Reginald A. Wilkinson, Director, DRC and referred to as the Expert Team's "Final Report: Mental Health Care in the Ohio Department of Rehabilitation and Corrections," (hereinafter referred to as either the Expert Team's "Final Report" or the "Final Report").

b) Since both parties have participated in the drafting of this Consent Decree, the rule that a document is interpreted against the party who drafts the document shall not apply.

VI. TIME FRAMES

a) Wherever the Defendants have agreed to adopt policy and procedure in this Consent Decree, the time frame for the submission of such policy and procedure to counsel for the Plaintiffs and the monitor shall not exceed six (6) months from the date of entry of this Consent Decree.

b) The time frames for matters relating to the addition or reassignment of staff for matters relating to bed/treatment space

and medical records are dealt with separately in the various paragraphs of this Consent Decree and are not subject to Section VIa.

c) Whenever a specific time for the achievement of a particular goal is not specified herein, then the time to undertake or achieve that particular goal shall be a "reasonable time" as interpreted initially by the monitor.

d) Any dispute which may arise under this section shall be resolved in accordance with Section XXIX governing Dispute Resolution.

VII. POLICY AND OBJECTIVES OF THE CONSENT DECREE

a) This Consent Decree is intended to resolve the declaratory and injunctive claims of the Plaintiff .class by providing for a comprehensive system of constitutionally mandated mental health care for those male and female inmates described in Section IV.

b) The objectives in providing such mandated mental health care are:

i) to reduce the disabling effects of serious mental illness and enhance the inmate's ability to function within the prison environment;

ii) to reduce or, when possible, eliminate the needless extremes of human suffering caused by serious mental illness; and

iii) to maximize the safety of the prison environment for staff, inmates, volunteers, visitors, and any other persons lawfully on prison premises.

c) Mandated mental health services shall be provided to inmates in the least restrictive available environment and by the least intrusive measures available consistent with the professional judgment of the appropriate mental health professionals and the security of the institution.

d) Mental health services shall be provided within the framework of a community mental health model. The allocation of mental health staff; the designation and allocation of various mental health services, including bed space devoted to psychiatric care; and, the staff and space needed to support such services will initially be distributed, and subsequently adjusted, to allow for the most economical, efficient and appropriate delivery of mental health services.

e) Pursuant to the community mental health model described above, inmates with serious mental illness will be distributed relatively evenly throughout the DRC system as encompassed by this Consent Decree and in accordance with the professional judgment of the appropriate staff.

f) Inmates with serious mental illness shall not be barred from participation in available prison programs solely because of their illness. Reasonable accommodation shall be made as necessary to achieve this end.

g) Mandated mental health services shall be adjusted upward or downward as the prison population of Ohio may increase or decrease.

h) Counsel for Plaintiffs shall be afforded the opportunity to review and comment upon all matters in this Consent Decree which require either the development of policy and procedure or the implementation of matters specified herein. To that end, the Defendants agree to provide counsel with the appropriate material sufficiently in advance of the various target dates established here to allow for study and comment but in no event less than thirty days before a specific target date.

i) In the development of the various policies and procedures agreed upon herein, the Defendants agree to articulate objectives that are as precise as the subject allows and which are subsequently susceptible to empirical validation.

j) This Consent Decree shall be implemented in light of the principles expressed in "An Outline for a Systems Approach to Holistic Behavioral Health Care for Offenders," an undated document reproduced in its entirety at Appendix G, Vol. II of the Expert Team's "Final Report."

VIII. DEFINITIONS

a) Serious mental illness means a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality or cope with the ordinary demands of life within the prison environment and is manifested by substantial pain or disability. Serious mental illness requires a mental health diagnosis, prognosis and treatment, as appropriate, by mental health staff.

It is expressly understood that this definition does not include inmates who are substance abusers, substance dependent, including alcoholics and narcotic addicts, or persons convicted of any sex offense, who are not otherwise diagnosed as seriously mentally ill.

b) *Initial Mental Health Screening:* A part of the normal reception and classification process, utilizing standard forms and procedures and designed broadly to identify those incoming inmates who may need further evaluation which, in turn, may lead to mental health services.

c) *Mental Health Evaluation:* A clinical assessment by a qualified mental health professional performed on those inmates who are referred from the initial intake screening or by various processes and individuals at any time thereafter. An evaluation is a more intensive and detailed procedure than intake screening.

d) *Crisis Intervention Services:* Timely and adequate response to any mental health emergency with access to the full range of mental health services, including psychotropic medication, available within the prison system.

e) *Crisis Beds:* Beds that are available within the prison for short-term, aggressive mental health intervention designed to reduce the acute, presenting symptoms and stabilize the inmate prior to transfer to a more or less intensive care setting.

f) *Residential Treatment Unit ("RTU"):* A housing unit within the prison for inmates with mental illness who do not then need inpatient treatment but who do require the therapeutic milieu

and the full range of services and variable security available in the RTU.

g) *Outpatient Mental Health Services*: The provision of appropriate mental health care and supportive services for those inmates with mental illness who are able to be housed and function in the general prison population.

h) *Inpatient Services*: Intensive, inpatient hospitalization during the period of an inmate's acute psychosis and designed to return the inmate to a less intensive treatment environment at the earliest, clinically appropriate time.

i) *Mental Health Professional*: Those persons who by virtue of their training and experience are qualified to provide mental health care within the provisions of the state's licensure laws.

j) *Control Unit*: A special housing area within a prison with inmates placed there for disciplinary or administrative reasons.

IX. INITIAL (INTAKE) MENTAL HEALTH SERVICES

a) All inmates entering the Ohio DRC shall be the recipients of mental health screening upon admission to the prison system and within the shortest possible time. Absent an emergency which may dictate acting sooner, twenty four (24) hours after admission shall be considered the norm for the completion of such screening.

b) Such screening shall be performed by a staff member trained in screening and may include correctional officers, nurses, and mental health professionals.

c) Mental health screening shall be accomplished by the use of a standardized form which shall be completed for all inmates who enter the prison system.

d) The screening process shall maintain a low threshold for follow-up evaluation and should include review of pertinent records which accompany the inmate as well as questions designed to identify prior mental health treatment; suicidal tendencies; the signs of serious mental illness, including unusual, observable behavior; and severe thought disorganization.

e) Written policy and procedures shall provide for prompt referral for a mental health evaluation as appropriate.

f) The Defendants shall develop appropriate screening forms and procedures; conduct training for those who perform such screening; and develop criteria designed to achieve consistency in the evaluation of the screening information and the occasions when mental health evaluations are appropriate.

X. MENTAL HEALTH EVALUATIONS

a) Mental health evaluations, or an appropriate alternative response, shall be provided in a timely fashion as dictated by the nature of the referral. In cases of emergency, provision shall be made for prompt evaluation upon receipt of the referral.

Referral may be made by:

i) staff involved in the initial mental health screening;

ii) security staff;

iii) mental health staff;

iv) self-referral; or

v) any other credible source.

b) The results of a mental health evaluation shall be recorded in writing and included as part of the mental health record.

c) Mental health evaluations or consultations shall be performed by appropriate mental health professionals.

XI. MENTAL HEALTH SERVICES ORIENTATION

Information regarding access to mental health care shall be incorporated as part of every inmate's initial reception and orientation to the DRC institutions encompassed by this Consent Decree. The basic objective of such orientation is to convey by the most effective oral and written means a description of the available mental health services and how an inmate may obtain access to such services.

The Defendants will develop and implement written policy and procedure concerning such orientation. Such policy and procedure also will encompass staff training, the utilization of written material and oral communications, and any special issues of communication relating to any relevant disabilities possessed by inmates.

XII. SINGLE PROVIDER

Having decided that it is fiscally and administratively appropriate to do so, the Directors of DMH and DRC have decided that the care and treatment of seriously mentally ill persons

encompassed by this Consent Decree shall be under the exclusive direction and control of the Ohio DRC. DRC will prepare and submit to the Ohio legislature proposed legislation to achieve implementation of such single provider system. DRC may enter into any arrangements it deems desirable on such matters as contracting for services encompassed by this Consent Decree; reconfiguring administrative positions; agreeing to the adoption of standards for mental health services and subsequent monitoring by another state agency or agencies, such monitoring to be in addition to the outside monitoring specifically provided for herein at Section XXVIII, *infra*; or any other matters related to the services encompassed by this Consent Decree.

XIII. ADDITIONAL MENTAL HEALTH STAFF

a) In order to provide constitutionally mandated mental health services, and subject to the terms and conditions which follow, the Defendants agree to hire and place in service such additional mental health staff as is required to reach a total of 246.5 FTE mental health staff based on a total DRC prison population of 40,253 inmates.

These positions shall be allocated solely to the provision of the mental health services mandated by this Consent Decree.

b) In addition to the 9.35 FTE psychiatrists presently employed by DRC and DMH providing mental health services to the seriously mentally ill, the Defendants agree to hire an additional 16.15 FTE psychiatrists as part of the overall total for new mental

health positions. The remaining number of mental health professionals and activity therapists shall be hired and placed in service in such proportion as is dictated by the professional judgment of the appropriate DRC officials and subject to review by the monitor.

The Defendants agree to be guided by the staffing proposals offered in the "Final Report" of August 1994 and by the "Policy and Objectives" set out in Section VII of this Consent Decree. However, it is imperative that the Defendants be able to maintain flexibility on the details of the allocation of staff at the outset of compliance and thereafter in light of the inevitability of changing circumstances.

c) The Defendants hereby undertake to hire and place the agreed upon mental health staff not later than three (3) years from the date of entry of this Consent Decree. The Defendants agree also that within six (6) months of the entry of this Consent Decree they will specify in writing annual targets for the hiring and placement of said staff with such targets submitted to the monitor and Plaintiffs' counsel for initial review. Thereafter, the Defendants will submit quarterly reports on such hiring and placement as it relates to the achievement of the yearly targets.

The monitor shall review the Defendants' efforts to hire and place the agreed upon staff. And where a target may not have been met, the monitor will review the reasons therefor and work with the parties on techniques by which to achieve the annual and overall three (3) year targets.

In the event that the Defendants have acted in good faith to achieve compliance with said staffing targets but have not achieved a target then, after notice to counsel for Plaintiffs, any necessary time extensions shall be negotiated by the parties after notice to the monitor.

All such extensions shall require the written agreement of counsel for Plaintiffs.

The above provision is in addition to any mechanisms for dispute resolution as set out in Section XXIX, *infra*.

XIV. BED/TREATMENT SPACE FOR SERIOUSLY MENTALLY ILL INMATES

a) The Defendants agree to provide not less than 120 inpatient hospital beds for male inmates and 11 inpatient hospital beds for female inmates based on an overall prison population of 40,253 inmates.

b) The Defendants agree to provide 710 residential beds in addition to the above hospital beds, to be allocated among crisis beds and RTUs in accordance with the "Policy and Objectives" described in Section VII, herein, and the study described, *infra* at c.

c) In order to determine precisely what bed space for mental health services is available, may be available through renovation, or made available through new construction, the Defendants hereby agree to undertake a study of these issues and report thereon to the monitor and Plaintiffs' counsel on or before September 30, 1995.

This detailed study will be conducted by a multi-disciplinary team appointed by the Director of DRC or his designee and shall include persons with expertise in mental health and security. Plaintiffs' counsel will be invited to provide input into this study.

The study shall address the following issues and such other relevant issues as the multi-disciplinary team deems appropriate:

i) the residential space required for crisis beds and RTUs.

ii) the space required for individual and group activities, dayrooms, programs related to mental health treatment, and the required office space and equipment needed for staff.

iii) the distribution, and the timing thereof, of such space following the principles set out in Section VII, "Policy and Objectives" herein and the general approach recommended by the Expert Team in their "Final Report."

iv) a detailed plan on precisely where such space is or may be located and whether such space may be available by renovation, construction, modular units, or in any other fashion.

v) a detailed plan which addresses target dates for the implementation of all bed/treatment space which is the subject of the agreement and study referred to in this paragraph.

XV. ADJUSTMENTS TO MENTAL HEALTH STAFFING AND SPACE ALLOCATED FOR MENTAL HEALTH SERVICES

a) Where specific agreements have been reached herein concerning additional staffing and bed/treatment space, the parties have utilized 40,253 as the base figure for the overall inmate population. The parties agree that wherever the Defendants have agreed to conduct studies and where prison population forms a basis for such studies, then the same number of inmates -- 40,253 -- shall be utilized as the base figure.

b) The parties agree that the number of staff, including mental health professionals, and the bed/treatment space devoted to mental health services for the seriously mentally ill, as encompassed by Sections XIII and XIV herein, shall be increased proportionately with certain increases in the inmate population and may be decreased proportionately on the same basis.

c) Within six (6) months of the entry of this Consent Decree, the parties shall agree upon a precise formula by which to operationalize the above noted adjustments.

XVI. MEDICATION

The Defendants shall establish procedures for the administration of medications which achieve the following objectives:

i) the timely administration or taking of the medication by the inmates;

ii) the regular charting of the efficacy of such medication;

iii) availability of sufficient and proper staff;

iv) blood tests are medically prescribed and blood samples taken in a timely fashion:

v) the timely performance of lab work; and

vi) inmates for whom psychotropic drugs are prescribed are provided with appropriate education and information about such drugs.

XVII. FORCED MEDICATION

The Defendants shall adopt a policy and procedure on the use of involuntary, psychotropic medication.

Said policy, and its implementing procedures, shall in all respects comply with *Washington v. Harper*, 494 U.S. 210 (1990) and within that constitutional framework:

i) assure that any such forced medication shall occur only within the context of an ongoing treatment regimen and in a treatment setting (defined as a hospital, RTU, or an infirmary with "crisis beds" for the seriously mentally ill);

ii) the medical record shall demonstrate the consideration and rejection of less intrusive alternatives along with the rationale for resorting to forced medication;

iii) include strict time limits on any judicial or administrative order permitting such forced medication; and

iv) in deciding to utilize forced medication it must be documented in the record that the gains anticipated from the medication outweigh any possible side effects.

XVIII. HOUSING ASSIGNMENTS

Cell assignments for seriously mentally ill inmates shall be based on the recommendations of the inmate's mental health treatment team unless appropriate security staff view such recommended housing as a serious threat to security.

In such a case, the security staff representative shall state in writing the factual basis for his or her opinion. The issue shall then be resolved by an interdisciplinary review team which includes both mental health and custody staff. When such review fails to resolve any such disagreement then final review of the decision shall be undertaken by the warden or the warden's designee and a decision rendered in writing within twenty four (24) hours of the filing of the security staff report noted above.

XIX. SUICIDE PREVENTION

a) The Defendants shall develop a written policy, defined procedures, and a program for identifying and responding to suicidal inmates. The program components shall include: identification, training, assessment, monitoring, housing, referral, communication, intervention, notification, reporting, and review.

b) The overall objectives of such policy and procedure shall be to minimize the risk of inmate suicides and to minimize the harm when suicide attempts occur. This will be accomplished through the dissemination of information, techniques, and procedures which will aid in the identification of potential suicides.

XX. PHYSICAL RESTRAINTS

a) The Defendants shall develop a written policy and procedure on the use of physical restraints in dealing with the seriously mentally ill which shall encompass a definition for immobilizing restraints; procedures for utilization thereof, including duration; who may authorize; required record keeping; criteria and procedure for release; areas authorized for use of such restraints; frequency of use; and staff responsibilities.

b) The written policy and procedure shall include as principles:

i) physical restraints shall never be used for the purpose of punishment;

ii) medical approval and monitoring shall be required after an initial and time-limited use of restraints; and

iii) detailed records shall be maintained.

XXI. CONTROL UNITS

a) Inmates with serious mental illness should not be placed in a control unit solely because of their illness unless there is no other setting immediately available and then only for the shortest period of time consistent with the need to protect the inmate from himself or herself, to protect others, or to prevent the destruction of property.

b) Inmates with serious mental illness may be placed in a control setting when such an inmate has been the subject of a Rules Infraction Board ("RIB") proceeding or found to be within the rules governing administrative and control status and placement (see Ohio

Administrative Code, Sec.s 5120-9-08, Disciplinary Control; 5120-9-11, Security Control; 5120-9-13, Administrative Control; and 5120-9-131, Local Control).

c) Regular on site mental health rounds shall be provided to all inmates in control units.

Policy and procedure for such mental health rounds shall be developed and, *inter alia*, shall identify (by profession) the mental health professionals who will provide the rounds; distinguish the function of rounds and treatment; the frequency of such rounds; and provide detailed reference to the emergency-type placement described in Section XXIa.

d) The hearing officer shall indicate whether or not an inmate charged with an RIB infraction currently is on a mental health caseload. This shall be done simply by checking a box on the appropriate form indicating "*currently on a mental health caseload.*"

e) When an inmate who may be seriously mentally ill is the subject of an RIB proceeding then the RIB chairman shall consult with the inmate's mental health treatment provider on the inmate's mental competency to proceed, and, in addition, must take the inmate's mental condition at the time of the infraction into account in determining the appropriate sanction.

f) The RIB chairman shall note in the inmate's disciplinary record any mental health consultation of the sort described in Section XXIe, noting the date, the time, and name of the mental health provider. The mental health provider will enter a summary

of the content of such consultation in the inmate's mental health file, including the date, the time, name of the RIB chairman and the opinion expressed concerning competency to proceed and the relationship, if any, between the inmate's mental condition and the conduct leading to the present charge or charges.

XXII. MEDICAL RECORDS

The Defendants agree to undertake a study of the feasibility of a computer system using desktop computers for centralized storage and access to inmates' health records. Any system of medical records, whether computerized or manual, shall move in the direction of standardized forms and a standardized chart order.

Said study shall also address the issue of the appropriate content of a medical record file. This study shall be completed by December 31, 1995 and implemented in accordance with stated target dates.

XXIII. CONFIDENTIALITY

a) DRC shall develop a policy on confidentiality which promotes the exchange of records and mental health information between persons providing mental health services to inmates encompassed by this Consent Decree.

b) Mental health personnel shall be required to report to correctional personnel when an inmate is identified as:

i) suicidal;

ii) homicidal;

iii) presenting a reasonably clear danger of injury to self or to others;

iv) presenting a reasonably clear risk of escape or the creation of internal disorder or riot;

v) receiving psychotropic medication;

vi) requiring movement to a special unit for observation, evaluation, or treatment of acute episodes; or

vii) requiring transfer to a treatment facility outside the prison.

Such information when disclosed to correctional personnel shall be used only in furtherance of the security of the institution or the treatment of the inmate and shall not otherwise be disclosed.

c) Mental health professionals who have a treatment/ counseling relationship with the inmate shall disclose the following to that inmate before proceeding: the professional's position and agency; the purpose of the meeting or interaction; and the uses to which information must or may be put. The mental health professional shall indicate a willingness to explain the potential risks associated with the inmate's disclosures.

XXIV. MENTAL HEALTH CLASSIFICATION POLICY

The existing DRC classification policy shall be modified to include standardized criteria and nomenclature by which to clarify the treatment and program needs of seriously mentally ill inmates. Such modification shall be made in the form of a modification of

the appropriate regulations or policy and procedure governing this area.

XXV. DISCHARGE FROM CASELOAD

No inmate shall be discharged from active caseload status solely because of any failure to comply with treatment. Inmates shall not be punished for non-compliance by removing them from the caseload. Inmates who remain in custody and are discharged from the active caseload shall be reassessed between seventy (70) to one hundred (100) days after discharge in order to determine whether any follow-up care is required. A written reassessment shall be entered into the inmate's mental health record.

The Defendants shall develop policy and procedure on discharge and implementation thereof.

XXVI. STAFF TRAINING

a) All correctional officers and mental health services personnel shall receive training and continuing education in programs regarding the recognition of mental and emotional disorders. Correctional officers whose assignment includes initial mental health screening or regular interaction with seriously mentally ill inmates, including but not limited to a RTU, shall receive more intensive training than other correctional officers. This training shall incorporate, but need not be limited to, the following areas:

i) the recognition of signs and symptoms of mental and emotional disorders most frequently found in the inmate population;

ii) the recognition of signs of chemical dependency and the symptoms of narcotic and alcohol withdrawal;

iii) the recognition of adverse reactions to psychotropic medication;

iv) the recognition of signs of developmental disability, particularly mental retardation;

v) types of potential mental health emergencies, and how to approach inmates to intervene in these crises;

vi) identification and referral of medical problems of inmates receiving mental health care;

vii) suicide prevention; and

viii) the appropriate channels for the immediate referral of an inmate to mental health services for further evaluation, and the procedures governing such referrals.

b) There shall be a written plan developed by DRC for the orientation, continuing education, and training of all mental health services staff. In-service training shall include regular individual supervision of staff and continuing education for part-time staff.

c) Within six (6) months of the entry of this Consent Decree, and in collaboration with the monitor, the Defendants shall develop, then implement, mechanisms by which to assess the effectiveness of staff training.

All staff training programs shall include a statement of objectives which, in turn, will serve as the criteria by which to assess the effectiveness of the training for each individual.

The parties recognize that there is no single, preferred method by which to assess the effectiveness of training and that various methods may well be utilized to achieve the overall desired outcome of knowing whether or not specified training makes a difference in the trainee's knowledge base and job performance.

XXVII. TRANSFER OF SERIOUSLY MENTALLY ILL INMATES FROM PRISON-TO-PRISON

When a seriously mentally ill inmate who is receiving regular mental health services is to be transferred from one prison to another then the sending institution, using the most expeditious means available, shall notify the receiving institution of such pending transfer. The Defendants agree to develop and implement policy and procedure designed to assure that the appropriate health records at the sending institution shall accompany the inmate so transferred in order to inform the mental health staff of the transferee's current mental health diagnosis; treatment plan; medication needs; and any other similar matters to assure the prompt and continuous delivery of mental health care.

XXVIII. MONITORING

a) Professor Fred Cohen, L.L.B., L.L.M., of the School of Criminal Justice, The University at Albany, Albany, New York, is hereby appointed as overall monitor of the provisions of this Consent Decree.

Professor Cohen may retain such appropriate staff, with the approval of the Defendants, including clinical and administrative experts, as is necessary to conduct the requisite

monitoring. The Defendants agree to pay for all agreed upon costs associated with said monitoring.

The monitor agrees to submit to counsel for both parties the curriculum vitae of any proposed clinical and administrative experts and to seek their advice and consultation prior to their retention. The names and tasks proposed for the initial team of experts will be distributed prior to the actual entry of this Consent Decree.

Should the Defendants during the life of this Consent Decree deny to the monitor any request of his relating either to the budget or staff required for the monitoring, the Defendants shall notify the Plaintiffs' counsel in writing of such denial and provide a brief explanation of the reason for the denial.

b) The monitor and any experts or other staff, full- or part-time, who are retained hereunder in connection with the monitoring function shall contract for their services directly with DRC and shall in all relevant respects be governed by existing DRC rules and regulations regarding such employment; and especially relating to compensation and expenses.

c) The general principles for such monitoring include:

i) the reporting and on-site aspects of the monitoring shall be more intensive at the outset and likely decrease as compliance is achieved;

ii) monitoring shall consist of a combination of empirical data, written reports from the Defendants, on-site

inspections, oral and written reports from the monitor, and appropriate consultation in aid of compliance;

iii) the monitor's role shall include the gathering of appropriate data and statistics and on-site inspections as well as the general duty of assuring that required policy and procedure are prepared in a timely fashion and meet the objectives of this Consent Decree; and where disputes between the parties occur or where there appears to be non-compliance, the monitor shall attempt to resolve such matters in the most expeditious and nonadversarial fashion as possible; and

iv) minimizing interference with the mission of DRC, or any other state agency involved, while at the same time having timely and complete access to all relevant files, reports, memoranda, or other relevant documents within the control of the Defendants or subject to access by the Defendants; having unobstructed access during announced and unannounced on-site tours and inspections to the institutions encompassed by this Consent Decree as well as any administrative offices; having unobstructed access to staff and inmates and other persons having information relevant to the implementation of this Consent Decree; and having the authority to engage in private conversation with any party hereto and their counsel.

d) A review of records by the monitor or his staff, shall not constitute a waiver of DRC's or DMH's quality assurance privilege. Moreover, any such disclosures shall not constitute a waiver or serve as precedent for other legal proceedings with

respect to the aforementioned quality assurance privilege. In addition, the monitor and his staff agree to keep said documentation confidential and not to disclose, publish or use for public consumption any of the records reviewed by the monitor or his staff.

e) In addition to the quality assurance privileges described above, other records or information whose disclosure is objected to by either party based on a claim of privilege, confidentiality, or relevance to the implementation of this Consent Decree shall not be disclosed by the monitor. Such material shall be made available for inspection by the Court, along with a precise statement of the objection or objections to disclosure prepared by the objecting party, and the Court shall render a decision on the matter.

f) Within three (3) months of the adoption of the policy and procedures referenced throughout this Consent Decree, the monitor shall prepare report forms for use by the institutions and central office which shall be submitted to counsel for the Plaintiffs and the Defendants for their prior approval before being put into use. Such report forms will require the submission of specified data relevant to this Consent Decree for evaluation by the monitor. DRC shall prepare the reports quarterly during the first two years of this Consent Decree, and twice a year thereafter, unless the monitor determines that the interim goals have not been met. The monitor will specify the precise dates for all such submissions on, or before, the approval of the forms described in this specific paragraph.

g) In addition to the quarterly and then biannual summary reports described above, the monitor shall submit an annual comprehensive report on overall compliance to the Court and the parties noted above.

h) In the event that Professor Fred Cohen is unable or unwilling to serve as the monitor, the parties agree to appoint another monitor.

i) The monitor shall not be subject to dismissal except upon good cause and the agreement of both parties or by the Court upon motion of one of the parties and a showing of good cause.

j) Monitoring shall continue for five (5) years following the entry of this Consent Decree unless sooner terminated on motion to the Court by the Defendants, with the concurrence of the monitor, that compliance has been achieved earlier.

XXIX. DISPUTE RESOLUTION

a) In the event a dispute arises as to whether Defendants have failed to substantially comply with the terms of this Consent Decree, counsel for the parties shall proceed as follows:

i) counsel for the parties shall make a good faith effort to resolve any difference which may arise between them over matters of compliance utilizing the monitor initially in an effort to resolve such dispute. Prior to the initiation of any proceeding before the Court to enforce the provisions of this Consent Decree, Plaintiffs' counsel shall notify Defendants' counsel in writing of any claim that Defendants are in violation of any provision of this Consent Decree.

ii) within thirty (30) business days of the receipt of this notice, counsel for Plaintiffs and Defendants shall meet in an attempt to arrive at an amicable resolution of the claim. Either party may request the attendance and involvement of the monitor at such meeting. If, after twenty (20) business days following such meeting, the matter has not been resolved, Defendants' counsel and the monitor shall be so informed by Plaintiffs' counsel, in writing, and Plaintiffs may then have due recourse to the Court.

b) Any complaints by inmates objecting to any provisions encompassed by this Consent Decree shall be addressed through institutional grievance procedures under Ohio Administrative Code, Section 5120-9-31. Exhaustion of such institutional grievance procedures through appeal to the chief inspector shall be a condition precedent to any legal action by an inmate. During the pendency of this Consent Decree, copies of any such complaints resulting in decisions by the chief inspector and related documents shall be provided to Plaintiffs' counsel and the monitor on a quarterly basis.

c) No legal action seeking equitable relief relating to the issues resolved herein, including a motion to enforce the terms of this Consent Decree, shall be filed on behalf of the Plaintiff class or by a member of the Plaintiff class without first resorting to the dispute resolution mechanisms set out in this Consent Decree advising the Defendants of the issue and making a good faith effort to resolve said issue extrajudicially.

d) If legal action is pursued, it shall be brought in the form of a motion to enforce any terms of this Consent Decree.

XXX. COMPLIANCE

The Defendants shall be deemed to be in compliance with the terms of this Consent Decree when they have substantially complied with it. Individual incidents of non-compliance do not necessarily prevent a finding of substantial compliance. The initial determination of substantial compliance by the monitor shall take into account the extent to which exceptions to substantial compliance are sporadic or isolated in nature, are unintentional, are the temporary result of actions by members of the Plaintiff class, and are addressed by corrective action.

XXXI. EMERGENCIES

It may be necessary to temporarily suspend any provision of this Consent Decree in the event of an emergency. An emergency is an event which makes compliance with the terms of this Consent Decree impracticable, impossible or extraordinarily difficult, and is caused by riot, fire, weather events, natural disasters, warfare, strikes, labor disputes, or similar events, not caused intentionally by the Defendants.

Counsel for Plaintiffs shall be notified of any such emergencies as soon as practicable.

XXXII. MODIFICATION

The parties recognize that the change of some conditions or practices may reduce the necessity of change of other conditions or

practices. The parties also recognize that the Defendants are entitled to substantial deference in their decision on how to improve mental health services. Therefore, the parties agree that it may be appropriate that this Consent Decree be modified from time to time. After six (6) months of operation under this Consent Decree, the Defendants may ask the monitor to review a proposed modification to any portion of this Consent Decree.

The monitor will submit a written opinion on such proposal to both parties which will bind the parties should they agree and the Court is of the view that the modification will allow the constitutional rights of the class to remain protected.

Where either party disagrees with the opinion of the monitor and not sooner than thirty (30) days after the written expression of such disagreement to the monitor and the monitor's efforts to have the parties reach an accord, then appropriate relief may be sought from the Court in the form of a motion for modification.

XXXIII CONTINUING COURT JURISDICTION OVER THE CONSENT DECREE

The principal action here is dismissed with prejudice because the underlying claims for declaratory and injunctive relief have been resolved by the parties.

The Court, however, retains jurisdiction over this Consent Decree for the purpose of its enforcement. The period of retention of jurisdiction is five (5) years following the entry of this Consent Decree unless sooner terminated by motion to the Court by the Defendants, with the concurrence of the monitor, that

compliance with the terms of the Consent Decree has been achieved. No action shall be taken on a termination motion until notice and an opportunity to be heard has been extended to the Plaintiffs. If legal action is pursued to enforce the terms of this Consent Decree, it shall be brought in the form of a motion to reopen the case.

SO ORDERED this 10th day of July, 1995.

UNITED STATES MAGISTRATE JUDGE
ROBERT STEINBERG

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Trial Attorney for the
Plaintiffs

ANDREW BERGMAN (0054582)
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