

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEVEN AUSTIN, ROBERT C. BORING,
FRANKLIN CASTLE, EUGENE DUNSON, JOHN
REGLMAN, KEVIN SANDERS, RICHARD BOOZER,
FRANCIS PARKER, WILLIAM A. FINGER,
JOSEPH MULCAHY, LAURENCE JOHNSON,
DEBRA SPEAKES, TROY CALHOUN,
FRANKLIN D. BALTIMORE SR.,
LEONARD T. MORTON JR., SCOTT DOCKLER,
GARY ROOS, PERCY MCCONNELL, JOHN DOE
AND JOHN ROE, on behalf of themselves
and all others presently incarcerated
or who will in the future be
incarcerated within the Pennsylvania
Department of Corrections,

Plaintiffs,

V.

PENNSYLVANIA DEPARTMENT OF CORRECTIONS;
JOSEPH LEHMAN, sued in his official
capacity as Commissioner of the
Pennsylvania Department of Corrections;
JEFFREY BEARD, sued in his official
capacity as superintendent of State
Corrections Institution at Camp Hill;
MARTIN DRAGOVICH, sued in his official
capacity as Superintendent of State
Corrections Institution at Cresson;
JOSEPH RYAN, sued in his official
capacity as Superintendent of State
Corrections Institution at Dallas;
DONALD T. VAUGHN, sued in his official
capacity as Superintendent of State
Corrections Institution at Graterford;
FREDERIC ROSEMEYER, sued in his
official capacity as Superintendent of
State Corrections Institution at
Greensburg; WILLIAM LOVE, sued in
his official capacity as Superintendent
of State Corrections Institution at
Huntingdon; GILBERT A. WALTERS, sued in
his official capacity as Superintendent
of State Corrections Institution at
Mercer; DENNIS R. ERHARD, sued in his
official capacity as Superintendent of
State Corrections Institution at
Retreat; JOSEPH F. MAZURKIEWICZ, sued

CIVIL ACTION
NO. 90-7497



in his official capacity as
 Superintendent of State Corrections
 Institution at Rockview; MARGARET A.
 MOORE, sued in her official capacity as
 Superintendent of State Corrections
 Institution at Smithfield; CHARLES H.
 ZIMMERMAN, sued in his official
 capacity as Superintendent of State
 Corrections Institution at Waymart;
 TIMOTHY ENGLISH, sued in his
 official capacity as Superintendent of
 State Corrections Institution at
 Waynesburg; JOSEPH CHESNEY, sued in
 his official capacity as Superintendent
 of State Corrections Institution at
 Frackville; ROBERT CASEY,
 sued in his official capacity as Governor
 of the Commonwealth of Pennsylvania;
 COMPREHENSIVE HEALTH CARE GROUP, INC.;
 CORRECTIONAL MEDICAL SYSTEMS, INC.;
 CORRECTIONS PHYSICIANS SERVICE, INC.;
 PRISON HEALTH SERVICES; AND PENNSYLVANIA
 INSTITUTIONAL HEALTH SERVICE, INC.;

Defendants.

FOURTH AMENDED COMPLAINT

Preliminary Statement

1. Plaintiffs on behalf of themselves and others similarly incarcerated by the Pennsylvania Department of Corrections seek to enjoin defendants from continued maintenance of penal institutions which deprive plaintiffs and the class they seek to represent of rights guaranteed by the United States Constitution's Bill of Rights.

Jurisdiction

2. As plaintiffs seek to vindicate rights protected by the Eighth and Fourteenth Amendments of the United States Constitution, and 42 U.S.C. Section 1983, this Court has jurisdiction of this civil action pursuant to 28 U.S.C Sections 1331 and 1343 (a)(3) and (4). Pursuant to 28 U.S.C. Sections 2201 and 2202, this Court has jurisdiction to declare the rights of the parties and to grant all further relief found necessary and proper.

Parties

3. Plaintiff Steven Austin is a citizen of the United States who at the initiation of this action was incarcerated at the State Corrections Institution at Camp Hill, but who has since been transferred to the State Correction Institution at Huntingdon. As a result of his transfer an additional plaintiff will shortly be added to act as a class representative of Camp Hill.

4. Plaintiff Robert C. Boring is a citizen of the United States presently incarcerated at the State Corrections Institution at Cresson.

5. Plaintiff Franklin Castle is a citizen of the United States presently incarcerated at the State Corrections Institution at Dallas.

6. Plaintiff Eugene Dunson is a citizen of the United States presently incarcerated at the State Corrections Institution at Graterford.

7. Plaintiff John Regelman is a citizen of the United States presently incarcerated at the State Corrections Institution at Greensburg.

8. Plaintiff Kevin Sanders is a citizen of the United States presently incarcerated at the State Corrections Institution at Huntingdon.

9. Plaintiff Richard Boozer is a citizen of the United States presently incarcerated at the State Corrections Institution at Mercer.

10. Plaintiff Francis Parker is a citizen of the United States who at the initiation of this action was incarcerated at the State Corrections Institution at Retreat. He has since been released on parole, but as a result of a technical infraction, is in the process of being returned to Retreat.

11. Plaintiff William A. Finger is a citizen of the United States presently incarcerated at the State Corrections Institution at Rockview.

12. Plaintiff Joseph Mulcahy is a citizen of the United States presently incarcerated at the State Corrections Institution at Smithfield.

13. Plaintiff Laurence Johnson is a citizen of the United States presently incarcerated at the State Corrections Institution at Waymart.

14. Plaintiff Debra Speakes is a citizen of the United States presently incarcerated at the State Corrections Institution at Waynesburg.

15. Plaintiffs Franklin D. Baltimore Sr. (presently incarcerated at the State Corrections Institution at Rockview), Leonard T. Morton Jr. (presently incarcerated at the State Corrections Institution at Frackville), and Ben Torres (presently incarcerated at the State Corrections Institution at Waymart) have been denied access to sex offender programs offered by defendants because of their refusal to admit guilt.

16. Plaintiffs Gary Roos (presently incarcerated at the State Corrections Institute at Dallas) and Percy McConnell (presently incarcerated at the State Corrections Institute at Cresson) were denied adequate clothing upon their admission to defendants' custody.

17. Plaintiff John Doe (presently incarcerated at the State Corrections Institution at Graterford), and plaintiff John Roe (presently incarcerated at the State Corrections Institution at Dallas), whose identities have been supplied to the Court in their verifications annexed to plaintiffs' motion for leave to proceed in pseudonym and to seal records, are HIV positive and have experienced discrimination on the part of defendants as a result of their medical conditions.

18. Defendant Pennsylvania Department of Corrections is that executive agency of the Commonwealth mandated by law to receive and detain state prisoners. The Department and its constituent corrections institutions are recipients of federal financial aid.

19. Defendant Joseph Lehman is the Commissioner of the Department of Corrections. As such, he is responsible for the

administration of the Department of Corrections. He is sued in his official capacity.

20. Defendant Jeffrey Beard is Superintendent of State Corrections Institution at Camp Hill. As such, he is responsible for immediately overseeing the day to day operation of that institution. He is sued in his official capacity.

21. Defendant Martin Dragovich is Superintendent of State Corrections Institution at Cresson. As such, he is responsible for immediately overseeing the day to day operation of that institution. He is sued in his official capacity.

22. Defendant Joseph Ryan is Superintendent of State Corrections Institution at Dallas. As such, he is responsible for immediately overseeing the day to day operation of that institution. He is sued in his official capacity.

23. Defendant Donald T. Vaughn is Superintendent of State Corrections Institution at Graterford. As such, he is responsible for immediately overseeing the day to day operation of that institution. He is sued in his official capacity.

24. Defendant Frederic Rosemeyer is Superintendent of State Corrections Institution at Greensburg. As such, he is responsible for immediately overseeing the day to day operation of that institution. He is sued in his official capacity.

25. Defendant William Love is Superintendent of State Corrections Institution at Huntingdon. As such, he is responsible for immediately overseeing the day to day operation of that institution. He is sued in his official capacity.

26. Defendant Gilbert A. Walters is Superintendent of State Corrections Institution at Mercer. As such, he is responsible for immediately overseeing the day to day operation of that institution. He is sued in his official capacity.

27. Defendant Dennis R. Erhard is Superintendent of State Corrections Institution at Retreat. As such, he is responsible for immediately overseeing the day to day operation of that institution. He is sued in his official capacity.

28. Defendant Joseph F. Mazurkiewicz is Superintendent of State Corrections Institution at Rockview. As such, he is responsible for immediately overseeing the day to day operation of that institution. He is sued in his official capacity.

29. Defendant Margaret A. Moore is Superintendent of State Corrections Institution at Smithfield. As such, she is responsible for immediately overseeing the day to day operation of that institution. She is sued in her official capacity.

30. Defendant Charles A. Zimmerman is Superintendent of State Corrections Institution at Waymart. As such, he is responsible for immediately overseeing the day to day operation of that institution. He is sued in his official capacity.

31. Defendant Timothy English is Superintendent of State Corrections Institution at Waynesburg. As such, he is responsible for immediately overseeing the day to day operation of that institution. He is sued in his official capacity.

32. Defendant Joseph Chesney is Superintendent of State Corrections Institution at Frackville. As such, he is responsible

for immediately overseeing the day to day operation of that institution. He is sued in his official capacity.

33. Defendant Robert Casey is the Governor of the Commonwealth of Pennsylvania. As such, under Article IV, Section II of the Constitution of the Commonwealth "supreme executive power" is vested in him. Further, under the Constitution and laws of the Commonwealth he is authorized to appoint the commissioner of the Pennsylvania Department of Corrections {see Article IV, paragraph 8, Pennsylvania Constitution and 71 P.S. section 67.1 (d) (1)} as well as to present to the general assembly the Department of Corrections' annual budget {see Article VIII, section 12, Pennsylvania Constitution and 71 P.S. 241}.

34. Defendant Comprehensive Health Care Group, Inc., is responsible for the provision of medical and mental health care at SCI-Greensburg pursuant to a contract with the Pennsylvania Department of Corrections.

35. Defendant Correctional Medical Systems, Inc., is responsible for the provision of medical and mental health care at SCI-Cresson, and mental health care at SCI-Frackville and SCI-Graterford, pursuant to contracts with the Pennsylvania Department of Corrections.

36. Defendant Corrections Physicians Service, Inc., is responsible for the provision of medical care at SCI-Graterford and for medical and mental health care at SCI-Retreat pursuant to contracts with the Pennsylvania Department of Corrections.

37. Defendant Pennsylvania Institutional Health Service, Inc., is responsible for the provision of medical and mental health care at SCI-Dallas, SCI-Smithfield, SCI-Camp Hill, and SCI-Waymart pursuant to contracts with the Pennsylvania Department of Corrections.

38. Defendant Prison Health Services is responsible for the provision of medical care at SCI-Frackville pursuant to a contract with the Pennsylvania Department of Corrections.

39. At all times relevant hereto and in all of the actions described herein, all defendants were acting under color of state law and pursuant to their authority as officials, employees or contractors of the Commonwealth of Pennsylvania.

Class Action Allegations

40. The named plaintiffs seek to maintain this action on behalf of themselves and all others similarly situated pursuant to Rules 23 (a) and 23 (b) of the Federal Rules of Civil Procedure. They represent a class of persons who are or who may in the future be incarcerated by the Department of Corrections in any facility other than State Corrections Institution at Muncy and State Corrections Institution at Pittsburgh who, in the absence of relief, have been or will be treated in the manner set forth below. As a result of such treatment, the members of the class are or will be subjected to cruel and unusual punishment and deprived of other constitutional rights. Plaintiffs therefore seek declaratory and

constitutional rights. Plaintiffs therefore seek declaratory and injunctive relief to eliminate defendants' actions, policies, and practices which work constitutional wrong.

41. The requirements of Rules 23 (a) and 23 (b) (2) are all satisfied by this class action. The class consists of all persons who are or will in the future be incarcerated by the Department of Corrections.

42. The class is so numerous that joinder of all members is impractical. The class presently exceeds 18,000 individuals and also includes an unknown number of individuals who will in the future be incarcerated by the Department of Corrections.

43. There are questions of law and fact common to the class, including the constitutionality of the conditions of confinement maintained by the Department of Corrections.

44. The claims of the plaintiffs are typical of the claims of the class. Plaintiffs include inmates currently incarcerated throughout the Department of Corrections.

45. The plaintiffs will fairly and adequately represent and protect the interests of the class.

46. The defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.

Facts Giving Rise To Causes Of Action

Overcrowding

47. The Pennsylvania Department of Corrections presently operates fifteen State Corrections Institutions all of which are severely overcrowded. The institutions which are the subject of this lawsuit on this issue are:

- a. Camp Hill, which was opened in 1941 with a design intended to house approximately 988 individuals but as of September 30, 1990, was being used to detain 2,192 prisoners.
- b. Cresson, which was opened in 1987 with a design intended to house approximately 499 individuals but as of September 30, 1990, was being used to detain 948 prisoners.
- c. Dallas, which was opened in 1960 with a design intended to house approximately 1,457 individuals but as of September 30, 1990, was being used to detain 2,024 prisoners.
- d. Frackville, which was opened in 1987 with a design intended to house approximately 540 individuals but as of September 30, 1990, was being used to detain 1,036 prisoners.
- e. Graterford, which was opened in 1929 with a design intended to house approximately 2,734 individuals but as of September 30, 1990, was being used to detain 4,067 prisoners.
- f. Greensburg, which was opened in 1969 with a design intended to house approximately 461 individuals but as of September 30, 1990, was being used to detain 761 prisoners.

g. Huntingdon, which was opened in 1889 with a design intended to house approximately 1,347 individuals but as of September 30, 1990, was being used to detain 2,007 prisoners.

h. Mercer, which was opened in 1978 with a design intended to house 464 individuals but as of September 30, 1990, was being used to detain 902 prisoners.

i. Retreat, which was opened in 1988 with a design intended to house 480 individuals but as of September 30, 1990, was being used to detain 842 prisoners.

j. Rockview, which was opened in 1915 with a design intended to house 1,250 individuals but as of September 30, 1990, was being used to detain 2,059 prisoners.

k. Smithfield, which was opened in 1988 with a design intended to house 484 individuals but as of September 30, 1990, was being used to detain 877 prisoners.

l. Waymart, which was opened in 1978 with a design intended to house 241 individuals but as of September 30, 1990, was being used to detain 515 prisoners.

m. Waynesburg, which was opened in 1984 with a design intended to house 168 individuals but as of September 30, 1990, was being used to detain 270 prisoners.

48. The Department has the capacity to house approximately 13,000 individuals. As of September 30, 1990, the Department detained approximately 18,500 individuals at the above listed institutions.

49. The overcrowding has become so serious that the very fact of incarceration in these institutions now causes such physical and psychological harms and deprivations as to render incarceration of plaintiffs unconstitutional. The physical facilities cannot safely accommodate such large numbers of inmates and the services required by the Constitution cannot be provided in the prison system as currently structured.

50. The harms caused to plaintiffs by overcrowding are exacerbated, as detailed below, by the fact that the institutions are otherwise suffering from substantial physical deterioration, environmental defects, correctional and other staff shortages, and grossly inadequate classification services and programs, thus causing plaintiffs to suffer cruel and unusual punishment.

Violence

51. As a direct result of the overcrowding, the Department of Corrections is experiencing more violence than at any other time in its history.

52. During the last six months of 1989 there were 409 assaults on guards alone. By contrast, there were only 500 such assaults throughout the Department in the twelve preceding months.

53. Between July of 1988 and June of 1989 there were 139 assaults requiring medical treatment reported at SCI Graterford alone. Of those, 86 were inmate on inmate, while the remaining 53 were inmate on staff or staff on inmate assaults.

54. The level of violence at that institution, reflecting the level of violence throughout the Department, grew unabated during the next six month period.

55. Between July 1989 and January 1990, there were 158 assaults at Graterford requiring medical treatment. Inmate on inmate assaults now rose to 107, the remaining assaults being between inmates and staff.

56. On October 23, 1989, the Department lost control of one of its housing blocks at SCI Huntingdon when approximately 25 prisoners refused to return to their cells. As a result, the Department put the entire institution on 24 hour lock-down for several months.

57. On October 25, 1989, the Department lost complete control of its second largest facility at Camp Hill when an inmate attack on a guard turned into a general melee.

58. Over the next several hours, prisoners seized hostages and took control of several buildings.

59. From these hostages, the prisoners were able to obtain cell block keys as well as radios which were used to begin negotiations with the Department.

60. While the Department was able to negotiate the release of the hostages along with a commitment from the prisoners to voluntarily return to their cells, the Department did nothing to secure that facility, notwithstanding its knowledge that Camp Hill's security systems had been badly damaged.

61. When the following day's negotiations proved fruitless from the inmates' perspective, prisoners simply released themselves and proceeded for a second consecutive day to seize control of the institution. During their second melee, a large portion of Camp Hill went up in flames. For approximately a day and a half, the prisoners held at bay nearly a thousand correctional and state police.

62. The institution was only secured at the cost of large numbers of injuries to both inmates (many of whom had not participated in the riot) and state officers.

63. These injuries were directly attributable to the Department's general poor management of its security operations, which continues to put inmates at risk of injury.

64. As had happened after the Huntingdon riot, employees of both the Department of Corrections and the State Police Department retaliated with excessive physical force against the inmates of the prison.

65. These employees not only destroyed what little property inmates had managed to save from the preceding conflagration, but further indiscriminately beat prisoners who were now handcuffed and shackled to one another.

66. This violence was countenanced by the Department in order to insure that its employees would not abandon the Department.

67. At the time of the Camp Hill riot the Department of Corrections was housing 2600 inmates at that facility.

68. As a result of the rioting, the Department lost nearly 1,000 beds at that facility. Approximately 700 former Camp Hill inmates were sent by the Department to federal custody, where many of them remain housed throughout the United States.

69. These individuals (some of whom are being housed as far away as California) are unable to meet with counsel or family.

70. While some former Camp Hill inmates have access to federal programs, others have been held in twenty-four hour lock-down since being transferred last fall. The rest of the Camp Hill inmates are scattered throughout the Department's remaining facilities, which were already overcrowded.

71. So great is the Department's disarray that on April 30, 1990, upon having to lock-down one of Graterford's housing units, the Department began transferring prisoners from Graterford to Camp Hill.

72. The Department is 550 correctional officers short of its established goal for full staffing. Inmate to correctional officer ratios have increased significantly in the past decade. This staff shortage contributes to the overall deterioration of security and is a substantial cause of the violence now occurring in the institutions.

Excessive Force

73. There is in each institution a pattern and practice of the excessive, malicious, and unjustified use of force by correctional officers against inmates.

74. The defendants have failed to properly discipline or otherwise control the abusive actions of correctional officers. As a result, corrections officers believe they can use such force with impunity and they continue to use physical force to punish and retaliate against plaintiffs.

Classification and Programs

75. In light of the Department's desperate need for space to house its rapidly expanding population, the Department's classification schemes (traditionally used to insure that less aggressive inmates not be housed with more violent inmates) are in complete disarray. Putting a prisoner anywhere (even in infirmaries as noted below) has now become the Department's main classification goal.

76. According to the Final Report of the Governor's Commission at Camp Hill Corrections institution, large numbers of the prisoners at that facility (which prior to the riot was the Department's second largest) had nothing to do throughout the day. Indeed, of the roughly twenty-six hundred persons incarcerated at Camp Hill there were never more than 850 enrolled in that facility's chemical abuse, sex offender, and/or educational programs in the ten months preceding the riot described above.

77. Upon information and belief, plaintiffs allege that the finding of the Governor's Commission concerning the limited number of inmates allowed access to programs is equally true with regard to each of the Department's other institutions.

78. Thus, for example, the number of teachers employed by the Department has remained constant since 1979, despite a 150% increase in the Department's population.

79. Further, while the Department has established a goal of having 15% of its population participate in vocational programming, staff shortages have meant that only 8% of the inmates can be included in these programs.

80. Aside from the fact that the Department has not hired enough staff to provide sufficient programs, the Department has impeded access to these programs in a number of other ways.

81. Upon information and belief, plaintiffs allege that access to these limited programs as well as the limited number of jobs which prisoners are allowed to hold is granted along racially biased lines. This discrimination further escalates inmate tension.

82. Further, with regard to its sex offender programs, the Department now requires an admission of guilt before granting access to these programs.

83. The Department's failure to increase the number of individuals who may take advantage of these programs works injury in two ways: first, by depriving inmates of the benefits these programs have to offer and second, because the Board of Pardons and Paroles often conditions release upon the successful completion of the very programs inmates are unable to secure.

84. The general lack of education, recreational or employment opportunities resulting in pervasive idleness contributes to the

level of violence which is outlined above and which has now become endemic.

Health and Psychiatric Issues

85. The provision of medical care by the Department and its contractors is in a state of crisis. The Department and its contractors systematically fail to provide necessary routine and emergency medical care to its population.

86. The Department's fifteen prisons had the third highest death rate of prisons throughout the nation last year: 26.2 deaths for every 10,000 prisoners. Eighty percent of inmate deaths in 1988 were medically related. In 1989, Pennsylvania had the ninth largest inmate population, yet ranked twenty-first in daily health care expenditures per inmate.

87. Overcrowding and poor sanitation provide a breeding ground for communicable disease. Strep and fungal infections are common. A serious epidemic of tuberculosis is a real possibility.

88. Necessary emergency care is often denied because medical personnel are not available on a 24 hour basis. Moreover, non-medical staff often fail to identify serious medical problems on the blocks, leading to delay or denial of emergency treatment even when medical assistance is available. The Department lacks basic equipment, such as crash carts, necessary to provide emergency care.

89. There are serious deficiencies with regard to the Department's sick call procedure. Inmates with potentially serious conditions are screened by inadequately trained and/or overburdened

personnel who often do not detect medical problems until serious harm occurs.

90. Inmates who need greater assistance than can be provided at sick call experience chronic delays in securing physician care. Sick inmates become sicker while waiting to see physicians, frequently suffering unnecessary pain and medical complications.

91. There are long delays in scheduling inmate appointments at outside hospitals for tests, specialist consults, and treatment, even in cases of a serious illnesses.

92. Even when an inmate finally receives outside care, medical care is compromised by a lack of continuity of treatment and follow-up. Test results and consultation reports from outside physicians often do not reach the Department treating physician for weeks or months. Unnecessary and dangerous medical complications sometimes arise because of the Department's practice of prematurely transferring inmates receiving hospital care back to its facilities for budgetary reasons.

93. Department physicians fail to prescribe proper diet and medication to prisoners who have, or develop, chronic physical conditions requiring daily special attention, such as ulcers, diabetes, hypertension, or chronic heart disease. Even when such diet or medication is ordered, the Department often fails to provide it in a consistent fashion.

94. Inmates with disabilities are often not provided proper physical therapy and/or assistance needed to participate in prison

activities. The Department fails to make reasonable accommodation to the special needs of disabled prisoners.

95. Many of the deficiencies in the medical program are related to overcrowding. Thus, for example, at SCI Huntingdon, one of the Department's largest institutions, the Department has been forced to house general population inmates in space previously assigned to its infirmary.

96. In addition, the Department fails to employ a sufficient number of qualified medical personnel to treat its burgeoning population properly.

97. As of the time of filing the complaint according to the Department's table of organization, the medical health care staff had 74 vacancies. The vacancies were primarily in the categories of licensed practical nurses and registered nurses. The Department also had 18 vacancies in the dental care area. There is an acute shortage of physicians, especially in the institutions situated in rural areas. Physicians staffing sick call or clinics are routinely required to see 10 or 20 or more inmates each hour and cannot devote the necessary time to properly examine, diagnose and treat their patients.

98. Finally, the manner in which the Department administers health care is woefully deficient and deliberately indifferent to serious medical needs.

99. At some Department institutions, medical care is provided by one or more contractors. Because the contracts are let at a fixed rate, the contractor has a financial incentive to minimize the

cost and amount of care provided. This structure has led to seriously ill inmates being denied necessary care, or being provided necessary care only after lengthy delays. This structure has resulted in pervasive, deliberate understaffing of clinics, sick calls, and intake examinations.

100. The Department and its contracted medical providers assign physicians to duties for which they are not properly trained. For example, physicians with no training or experience in internal medicine are assigned to sick call and intake examinations, tasks which require skill in the diagnosis and treatment of internal medical complaints.

101. Inadequate record keeping adversely affects the delivery of health care from diagnosis to treatment. Insufficient staff, poor procedures, and inadequate equipment prevent appropriate follow-up of patients receiving ongoing care from Department or outside physicians. The results include interruption of medication, delays in test results or outside consultation results reaching the treating physician or outright loss of such results, and delays in diagnosis and implementation of treatment.

102. The facilities, staff and procedures in the Department's mental health care units are all seriously deficient.

103. The mental health treatment staff is currently 72 positions short of a full complement. There was need for an additional 19 counselors, 22 psychologists, 5 psychiatrists, and 26 activity staff persons, according to the Audit of the Pennsylvania Budget and Finance Committee conducted in 1988. The need is greater

today because of increased population. Shortages in mental health services disrupt treatment, and increase overcrowding as parole is denied to inmates with active mental health problems.

104. As a result of this shortage of staff the mental health care is often grossly inadequate, resulting in the deterioration of inmates' mental condition.

105. The Department's psychiatric screening for inmates suffering from mental illness is seriously deficient. Due to overcrowded conditions, prisoners are not properly classified or housed. Even if they are recognized as suffering from mental illness, they are frequently housed with other inmates.

106. All these deficiencies in medical and mental health care reflect inadequate funding for medical staff, support staff, and equipment.

107. As a result of all of the foregoing, inmates unnecessarily develop serious medical conditions or suffer unnecessary pain and even death.

HIV/AIDS Health Issues

108. The Department presently admits to having fewer than 150 HIV infected inmates in its custody. Based on the prevalence of AIDS in county jails in Pennsylvania, and taking into account the high incidence of past intravenous drug use among the prison population, the actual number of infected inmates is probably several times higher than the Department's estimate.

109. To date there is no cure for HIV infection. Education, counseling and voluntary testing to inform people about HIV and to foster avoidance of behaviors that transmit HIV are the only effective means of preventing the spread of the epidemic. Early identification of the infected has also become crucial, because the infected can be medically monitored and treated to delay the onset of serious AIDS symptoms and death.

110. All the problems of medical care cited above (see paragraphs 77 to 99) rebound with even more deadly effect on HIV infected prisoners. Plaintiffs are being denied necessary medical care across the entire spectrum of serious medical need.

(a) Inmates receive minimal AIDS education at intake, including written material that is out of date and inaccurate. There is little or no follow-up education, and inmates are not provided with information they need to protect themselves and others from HIV transmission in prison. Inmates who are or may be infected are not informed of the benefits of early identification of their condition, including the fact that there is treatment available to delay the onset of serious illness.

(b) Inmates whose HIV infection has not been detected because they were deterred from requesting or were otherwise denied HIV testing are not evaluated for treatment they may need to prevent or delay the onset of AIDS. Inmates obviously at risk for HIV, or even showing obvious symptoms, are often not identified or offered testing by physicians at intake or sick call, either because the

physician does not recognize the symptoms, or because physicians are under pressure to minimize the number of HIV tests performed.

(c) Inmates who are known to be HIV infected are often not carefully monitored with periodic physical examinations and CD4+ cell testing, and so do not receive treatment they need to prevent or delay the onset of AIDS.

(d) Inmates who are known to be immunosuppressed, with CD4+ cell counts between 500 and 200 per cubic millimeter, frequently do not receive necessary prophylactic or ameliorative treatments on a timely basis or at all. In some institutions, basic recognized therapies, such as aerosolized pentamidine to prevent PCP, a form of pneumonia, have been categorically unavailable. In others, AZT is sporadically provided, or is often not dispensed in accord with current medical practice. Other medications needed to treat HIV or opportunistic infections are frequently not prescribed or unavailable.

(e) Inmates with AIDS may not be seen on a regular basis by physicians with knowledge of the proper treatment of their disease, or may not be seen by such a physician at all.

(f) Defendants fail to provide plaintiffs with sufficient information about the nature and course of their illness. As a result, class members' right to participate in their own treatment decisions is compromised. Some patients refuse necessary treatment because of inadequate, incomplete or inaccurate information.

(g) Inmates with psychological problems linked to HIV do not receive sufficient mental health care and support.

111. These deficiencies arise out of the same systemic failures that prevent the delivery of adequate general medical care.

112. In addition, the cost of testing for and treating HIV disease, and the impact of identifying large numbers of HIV infected inmates on the management of prison staff and inmates who are not educated about the virus, have led to a reluctance on the part of medical providers and Department officials to identify inmates with HIV infection.

113. Although the Department pays lip service to confidentiality, in practice HIV infected prisoners are routinely identified to Department staff and other inmates.

(a) The Department interprets its union contract to require that HIV infected inmates be identified to corrections staff.

(b) HIV-related information about inmates is routinely circulated among corrections staff and is often seen by prisoners, including inmate clerks who have access to the information in the course of their duties.

(c) In some Department institutions, inmate files are marked with a distinctive signal that is known to indicate HIV infection.

(d) Inmate files containing private medical information are routinely available to non-medical staff.

(e) Staff often inform prisoners of the HIV status of inmates, either directly or in statements or documents that inmates are allowed to overhear or see.

114. Although its stated policy is to segregate HIV infected inmates only if they pose a risk of sexual or needle-sharing behavior, in many Department institutions HIV infected inmates are housed together in a single block or tier. Inmates known to be HIV infected are subject to arbitrary and unjustified disciplinary writeups intended to serve as a pretext for isolation. HIV infected prisoners have been kept in solitary confinement for months and years at a time.

115. Inmates with AIDS have been confined for long periods in infirmaries, even when their health improves and infirmary care is no longer needed.

116. HIV infected inmates in infirmaries and restricted housing units are denied participation in educational and other programs available to other inmates. The lack of such program opportunities hinders the rehabilitation efforts of HIV infected inmates and may prevent or delay their parole.

117. These programs are denied to them solely because of their handicap. For all HIV infected inmates, the Department's failure to provide adequate education and to promulgate and police serious anti-discrimination policies results directly in a climate of fear, discrimination and harassment that renders HIV infected inmates unable to fully participate in the social, educational or work life of the institution, solely because of their handicap. The climate of discrimination and fear forces people who know or suspect that they are HIV infected to keep their condition secret, depriving them

as a consequence of the same opportunity as other prisoners to seek medical care for their condition.

118. HIV infected inmates are denied the opportunity to take certain prison jobs, such as food worker or barber, solely because of their handicap, and despite the fact that they do not pose a significant risk of infection to other inmates in such jobs.

119. The Department of Corrections has recently undertaken to audit its HIV education, testing and treatment policies in cooperation with the Department of Health. The Department of Corrections has further agreed to work with the Department of Health to make HIV testing available to prisoners upon demand, to offer inmate education, to improve staff education, and to provide uniform standards of medical treatment. To date, however, the Department of Corrections has not been able to secure significant changes in the actual delivery of care or to ameliorate the underlying conditions that lead to deficient care.

Environmental Conditions

120. Many of the Department's cells in the system are without sufficient ventilation and have excessive noise, insect and rodent infestation, leaking walls and ceilings due to roof flooding, uneven heat, insufficient lighting, unsafe electrical wiring, and deteriorating plumbing systems.

121. Many of the shower facilities within the Department lack adequate ventilation, have mold and mildew on the walls and

ceilings, ineffective temperature control, and deteriorating floor surfaces.

122. Food services facilities within the Department are unsanitary, poorly ventilated, poorly lit, poorly maintained, and rely upon outdated and poorly maintained equipment. Numerous safety hazards exist for employees and inmates alike, including electrical hazards, the potential for back siphonage, improper storage methods, and improper disposal of waste materials. Food storage facilities have been found to have roach and rodent infestation, improper temperature control, and use of inadequate and outdated storage equipment.

123. Dining facilities are unsanitary and have the potential for cross-contamination. The equipment has deteriorated to a point where inmate health is threatened.

124. The Department's reporting systems are deficient. Inspectors do not have formally defined criteria or detailed inspection forms to guide their activities. Sanitation and hygiene inspections are grossly inadequate.

125. The water supplies at several institutions are below acceptable EPA standards.

126. Insufficient funding for capital improvements and ongoing maintenance is a major factor contributing to the difficulties being encountered by the Department in maintaining the environment of the physical plants and facilities.

127. The Department lacks a long-term plan for capital improvements and physical maintenance.

128. Overcrowding has further contributed to the difficulties encountered by the Department in maintaining and upgrading institutional physical plant and facilities. It has drained available financial resources away from maintenance by expanding housing capacity without a corresponding modification in support facilities.

129. Poor design of several institutions impedes the Department's ability to maintain the physical structures. Many of the state correctional institutions were designed for uses other than as adult correctional facilities. For example, SCI Graterford was designed to be a prison farm; SCI Camp Hill, SCI Dallas, SCI Huntingdon and SCI Waynesburg were designed to be juvenile facilities and consist of hollow brick construction; SCI Cresson was designed as an institution for mentally retarded persons, and SCI Retreat was designed as a center for mentally ill persons; SCI Rockview was designed as a minimum security farm; and SCI Greensburg was designed as a short term county facility.

130. The Department fails to meet basic needs of the inmate population. There are chronic shortages of essential clothing for newly admitted inmates, blankets and pillows for all prisoners, and replacement mattresses for those that are torn, dirty, or infested with bed bugs.

131. Fire safety is a problem throughout the Department. Many of the institutions have been found to be in violation of the Life Safety Code, which has been adopted by the Commonwealth of Pennsylvania via the Pennsylvania Fire and Panic Act. Deficiencies include the lack of an automatic alarm system, an insufficient number of

exits, lack of an immediate release mechanism on the cell blocks, lack of an emergency lighting system, the existence of significant barriers to evacuating the cell blocks within a reasonable amount of time because of the long distances inmates must travel from their cells to exit doors, and the absence of fire separation walls between authorized smoke compartments. Many of these deficiencies have been cited by the Pennsylvania Department of Labor and Industry inspectors.

Access to Courts

132. The Department does not provide attorneys, paralegals or professionally trained persons to assist inmates with the filing of civil rights complaints, habeas corpus petitions or similar challenges to their convictions. With limited exception, the Department has not allowed the formation of para-law clinics staffed by inmates knowledgeable in the law.

133. Most of the Department's law libraries are stocked with such limited and antiquated volumes as to make it nearly impossible for prisoners to do legal research.

134. Those inmates without legal training and those who do not have a command of the English language are seriously handicapped in their efforts to pursue legal remedies.

135. At some of the Department's institutions, inmates in administrative segregation, protective custody, or punitive segregation are not permitted to visit the main law library. Alternative provisions for such inmates are totally inadequate.

Causes of Action

136. The policies, practices, acts and omissions complained of herein taken as a whole constitute deliberate indifference to plaintiffs' rights under the United States Constitution and 42 U.S.C. Section 1983, thereby depriving plaintiffs of their rights to:

- a. be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments;
- b. be free from excessive and malicious physical force and violence under the Fourth, Eighth and Fourteenth Amendments;
- c. proper and necessary medical and psychiatric services under the Eighth and Fourteenth Amendments;
- d. be free from deprivations of liberty and property without due process of law under the Fourteenth Amendment;
- e. equal protection of the laws under the Fourteenth Amendment; and
- f. access to counsel and the courts under the First, Sixth, and Fourteenth Amendments.

137. The policies, practices, acts, and omissions of the defendants constitute deliberate indifference with respect to the collection and retention of private medical information thereby violating plaintiffs' rights under the United States Constitution and 42 U.S.C. Section 1983 in that they deprive plaintiffs of their rights to privacy and autonomy under the First, Fourth, Ninth, and Fourteenth Amendments.

138. Defendants' actions in denying otherwise qualified HIV infected plaintiffs the benefits of participation in programs and activities available to other inmates, and exposing them to harassment and discrimination, solely on the basis of their handicap, violates Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 701 et seq., as amended by the Civil Rights Restoration Act of 1987.

139. Defendants' actions in failing to make their facilities and programs accessible to otherwise qualified handicapped individuals, and to make reasonable accommodation to the special needs of such people, constitutes discrimination solely on the basis of handicap, and violates section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 701 et seq., as amended by the Civil Rights Restoration Act of 1987.

Prayer for Relief

WHEREFORE, plaintiffs, individually and on behalf of all others similarly situated, request that this Court:

- a. Assume jurisdiction of this action;
- b. Issue an order certifying this action to proceed as a class pursuant to Rule 23 (a) and (b) (2) of the Federal Rules of Civil Procedure;
- c. Issue a declaratory judgment pursuant to 28 U.S.C. Sections 2201 and 2201, and Rule 57 of the Federal Rules of Civil Procedure, that the policies, practices, acts and omissions

complained of herein violate plaintiffs' rights to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments, to due process and equal protection of the laws guaranteed by the Fourteenth Amendment, to be free from the use of excessive force under the Fourth, Eighth and Fourteenth Amendments, to counsel and access to the courts under the First, Sixth, and Fourteenth Amendments, and for handicapped members of this class to be free from discrimination as is guaranteed by the Rehabilitation Act of 1973.

d. Issue preliminary and permanent injunctions sufficient to rectify the unconstitutional and unlawful acts, policies, practices and conditions complained of herein.

e. Retain jurisdiction over defendants and each of them until such time as the Court is satisfied that their unlawful policies, practices, acts and omissions complained of herein no longer exist and will not recur.

f. Award plaintiffs reasonable attorneys' fees, pursuant to 42 U.S.C. Section 1988, and costs of this action.

g. Award such other further relief as to this court seems just and proper.

Respectfully submitted,

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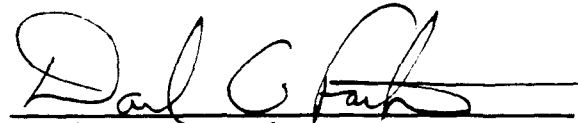
ATTORNEYS FOR PLAINTIFFS

Dated: November ____, 1992

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that the foregoing Motion for Leave to Amend Complaint and Add Parties, Brief in Support of Motion for Leave to Amend Complaint and Add Parties and attachments, and proposed Fourth Amended Complaint were served on the defendants via first class mail, postage prepaid, to the following address on this 6th day of November, 1992:

Linda Barrett
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