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

STEVEN AUSTIN, et al., Plaintiffs	:	No. 90-7497
v.	:	
PENNSYLVANIA DEPARTMENT OF CORRECTIONS, et al., Defendants	:	

PROPOSED SETTLEMENT AGREEMENT

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DATE: August 1, 1994

TABLE OF CONTENTS

I. BACKGROUND

1. This class action was filed on November 27, 1990. The Second Amended Complaint presents constitutional challenges regarding the conditions of confinement at thirteen (13) specific institutions that are part of the Pennsylvania Department of Corrections. Those institutions are the State Correctional Institution ("SCI") at Camp Hill, SCI-Cresson, SCI-Dallas, SCI-Frackville, SCI-Graterford, SCI-Greensburg, SCI-Huntingdon, SRCF-Mercer, SCI-Retreat, SCI-Rockview, SCI-Smithfield, SCI-Waymart, and SCI-Waynesburg.

2. Pursuant to Federal Rule of Civil Procedure 23(b)(2) the plaintiff class has been defined as consisting of all persons who are now or will in the future be confined by the Pennsylvania Department of Corrections in a facility other than SCI-Muncy or SCI-Pittsburgh, both of which are subjects of other court orders (Order dated March 5, 1992).

3. The defendants are Joseph D. Lehman, Commissioner, Jeffrey A. Beard, Superintendent, SCI-Camp Hill, Frederick K. Frank, Superintendent, SCI-Cresson, John Stepanik, Superintendent, SCI-Dallas, Joseph W. Chesney, SCI-Frackville, Donald T. Vaughn, Superintendent, SCI-Graterford, Frederic A. Rosemeyer, SCI-Greensburg, William J. Love, Superintendent, SCI-Huntingdon, Gilbert R. Walters, State Regional Correctional Facility at Mercer, Dennis R. Erhard, SCI-Retreat, Joseph F. Mazurkiewicz, Superintendent, SCI-Rockview, James Morgan, Superintendent, SCI-Smithfield, Charles H. Zimmerman,

Superintendent, SCI-Waymart, and Timothy B. English, Superintendent, SCI-Waynesburg and Robert Casey, Governor.

4. The named plaintiffs and the class of inmates they represent have sought to remedy the conditions of confinement they alleged to be unconstitutional through declaratory and permanent injunctive relief.

5. The parties have engaged in extensive discovery on all aspects of the case. Based on this discovery and supported by affidavits from prison officials and expert witnesses, in 1993, the Defendants filed a Motion for Summary Judgment on correctional and environmental issues. The plaintiffs filed a Cross-Motion for Summary Judgment on the HIV issues. These motions were denied by the Court without prejudice to the re-assertion of the disputed claims at trial.

6. The Court ordered that the case be tried in four phases: corrections, environmental, medical care, and mental health. Between December 6, 1993, and January 3, 1994, the parties tried the corrections issues. On January 3, 1994, the Court continued the corrections phase to allow for discussions on possible settlement of the case, prior to the completion of testimony and evidence on the corrections issues.

7. The parties have engaged in settlement negotiations on all phases of this litigation and have reached agreement as to all areas of dispute. The terms of the agreement on the substantive issues are set forth in Sections III-VIII.

II. JURISDICTION

8. Jurisdiction over the subject matter of this litigation is conferred on this Court by 28 U.S.C. §1343(3) in that this is a civil action brought under 42 U.S.C. §1983 to redress deprivation of civil rights protected by federal law.

III. MEDICAL CARE

A. Staffing

9. The Department of Corrections (hereinafter the DOC) has developed prototypical staffing patterns for health care.

10. As a step toward implementation of the prototypical staffing patterns, the DOC has been allocated certain new health care positions in the fiscal year (hereinafter FY) 1993-1994 budget. In addition, the DOC will request additional health care positions in the FY 1994-1995 and the FY 1995-1996 budgets. Attachment 1 reflects these FY 1994-1995 new health care positions. The DOC will also request 77 additional health care positions in the FY 1995-1996 budget. By September 15, 1994, the DOC will develop a document similar to Attachment 1 which identifies the position by occupational category and facility. After this document is developed, it will be incorporated into this agreement as Attachment 2.

11. By FY 1995-1996 the DOC will provide a minimum of forty hours per week of primary physician time for each 1000 prisoners at a facility. Such primary physician hours will not include medical specialty or psychiatric services which services require additional time by qualified specialists. Such hours also do not include physician time for reception physicals at the Diagnostic and Classification Center or for coverage of specialized medical units such as dialysis units. For purposes of this paragraph, the DOC may choose to substitute one hour of

physician assistant services for 0.4 hours of physician services up to a maximum of 30% of the total physician hours.

12. By FY 1995-1996 the DOC will provide a minimum of ten (10) registered nurse (RN) positions for each 1000 prisoners at a facility.

13. By FY 1995-1996 the DOC will provide a minimum of one (1) FTE dentist for facilities with less than 1000 prisoners, two (2) FTE dentists for facilities with between 1001-2500 prisoners and three (3) FTE dentists for facilities with 2501-4000 prisoners. At facilities with up to 2000 prisoners or less, the DOC will provide one (1) FTE dental assistant. For facilities exceeding 2000 prisoners, the DOC will provide two (2) FTE dental assistants. Additionally, the DOC will seek funding by FY 1995-1996 to provide one (1) FTE dental hygienist for facilities with up to 2000 prisoners and two (2) FTE dental hygienists for facilities in excess of 2000 prisoners.

14. Each facility will consistently provide 24-hour on-site RN coverage.

15. When a facility experiences a significant rate of vacancies in a particular position, the facility will make arrangements for individual contracts or PRN employment to cover the position until the vacancies are filled.

16. Nothing in these provisions is intended to prevent the DOC from determining that a higher level of health care staffing is necessary at any facility or group of facilities in

order to maintain consistency with the prototypical staffing pattern or for other reasons.

17. The issue of psychiatric physician and nursing services is addressed in Section IV, Mental Health, infra.

B. Policies

18. Except as otherwise provided in paragraph 25, the DOC will adopt, by June 30, 1995, comprehensive state-wide healthcare and medical policies modeled in scope and level of detail on the Clinical and Administrative Guidelines for the Prevention and Management of Tuberculosis policy, dated September 4, 1992. Prior to implementation, the medical policies will be reviewed by the DOC Peer Review Committee as described in ¶¶30 and 33, infra. The medical policies will be reviewed for consistency with contemporary standards of practice. The specific medical policies to be developed are listed in paragraphs 25 and 26, infra. The healthcare policies will be reviewed by the clinical director. The specific healthcare policies to be developed are listed in paragraphs 20-24 and 27-29.

19. Each such policy will be accompanied with a corresponding procedure specifically outlining how the policy and the intended outcome is to be effected.

20. The DOC will develop and implement a revised policy for entrance screening and medical clearance for transfer. The policy will include review of the appropriateness of transfer in light of the prisoner's condition. In addition, there will be

a periodic general review to determine whether any facility or contractor has transferred or attempted to transfer a disproportionate number of prisoners with medical conditions precluding transfer. The policy will provide that, if such a practice is discovered, appropriate corrective action will be instituted.

21. The DOC will develop and implement a policy for access to health care, including sick call and on-site and off-site specialty referrals, as well as for access for prisoners in restricted confinement. In the absence of emergency conditions, all medication lines and sick call lines will be conducted in areas where the prisoners waiting for services are protected from the elements including cold.

22. The DOC will develop and implement a policy setting up standards for infirmary admission procedures, staffing and equipment. The policy will limit the use of the infirmary to patients who do not require a higher level of treatment, and will provide that infirmary patients are within sight or sound observation of medical staff twenty four hours per day.

23. The DOC will develop and implement a policy for health education and preventive care including periodic screening and the handling of emergencies.

24. The DOC will develop a policy for access to emergency care. The policy will require that the DOC arrange for ambulance capability staffed by personnel with advanced cardiac life support (ACLS) training available within twenty minutes of

paragraph is intended to prevent any facility from offering root canal services.

26. The DOC will develop and implement medical policies for the management of the following chronic diseases, including provisions for a baseline evaluation; regular, structured follow-up; expected elements of documentation; and physician intervention and treatment for a particular diagnosis for the following medical conditions:

a. HIV;

b. Diabetes;

c. Cardiovascular disease and hypertension;

d. Seizure Disorder; and

e. Asthma and pulmonary disorders.

27. The DOC will develop and implement a revised policy regarding medical records and their maintenance. This policy will include the integration of all medical and mental health records insofar as such integration is not expressly prohibited by state law or court order. The policy will also provide for a problem-oriented record and will contain provisions for documentation; integration maintenance; record transfer; and medication continuity, distribution and monitoring. The parties further recognize that the DOC will undertake certain interim steps to ensure the appropriate maintenance of medical records.

28. The DOC agrees to develop and implement a policy that will contain provisions assuring that diagnostic test results are given appropriate follow up by requiring that at a

minimum a physician review and initial all abnormal values, document such in the record, and document treatment when appropriate.

29. The DOC will develop and implement a policy for staff credentialling and continuing education and for assuring that staff do not exceed their appropriate scope of practice. The policy will provide that registered nurses may not perform health care assessment and triage without special training. The policy will prohibit licensed practical nurses from performing health care assessment.

30. In conjunction with the policy for credentialling, the DOC will establish a Peer Review Committee composed of Board certified physicians and dentists as well as other health care professionals when appropriate. This Committee will make recommendations concerning the granting of physician privileges to the BHCS Director. In order for a physician to be recommended for approval by the Committee, the physician will be required to demonstrate competency through submission of documentation that he or she possesses the necessary training and experience to perform the procedures at issue.

C. **Equipment and Facilities**

31. The DOC agrees to request funding to provide standardized medical equipment for its facilities and provide the facilities specified by its comprehensive health care policies. All facilities will maintain negative pressure rooms that are routinely inspected for the maintenance of air flow rates. All

facilities will have peak flow meters to aid in the treatment of patients with asthma or other pulmonary diseases as appropriate. All facilities will maintain and check all emergency medical equipment pursuant to a standard list of required emergency equipment. Attachment 3 consists of a standard list of equipment that is currently available at all institutions or will be available on or before June 30, 1995. Attachment 4 consists of a list of equipment identified by individual institutions in order to fulfill their equipment needs by June 30, 1995.

D. Quality Assurance

32. By June 30, 1995, the DOC will adopt a comprehensive system-wide quality assurance program designed to assure the implementation of the policies described in paragraphs 17-29, supra as well as all other facets of health care. The quality assurance program, which will have both Central Office and local facility components, will include clinical review and peer evaluation components. There will be a review of implementation of specialists' recommendations, including the timeliness of implementation. The clinical director has the discretion to raise patient care issues with the Commissioner.

33. One component of quality assurance will be the development of a DOC Peer Review Committee (hereinafter Committee) that will provide oversight to the practice of medicine; review physician standards of practice with regard to DOC policies; and make recommendations to the Director, Bureau of

Health Care Services and to the Commissioner on the subject of physician credentialling and disciplinary action.

34. The Committee will be involved in the development of physician standards of practice that are diagnostic specific. These standards will become the basis of the chronic disease policies provided for in paragraph 26, supra.

35. The quality assurance process will include on a regular basis case reviews that assess compliance and clinical competence of the practitioners.

36. The quality assurance mechanism that is adopted to examine emergency services will include semiannual medical unit emergency response drills coordinated by the Correctional Healthcare Administrator in conjunction with the medical director of the facility, who will issue written critiques; a quarterly analysis of ambulance response times and the appropriateness of vehicle selection; a quarterly review of at least 10% of all cases presented for emergency treatment to determine the appropriateness of the nursing response; and a quarterly review by the medical director of five (5) or all cases, whichever number is less, that present with a specific diagnosis or condition. The nursing supervisor will review at least two emergency records for each registered nurse and provide feedback to that nurse.

E. Time Limits

37. The medical care claims in plaintiffs' complaint shall be dismissed without prejudice contemporaneous with the

Court's approval of this agreement with the exception of the plaintiffs' claims regarding tuberculosis control. The plaintiffs' claims regarding tuberculosis control will be dismissed without prejudice on June 30, 1995, provided that the DOC is in substantial compliance with the preliminary injunction of September 29, 1992, including the requirement to provide prompt x-rays for all prisoners discovered to be PPD-positive and the requirement to maintain negative pressure rooms at all facilities. A finding of substantial compliance will not be defeated by isolated, non-continuing instances of non-compliance.

F. Monitoring

38. The DOC will provide the following information on a quarterly basis: biweekly reports from the correctional health care administrators, the Regional Health Care Administrators' Quarterly Status Report, the executive monthly SCAN report relating to medical issues, the equipment lists for each facility reflecting the present state of equipment on site, the Tuberculosis Summary of Tracking Data Report, and the Inmate Deaths Database System Printout, the Facility Medical/Mental Health Staffing Report, an explanation for any positions which are not filled within three months of the vacancy as well as efforts initiated to fill the vacancy, institution population counts from the SCAN data, copies of promulgated policies, copies of the public DOC Budget and Rebudget documents for FY 1994-1995, 1995-1996, 1996-1997 as well as the Bureau of Health Care Services Budget and Rebudget documents for the same fiscal years,

reports reflecting the measurements taken in the negative air pressure rooms reflecting the number of air exchanges per hour, and reports from each facility regarding emergency equipment checks.

39. In accordance with the August 15, 1991, Stipulated Protective Order and the March 26, 1992 Amendment to Stipulated Protective Order and ¶2 of the October 26, 1992 order in this case, the DOC will provide copies of specific medical records identified by plaintiffs' counsel.

IV. MENTAL HEALTH CARE

A. Central Office Structure

40. The Pennsylvania Department of Corrections (DOC) will hire a Chief of Psychiatric Services. The Chief of Psychiatric Services must be a board certified psychiatrist. This position will be allocated to the Bureau of Health Care Services (BHCS) and the Chief of Psychiatric Services will report to the Director BHCS. The DOC may elect to make the Chief of Psychiatric Services either a contract or staff position. A minimum of thirty-two (32) hours per week will be devoted to this position. Psychiatric services will be governed by the Chief of Psychiatric Services. The Chief of Psychiatric Services will be involved in peer review, clinical practice issues, assessment of competency as well as the development, revision and expansion of mental health policies and standards of practice.

41. The Chief of Psychiatric Services will guide, review, and direct the field psychiatrists as necessary. This process includes ensuring field psychiatrists comply with DOC policies and procedures as well as psychiatric standards developed by the Chief of Psychiatric Services and reviewed by the Committee described in Section III, supra.

42. DOC will seek funds for this position in its FY 94-95 Budget Request. If approved, the Chief of Psychiatric Services would be hired after July 1994.

43. The BHCS and the Chief of Psychiatric Services will ensure that clinical decisions related to the mental health care of the inmate population are directed by medical personnel.

44. Psychological services will remain under the supervision of the Bureau of Inmate Services. The Chief of the Psychological Services section, the Director, BHCS, and the Chief of Psychiatric Services will take administrative steps to ensure the coordination of mental health services within DOC. These steps include, but are not limited to, reviewing all audits conducted by the Department of Public Welfare, Central Office or any other agency, attending monthly meetings to ensure consistency of approach between Psychological Services and Psychiatric Services; and providing for coordinated training sessions.

B. **System Issues**

45. The DOC agrees to continue to contract for the provisions of psychiatric services to inmates who are seriously mentally ill.

46. The DOC has implemented an ongoing mental health assessment process beginning at the Diagnostic and Classification (DCC) level which collects statistical information. The DOC utilizes its current Mental Health Computer Tracking System (the Tracking System) to collect these data.

47. The Mental Health Computer Tracking System identifies an inmate, his DOC number, institution, custody level, single cell status, stability score, ICD-9 (International

Classification of Diseases) code, GAF (Global Assessment of Functioning) score. IQ score, achievement scores (e.g. WRAT), and last completed school grade. The system is designed to include suicide attempt history, means of attempt and severity of attempt. In addition, the system is designed to display information on participation in Prescriptive Program Planning (PPP) as well as drug and alcohol treatment needs. The computerized system provides the user access to other information including patient's maximum and minimum dates, offense code, severity of criminal history, work performance, housing performance, and history of institutional violence.

48. The DOC agrees to utilize the Tracking System as a means to include pre-confinement medication history for inmates with a pre-confinement history of mental illness, either by use of the "comments" field or another more appropriate data entry field.

49. The DOC agrees to utilize the Tracking System to obtain information which would assist in the identification of system needs.

50. The DOC uses the existing Pennsylvania Additive Classification Tool (PACT) as a part of the ongoing assessment process for all inmates.

51. The DOC agrees to make its tracking system fully operational by June 30, 1994.

52. The DOC agrees that its psychological services section will continue to conduct annual audits of all psychology

programs and continue to participate in Department of Public Welfare - Office of Mental Health (DPW/OMH) inspections of the Mental Health Units (MHUs).

53. DOC will draft a specific informed consent document for an inmate to review and sign when therapeutic and forensic interviews occur. The Department will provide in-service training on the use of the informed consent document to psychiatric and psychological and other appropriate staff members. The training includes a component addressing a de-emphasis of their roles in the parole process.

54. The Department agrees to continue to comply with applicable state law as embodied in the Mental Health Procedures Act, 50 P.S. §§7100, et seq., other applicable state and federal statutes and applicable professional licensing regulations.

55. The institutional psychiatrist will be included as a member of the psychiatric review team.

C. **Policies**

56. The DOC agrees that the BHCS will utilize the Peer Review Committee (Committee) to review psychiatric standards of practice specific to diagnosis as developed by the Chief of Psychiatric Services. Elements of these standards include, but are not limited to, documentation, physical intervention, and treatment for particular diagnoses.

57. The DOC agrees to implement a policy that requires each inmate who is placed on psychotropic medications be evaluated at least every six (6) months for signs of tardive

dyskinesia. If such signs are detected, the inmate will receive medical treatment in accordance with the protocol established by this policy.

58. The DOC agrees to revise its policies regarding the maintenance of the medical records system (previously embodied in OM-105.09). These revisions include maintenance of all integrated health records in an easily accessible location to all authorized treatment staff.

59. The records maintenance policy will describe how information contained within the medical and mental health sections of the inmate's chart is documented to ensure continuity of care among all health care providers.

60. If records are removed pursuant to a removal procedure which is outlined in the policy, the fact of that removal, the reason for that removal and the person to whom the records were provided will be conspicuously noted in the chart.

61. Medical records personnel will maintain a list of the removed records in accordance with the policy and notify the health care administrator who will follow-up with appropriate management staff if the records are not timely returned.

D. **Special Needs and Mental Health Units**

62. Special Needs Units (SNUs) are located at the following level 3 facilities: SCI-Smithfield, SCI-Rockview, SCI-Cresson, SCI-Graterford, SCI-Greensburg, and SCI-Dallas. SRCF-Mercer has a separate block for special needs inmates. SNUs are

available at the following level 4 facilities: SCI-Huntingdon and SCI-Camp Hill.

63. DOC agrees to develop and implement a policy which ensures access to an SNU to any inmate identified to need such housing. The policy will establish criteria for prioritizing placement of these inmates. Among the criteria which may be considered are the length of time the inmate would benefit by placement in the SNU, the programming of the particular SNU under consideration, and the objectives of the inmate's long term treatment plan. DOC will aim for placement of inmates in need of SNU placement within thirty (30) days of this evaluation.

64. DOC agrees to draft a new Special Needs Unit Policy which will describe the operation of the unit, inmate access to the unit, the procedures for reintegration of an SNU inmate to general population wherever possible.

65. Based upon the needs of the SNU population, psychological, psychiatric and unit staff at a particular institution with a special needs unit may offer a variety of programs to SNU inmates in accordance with their treatment plan. This may include group therapy, individual psychotherapy, and the development of psycho-educational and psycho-social skills. However, other programs offered to SNU inmates may include, but are not limited to, groups focusing on activities of daily living (hygiene, money management), interpersonal relations, communication skills, vocational skills, insight oriented psychotherapy, crisis stabilization, transition and re-

integration back into general population, or return from an MHU, anger management, stress management, sex offender therapy, adult basic education, art therapy, recreational instruction, drug and alcohol treatment and self esteem instruction.

66. Each SNU must offer programs concentrating on medication compliance.

67. The DOC agrees to dedicate at least 800 special needs units beds statewide to house inmates determined to require housing in a SNU.

68. The DOC agrees that inmates housed in SNUs who are willing and appropriate for work will have the same access to job and educational opportunities as inmates housed in general population.

69. Each Special Needs Unit will devote at least thirty-five (35) hours per week to programming for inmates housed there. This programming may include two (2) hours each day of recreational activity. Other programming which may satisfy this requirement includes participation in employment and educational programs (both mainstream general population or SNU specific programs), the programs listed in paragraph 65 supra or other programs identified by the inmate's treatment plan.

70. The DOC agrees to establish at least 212 Mental Health Unit (MHU) beds statewide for inmates. This requirement may be fulfilled by utilizing in-house mental health unit bed space or bed space in the DPW Forensic Mental Health Unit.

71. Contingent upon the availability of DPW Forensic Mental Health Unit space, the DOC agrees that it will not reduce the number of SNU beds or MHU beds systemwide below the level established by this agreement. If system planning demonstrates a greater or lesser need for SNU beds, the number of beds may be adjusted accordingly.

72. DOC will continue its present policy "Inmates Refusing to Take Prescribed Psychotropic Medications" (OM 105.04), which permits placement of non-compliant with medication inmates in administrative custody (AC) status. The placement decision may not be based solely on a mental health diagnosis and a refusal to be medicated with antipsychotic drugs. The DOC will continue to require that medication non-compliance be addressed therapeutically if noncompliance is related to the inmate's mental illness.

73. Inmates placed in AC status pursuant to this policy should be evaluated for placement in an infirmary setting, an SNU, an MHU, or other placement which would be consistent with a short term treatment plan, if the refusal to continues beyond three (3) days. The evaluation should be undertaken pursuant to the criteria in the Interinstitutional Transfer of Mental Health Commitments to DOC Mental Units (7.3.4) policy. Whenever an inmate is placed in administrative custody pursuant to this policy, an entry into the mental health chart must be written that details why placement was necessary. The entry will include

an explanation as to what behavior was so disruptive such that the inmate was dangerous to himself or others.

74. DOC agrees that the reasons for placement of an inmate who is seriously mentally ill in a double cell will be documented in that inmate's mental health record by the mental health practitioner.

75. The reasons for placement of an inmate in an institution's psychiatric observation room (POR) shall be documented in the mental health chart. Inmates placed in a non-infirmary POR for more than three days should be evaluated for placement in an infirmary setting, an SNU, an MHU, or other placement which would be consistent with a short term treatment plan.

76. The DOC agrees to implement a treatment plan for inmates who are seriously mentally ill. The treatment plan will be consistent with the treatment plans developed pursuant to 55 Pa. Code §5200.31 with the following exceptions:

(a) Treatment plans for inmates currently incarcerated must be developed by no later than June 30, 1995. Updated treatment plans for these inmates will be governed by subsection (c).

(b) Treatment plans for newly incarcerated inmates will be developed within thirty (30) days of intake and updated every one hundred twenty (120) days.

(c) Updated treatment plans will be developed at least every one hundred twenty (120) days.

E. Quality Assurance

77. By June 30, 1995, the DOC will adopt a comprehensive system-wide quality assurance program designed to assure the implementation of the policies described in paragraphs 56-76, supra, as well as other facets of health care. The quality assurance program, which will have both Central Office and local facility components, will include clinical review and peer evaluation components. There will be a review of implementation of specialists' recommendations, including the timeliness of implementation. The chief psychiatrist has the discretion to raise patient care issues with the Commissioner.

78. One component of quality assurance will be the development of a DOC Peer Review Committee (hereinafter Committee) that will provide oversight to the practice of psychiatry review physician standards of practice with regard to DOC policies; and address staff credentialling and disciplinary action.

79. The Committee will be involved in the development of physician standards of practice that are diagnostic specific. These standards will become the basis of policies provided for in paragraphs 57, 58, 63, 76, supra.

80. The quality assurance process will include on a regular basis case reviews that assess compliance and clinical competence of the practitioners.

F. Individual Institutions

SRCF-Mercer

81. Funding for an additional full-time psychologist will be requested in the DOC FY 94-95 budget.

SCI-Huntingdon

82. Specific treatment for the seriously mentally ill inmate who is housed in the RHU will be coordinated pursuant to policies regarding the Administration of the RHU (6.5.1) Policy and the Delivery of Mental Health Services (7.3.1) Policy.

83. By June 30, 1994, DOC agrees to contract for the provision of at least 45 hours of psychiatric coverage per week.

84. Crisis intervention will be handled pursuant to the Interinstitutional Transfer (7.3.4) Policy.

SCI-Greensburg

85. The institution will provide access for at least 14 hours/week to recreation facilities to inmates housed in the SNU. Fulfillment of this requirement may be satisfied by attendance in mainstream recreational facilities yard, recreational tournaments or SNU specific activities coordinated through the institution activities department.

SCI-Camp Hill

86. The institution will comply with the Interinstitutional Transfer Policy (7.3.4).

87. By June 30, 1994, DOC agrees to contract for the provision of at least 56 hours of psychiatric coverage which is intended for out-patient care and inmates housed in the SNU.

88. DOC agrees to build a 30 bed MHU by March 1, 1996.

SCI-Dallas

89. By June 30, 1994, DOC will contract for the provision of a minimum of 45 hours per week of psychiatric coverage for this institution.

SCI-Frackville

90. Funding for a SNU will be sought in the FY 95-96 budget.

SCI-Graterford

91. DOC agrees to continue to maintain a 19 bed MHU.

92. DOC agrees to establish by June 30, 1994, an 80 bed step down unit from the MHU and secure SNU in the general population with the following characteristics: weekly psychiatric rounds, special education classes, self esteem and medication compliance groups, individual counseling, and activities/recreational therapy. Admission to the step down unit will be governed by "Criteria for Referral to the Psychiatric Review Team For Lower F-Block Placement Consideration".

93. DOC agrees to provide the stepdown unit inmates who are willing and appropriate for work with the same access to job and educational opportunities as inmates in general population.

94. DOC agrees to provide out of cell time consistent with individual treatment plan needs to inmates housed in the SCI-Graterford secure SNU.

95. DOC will provide specialized training which focuses in clinical issues to correctional personnel assigned to the secure SNU.

G. Time Limits

96. The mental health care claims in plaintiffs' complaint shall be dismissed contemporaneous with the Court's approval of this settlement agreement.

97. Unless otherwise stated in this agreement, the DOC agrees to provide plaintiffs' counsel with quarterly status reports regarding implementation of the terms of the Settlement Agreement for a period of three (3) years after approval of the Settlement Agreement by the Court.

98. These status reports shall include copies of all policy changes and new policies implemented during the course of monitoring.

H. Monitoring and Reporting

99. The DOC agrees to permit plaintiffs' expert, Jeffrey Metzner, M.D., to tour specific areas (e.g., SNUs, RHUs, MHUs) in 5-7 institutions (one tour per institution), designation of which institutions and areas to be in the sole discretion of plaintiffs.

100. Plaintiffs' expert shall also consult with Central Office staff, including the Chief Psychologist and Chief of Psychiatric Services in BHCS, prior to any tour. Plaintiffs will establish, prior to the tour, a list of expected documents, case files and personnel Dr. Metzner will review and interview.

101. During these tours, DOC agrees to permit the on-site review of individual inmate files upon the execution of a release by the inmate. However, where the competency level of an inmate prevents the execution of a release, DOC may permit release of such files pursuant to the dictates of the Court's prior protective orders. The release of these records will be coordinated through Austin defense counsel.

102. DOC also agrees to permit the review of a limited number of files without client releases, in accordance with the criteria established in the August 15, 1991, March 26, 1992 and October 26, 1992 protective orders. This release shall also be coordinated through Austin defense counsel. Additionally, the DOC agrees to provide, on a quarterly basis, copies of internal audits conducted by the Chief of Psychiatric Services and Chief Psychologist, a description of the Mental Health Tracking System and evaluation reports which discuss the effectiveness of the Mental Health Tracking System.

103. DOC agrees to advise plaintiffs' counsel no later than June 30, 1995 that the Department has implemented the provisions of Section IV of this agreement, at which time plaintiffs may begin to schedule tours of institutions.

I. Definitions

104. **Diagnostic and Classification Unit/Facility (DCU)** - The Diagnostic and Classification Unit/Facility is a reception unit/facility for new commitments to the Department of Corrections. While in Diagnostic and classification status, the

new receptions are seen for a medical evaluation, psychological evaluation, and for gathering background information. At the end of the classification process, the diagnostic and classification staff formulate recommendations concerning programming needs for the inmate.

105. **Diagnostic and Classification Unit/Facility Mental Health Staff** - Refers to the counseling, psychological and psychiatric staff that work in a Diagnostic and Classification Unit/Facility or provide mental health services to inmates in Diagnostic and Classification status.

106. **Diagnostic and Classification Unit/Facility Staff** - All staff in a Diagnostic and Classification Unit/Facility including but not limited to counselors, corrections officers, and ancillary staff.

107. **DPW Forensic Mental Health Unit** - Refers to the forensic mental health units operated by the Office of Mental Health in the Department of Welfare (DPW). The male forensic unit is located at Farview State Hospital, while female DPW forensic units are located at Norristown State Hospital and Mayview State Hospital.

108. **DPW Forensic Mental Health Unit** - Refers to the forensic mental health units operated by the Office of Mental Health in the Department of Public Welfare (DPW).

109. **General Population Unit/Facility** - A general population unit/facility is a general housing unit/facility

within which an inmate may engage in various educational, vocational and treatment programs.

110. **In-House Mental Health Unit** - Refers to the licensed mental health units housed within DOC correctional facilities. These units are operated by vendors under contract to the Department of Corrections.

111. **Mental Health Commitment** - Refers to the procedure to obtain a commitment to a mental health facility as directed by Act 143 of 1976, as amended by Act 324 of 1978, the Mental Health Procedures Act. It is the same process as is used for commitments instituted in the community.

112. **Mental Health Record** - This record is comprised of the psychiatrist's progress notes, psychologist's notes, orders for psychotropic medications, discharge summaries from DPW or in-house forensic mental health units, suicide watch checklist and infirmary records. This definition does not include entries from the DC-14.

113. **Preventative Mental Health Services** - Those services that are designed to maintain or improve the mental health of inmates before they develop emotional problems or reach a crisis. Programs involving Anger Management, Assertiveness, General Adjustment Groups, and recreation activities are examples of these services.

114. **Psychiatric Review Team** - A team, chaired by the institution's Chief Psychologist or designee, and including the Consultant Psychiatrist, the Unit Manager, and such other staff

as may be designated by the institution's Chief Psychologist with input from the Unit Manager or the Inmate Program Manager of the facility. The Psychiatric Review Team reviews the cases of those inmates who experience adjustment or behavioral difficulties related to emotional problems and who require more in-depth evaluation, and closer monitoring and support. This team may also be referred to as the Multidisciplinary Mental Health Review Team.

115. **Psychological Services Staff** - Psychological Services staff refers to those individuals who hold positions as Psychological Services Associates up through and including Psychologist positions. Psychological Services staff provide a range of psychological, treatment and mental health services to the various units. Psychological Services staff may be assigned to more than one Unit. While psychological services will be centralized, Psychological staff are expected to make frequent visits to the Units and to interact with Unit staff and inmates on a regular basis.

116. **Restricted Housing Unit (RHU)** - The disciplinary unit within a correctional facility. Administrative custody cases, including self-confinement and protective custody cases may also be placed in this unit.

117. **Seriously Mentally Ill** - A substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality or cope with the ordinary demands of life.

118. **Special Needs Unit** - The Special Needs Unit is a housing area in which inmates can receive additional or more intense treatment services and support.

119. **Treatment Plan** - A plan formulated for a particular person in a program appropriate to his specific needs.

120. **Unit Manager** - The person who is responsible for managing the staff and programs in a Unit.

121. **Unit Staff** - The staff who are assigned specifically to the Unit full time and who provide services and programs in a Unit under the direction of the Unit Manager. Unit staff includes (but is not limited to) corrections officers and counselors.

V. CORRECTIONS ISSUES

A. Access to the Courts and Law Libraries

Legal Assistance

122. The DOC agrees to implement statewide the Comprehensive Paging System and Legal Research Program for Non-Capital Inmates Confined in the Restricted Housing Unit as adopted in Tillery v. Owens, No. 87-537 (W.D. Pa. May 13, 1994).

123. The DOC agrees to implement statewide an Access to Provided Legal Services Policy.

124. The DOC will employ paralegals at its institutions in order to fulfill the policy set forth in paragraph 123, supra. The services that paralegals will provide under the above referenced policy, will include:

(a) instruction to the inmate legal reference aides who will be permitted to assist requesting prisoners with legal research and drafting documents;

(b) assistance to inmates with legal research and, where necessary, preparation of documents for submission to the courts for those inmates who satisfy the following criteria:

(i) are in restricted housing unit (whether their status is disciplinary custody, administrative custody or protective custody) or in a Special Management unit (hereinafter, together referred to as restricted housing status);

(ii) are assigned to restricted housing status for a period to exceed thirty consecutive days;

(iii) have served the first thirty days in that restricted housing status EXCEPT: the paralegal may assist an inmate who has spent less than thirty consecutive days in restricted housing status if he/she produces a court document verifying that a pending legal action exists in which a deadline for filing documents has been established by order of court or by rule of

- procedure which cannot reasonably be met absent such assistance OR wishes to initiate an action regarding medical care at the institution, seeks immediate court action (preliminary injunctive relief) and has exhausted this claim through the first level of the internal grievance process (that is, has received a response from the administrative review by the institution available through DC-ADM 804); and

(iv) present claims that are deemed by the paralegal to be non-frivolous. A frivolous claim is one that is patently without legal foundation or factual possibility. The paralegal will keep a record of the claims found to be frivolous, describing the claims in general terms and identifying the inmate who requested assistance on each such claim and any papers related to the request(s).

The name of the inmate requesting to initiate an action regarding medical care at the institution will be entered on the paralegal's list at the time of the receipt of the request for assistance to assure that services will not be delayed unnecessarily while the inmate's institutional grievance is being processed. Priority will be given to those inmates who otherwise qualify who are non-English speaking inmates and those inmates who do not have an 8th grade reading level (ascertainable qualifying literacy level or AQLL). The DOC will determine an inmate's AQLL within five working days of his/her request for paralegal assistance. The requesting inmate's name will be entered on the paralegal's list at the time of the receipt of the request to assure that services will not be delayed unnecessarily while the inmate's AQLL is being established.

125. The department will employ two contract paralegals regionally who will be dedicated to training issues (that is, will bear primary responsibility to educate the inmate legal

reference aides). During the initial phase of the implementation of this program, all paralegals will assist in the training of inmate legal reference aides. The task of educating the inmate legal reference aides is expected to take approximately one (1) year from the hire of the paralegals. Under the Access policy, the number of inmate legal reference aides to be hired by the institutions will be established by using as the primary criteria: the total number of inmates in general population; historical usage of the law library; the number of hours the library is open and the space available in the law library. The paralegals will provide training to inmate legal reference aides and serve as an on-going resource for the inmate legal reference aides to assist them to provide services to the general population inmates.

126. The DOC agrees to the following allotment of paralegal hours per week per Austin institution based on its review of previously identified factors and geographical considerations:

INSTITUTION	NUMBER OF PARALEGAL HOURS PER WEEK	INSTITUTION	NUMBER OF PARALEGAL HOURS PER WEEK
SCI-CAMP HILL	40 HOURS	SRCF-MERCER	4 HOURS
SCI-CRESSON	4 HOURS	SCI-RETREAT	4 HOURS
SCI-DALLAS	12 HOURS	SCI-ROCKVIEW	8 HOURS
SCI-FRACKVILLE	8 HOURS	SCI-SMITHFIELD	8 HOURS
SCI-GRATERFORD	40 HOURS	SCI-WAYMART	4 HOURS
SCI-GREENSBURG	4 HOURS	SCI-WAYNESBURG	4 HOURS
SCI-HUNTINGDON	40 HOURS		

127. The DOC will afford inmates who are consulting with a paralegal privacy to confer. This opportunity for private conferences will encompass communication through a non-employee translator (as provided for in paragraph 130, below) when such services are needed to conduct effective communication.

Inmate Legal Reference Aides

128. The inmate legal reference aides will be paid by DOC and will be prohibited from charging other prisoners for such services. Violators will be punished through the inmate disciplinary procedures.

129. The DOC agrees to develop procedures which will facilitate prisoners fair access to inmate legal reference aide services. Consistent with institutional space availability and security requirements, the DOC will provide a degree of privacy for those inmates consulting with an inmate legal reference aide.

Non-Employee Translation Services

130. The DOC will make reasonable efforts to provide translation services for non-English speaking inmates to facilitate communication between inmates and paralegals and between inmates and inmate legal reference aides at the institution.

Capacity and Hours of Operation

131. The DOC will continue to provide the existing space (capacity) to its inmate population at the thirteen (13) institutions named in the complaint.

132. The DOC has established current capacity and hours of operation per week consistent with the table below.

INSTITUTION	LAW LIBRARY CAPACITY	HOURS OF OPERATION/WEEK
Camp Hill	33	42 hrs. 35 min.
Cresson	30	50 hrs.
Dallas	36	35 hrs. 30 min.
Frackville	16	27 hrs.
Graterford		
Main Law Library	50	40 hrs.
Graterford		
New Side Library	30	22 hrs. 30 min.
Greensburg	26	47 hrs.
Huntingdon	37	41 hrs.
Mercer	30	28 hrs. 30 min.
Retreat	38	43 hrs.
Rockview	44	52 hrs. 30 min.
Smithfield	21	42 hrs. 45 min.
Waymart	10	40 hrs.
Waynesburg	25	27 hrs. 10 min.

Legal Materials for Inmates in the Special Management Unit (SMU) at SCI-Camp Hill and Restricted Housing Units (RHU)

133. DOC agrees to establish mini-law libraries for each RHU throughout the thirteen institutions subject of this litigation and the SMU at SCI-Camp Hill. These libraries will contain materials consistent with the capital case mini-law libraries.

134. The Restrictive Housing Unit mini-law libraries will be available for legal research seven (7) days a week, six (6) hours per day as needed. This will enable RHU inmates to review the legal reference books that are located in the libraries, to identify from those books any published opinions they wish to order from the institution's Main Law Library, and to Shepardize opinions they believe are pertinent to their research. Mini-law libraries will not be open unless inmates have signed up to use it as set forth below.

135. The law books that are stocked in the Restrictive Housing Unit mini-law libraries will not circulate from those rooms and will remain inside the libraries at all times. Therefore, as a matter of policy, inmates will not be allowed to remove the books from the library rooms and prison personnel will take reasonable steps to assure that books are not removed.

136. Due to the limited size of each of the mini-law libraries, two inmates at a time may be permitted to use the rooms. If, however, RHU/SMU staff determine that inmates must be separated from each other, separations will be maintained.

137. Research periods will be scheduled and assigned in time blocks of two hours each. Under this system, an inmate who is scheduled for a research period will be permitted, at his option, to engage in research for two consecutive hours or for a shorter amount of time, if he so desires. Should library space be available due to a lack of demand, an inmate who is using the library may be permitted to continue to use the library beyond

the assigned period, not to exceed normal mini-law library hours of operation.

138. Access to the RHU mini-law libraries will be scheduled in a fair and equitable manner. Access to the mini-law libraries will be made on an ongoing basis from sign-up sheets that will be equally available to all inmates in the restrictive housing units. Schedules for research periods will be established by institutional personnel in the order in which the names of the inmates appear on the sheets, subject to adjustment for security concerns.

139. A rotating system will be designed and implemented by the defendants to ensure that no particular inmates or group of inmates are given priority access to the sign-up sheets or to the mini-law libraries. Access to the sign-up sheets and to the mini-law libraries themselves will neither be delayed nor withdrawn from any inmate for disciplinary reasons, unless the disciplinary violation is associated with the misuse of the mini-law libraries.

140. Under the paging system established for the Restrictive Housing Unit, inmates will be allowed to order and receive a maximum of six (6) published case opinions per delivery from the prison's Main Law Library, which, at the institution's option, can be in the form of legible photocopies of opinions.

141. Deliveries of opinions under the paging system will be made twice a week to inmates in each of the housing areas

covered by this plan in accordance with an established schedule. There will be at least two days between deliveries.

142. Under this plan, the institution will have until the next delivery day to deliver copies of the requested opinions to an inmate for requests made on or before the previous delivery day.

143. Copies of opinions will be provided to inmates without charge and inmates will be permitted to retain the copies for a period of up to a month without charge. Thereafter, an inmate must either return the copies to prison personnel or he will be charged for them at the prevailing photocopying rate established by the institution for copying documents.

144. The ordering of opinions will be on request forms furnished by the institution. The forms will include space for an inmate to list the names and case citations of the opinions he wishes to order and will have a space for the officer to whom the inmate hands the request to record the date of the request. The forms will also include a place for institutional library personnel to sign his/her name and date, acknowledging receipt of the request form and a space to record the date of delivery. The original of the completed request from containing the above information (with the exception of the delivery date) will be retained by the institution to enable the request orders to be processed. A copy of the form will be given to the inmate for his records. The date of delivery will be recorded on the originals, as well as on the copies at the time of delivery.

145. Copies of the executed request/delivery forms will be retained by the institution for the first year of the plan's implementation to enable the parties to monitor compliance. Therefore, copies shall be retained for six (6) month periods for the same purpose.

Photocopying Facilities

146. DOC agrees to provide legal document photocopying services at all thirteen (13) institutions named in the Complaint. DOC will ensure the placement of equipment in order to provide on-site photocopying service at all thirteen (13) institutions named in the Complaint by December, 1994.

147. Inmates will be charged a reasonable fee for photocopies.

B. Vocational Work and Educational Programs

1. Correctional Industries

148. Correctional Industries will expand between December 1993 and December 31, 1995 to allow for the employment (at full operation) of 725 additional inmates.

2. Non-Correctional Industry Work Opportunities

149. The DOC will offer some type of regular employment to each eligible inmate within six (6) months after the inmate arrives at his/her parent institution.

3. Educational Programs

150. The DOC agrees to maintain GED programs and the time between application and initial class to the existing time period range of zero (0) to one hundred and twenty (120) days.

151. The DOC will advocate and encourage the availability of GED and other educational programs. By Pennsylvania law, eligibility for and availability of educational programs is controlled by the Pennsylvania Department of Education. Educational services are provided in a cooperative manner by the DOC and the Pennsylvania Department of Education.

C. Investigation Procedures for Allegations of Use of Force

1. Investigation Procedures of the Special Investigations Office

152. All allegations of abuse as that term is defined in the Inmate Abuse Allegation Monitoring Process policy (Abuse Monitoring Policy) dated November 2, 1992 will be tracked and monitored by the Special Investigations Office (SIO).

153. Employees receiving written or verbal notification from an inmate alleging an incident of abusive use of force will forward the complaint or information to the Superintendent or Security Office within 24 hours of receipt. The Superintendent or institutional Security Office will then forward this information to SIO within seventy-two (72) hours of its receipt for tracking, monitoring, or additional investigation pursuant to the Abuse Monitoring Process policy.

154. All documentation relevant to the allegation including, when available, interviews, medical reports, physical evidence and reports will be forwarded to SIO in accordance with the Abuse Monitoring Process policy.

155. The DOC agrees to continue to follow the provisions of the Abuse Notification Process policy which permits SIO to review the investigations in any case, order additional investigative steps or procedures or assume direct responsibility for the investigation of a particular case.

156. Pursuant to the Abuse Monitoring Policy, the DOC shall develop a database concerning allegations of inmate abuse.

(a) The database will be maintained by SIO and shall include the name of the complainant, the name(s) of the staff against whom the complaint is made, a synopsis of the complaint and resolution inclusive of any employment action (if taken) by the DOC.

(b) Consistent with current practice and aided by the abuse notification database, administrators will continue to take appropriate action with respect to training, supervision or assignment of staff if any pattern emerges.

(c) The DOC has under consideration a computerized tracking program on an institutional level of all non-abuse grievances submitted pursuant to DC-ADM 804. This database will identify both staff and inmates involved, the location of the incident and type of grievance.

2. General Investigation Procedures

157. The Health Care Administrator or other medical personnel of each institution will document any abuse complaint using the medical incident/injury report form and provide a copy to the Shift Commander. This report will be forwarded before the end of the shift on which the complaint is received. This report will contain the inmate's account of the incident.

158. Any physical injuries that are reported by the inmate or otherwise observable by medical or other personnel pursuant to a claim of abuse or a suspicion of abuse will be immediately photographed and attached to the copy of the medical incident report submitted to the Shift Commander.

159. All DOC employees, medical staff and counselors are bound by the DOC Code of Ethics to report abuse complaints or incidents of abuse to the Shift Commander.

160. The DOC as a matter of policy treats reports of abuse of inmates by staff on a confidential basis where the person reporting the incident or complaint requests confidentiality. This policy will be communicated to all correctional officers and staff.

161. Where an inmate claims abuse by an unknown correctional officers or staff members the DOC agrees to make an effort to facilitate identification of the officers or staff if the inmate can provide sufficient information which would make identification possible. Such efforts can include the use of photographic array after the charging inmate provides sufficient

descriptive information which would promote making an identification possible. Witness statements and report(s) generated from the investigative process will also be used to assist in identifying unknown individuals.

162. The DOC will maintain photographs of all employees. These photographs will be updated every five (5) years.

163. Every effort shall be made to investigate fully all allegations/complaints of abuse raised via grievances before any resolution is reached. In resolving grievances, credibility determinations shall be made based on all relevant and material facts. The fact that the complaint of an inmate is not corroborated by other persons or physical evidence does not preclude the fact-finder from taking action. However, the fact-finder may consider the lack of corroboration when weighing the credibility of the inmate's statements.

3. Videotaping Use of Force Situations

164. The DOC will continue its policy which provides that in instances where it is reasonably expected that physical force may have to be used, those incidents will be videotaped. Videotapes will not be used in circumstances where the wait for the video equipment will result in an unreasonable delay. Where it is reasonably anticipated that waiting for the video equipment will likely result in bodily injury or property damage, videotaping will not be required.

D. Inmate Safety: Transfers and Protective Custody

165. Consistent with existing policy, where the physical separation from general population for inmates requiring protection from other inmates, for reasons that are not a result of their own behavior, is determined necessary, consistent with DC-ADM 802, the DOC will consider (among other factors) a transfer to another institution or jurisdiction (federal, ICC referral, county placement) in alleviating the need for protective custody.

166. The investigation and disposition of a protective custody request or referral shall be completed pursuant to the Administration of Restricted Housing Units and Protective Custody policy.

167. Where a transfer is not effected, protective custody shall be consistent with the provisions of the November 2, 1993 Protective Custody Policy.

168. The DOC will consider a transfer to another institution in efforts to alleviate the need for administrative custody where the need for physical separation from general population for inmates requiring protection from other inmates is for reasons which are the result of their own behavior within the institution.

E. RESTRICTED HOUSING UNITS AND SPECIAL MANAGEMENT UNIT

169. The DOC will purchase fixed cameras for or assign dedicated camcorders to each RHU/SMU. DOC will videotape the

intake process of all RHU and SMU inmates and all movements or other contacts with inmates in which it is reasonably anticipated that the use of force may be necessary. The routine activities of the RHUs and SMUs such as movement to showers or yard shall not be required to be videotaped under normal conditions.

170. The DOC will place a secure sitting/writing unit in SMU level 5 housing areas.

F. Sex Offender Programs

171. At present, the DOC provides a "non-admitters" or educational component of a sex offenders program at all thirteen (13) named facilities.

172. The DOC shall summarize for the Board of Probation and Parole all program involvement, including any portion of a sex offender program an inmate completes. The "non-admitters" program is considered the educational component of the sex offender program.

173. Parole suitability is determined on staff assessment of potential harm to the community. Many factors are reviewed prior to making a parole recommendation. These factors include (but are not limited to) the nature of the crime, community sensitivity, level of community support.

G. Monitoring Provisions

174. Use and dissemination of any information produced pursuant to the Monitoring Provisions which is marked "confidential" will be controlled by the Court's protective orders in this case.

175. For a period of three (3) years from the date of the Court's approval of the Settlement Agreement, the DOC agrees to provide at three (3) month intervals a report which identifies the number of paralegal positions system wide and the status of whether those positions are filled or vacant. The DOC agrees to provide at three (3) month intervals the weekly schedule of hours actually worked by the paralegals (by hours and by institution).

176. The paralegals will maintain reports which will include the response time for paralegal responses to requests by inmates for legal assistance. For a period of three (3) years from the date of the Court's approval of the Settlement Agreement, the DOC agrees to provide at three (3) month intervals the number of requests for legal assistance at each institution from inmates in restricted housing. For a period of three (3) years from the date of the Court's approval of the Settlement Agreement, the DOC agrees to provide at three (3) month intervals all reports regarding the response times which shall include a list of requests that were not responded to by the paralegal. For a period of three (3) years from the date of the Court's approval of the Settlement Agreement, the DOC will require the paralegals to submit to the training/supervising paralegals, at three (3) month intervals, reports regarding those claims deemed frivolous. Upon written release from the inmates involved, plaintiffs' counsel will be given access to the reports pertaining to the frivolous claims.

The DOC will provide at three (3) month intervals, by institution, the number of inmate legal reference aides once they have begun employment. In addition, any documents used to track inmate requests directed to inmate legal reference aides and when those services are received will be made available to plaintiffs' counsel at three (3) month intervals.

177. For a period of three (3) years from the Court's approval of the Settlement Agreement, the DOC agrees to provide plaintiffs' counsel at three (3) month intervals copies of all regulations, other rules and directives (including amendments or other changes) pertaining to this section of the Settlement Agreement as they are published.

178. For a period of three (3) years from the date of the Court's approval of the Settlement Agreement, the DOC shall at three (3) month intervals provide to plaintiffs' counsel a report which identifies the number of inmates at each of the thirteen (13) state correctional institutions named in the complaint enrolled in correctional industries, other work or vocational programs and in education programs, to be broken down into the various categories: correctional industries, vocational training, other work assignments, GED programs, other educational programs.

179. For a period of three (3) years from the Court's approval of the Settlement Agreement, the DOC shall at three (3) month intervals provide to counsel for plaintiffs the following

data regarding investigations conducted pursuant to the Inmate Abuse Allegation Monitoring Process policy:

a. The number of cases actually investigated by the SIO;

b. The method of disposition of these cases by the SIO; and

c. The number of cases in which the SIO has ordered additional investigation by the SCI.

180. For a period of three (3) years from the Court's approval of the Settlement Agreement, the DOC shall at three (3) month intervals make available for review by plaintiffs' counsel all investigative records regarding allegations of abuse of force received by the SIO pursuant to the Inmate Abuse Allegation Monitoring Process policy.

181. For a period of three (3) years from the Court's approval of the Settlement Agreement, the DOC shall at three (3) month intervals provide plaintiffs' counsel access to the tracking data described in §VI(E)(1) of the Inmate Abuse Allegation Monitoring Process policy, concerning allegations of abuse of force by correctional officers and other staff.

182. During the three (3) year period following the Court's approval of the Settlement Agreement, on request of plaintiffs' counsel, defense counsel shall provide information concerning placement of inmate(s) in protective custody in accordance with paragraph 165.

183. For a period of three (3) years following the Court's approval of the Settlement Agreement, at three (3) month

intervals, defense counsel shall provide the following information relative to placement of inmates in administrative custody in accordance with paragraph 168:

a. By institution, the name and time of commitment in administrative custody of each inmate placed in administrative custody for reasons of protection of the inmate;

b. By institution, the names of each inmate transferred to another institution for reasons of protection of that inmate.

184. For a period of three (3) years following the Court's approval of the Settlement Agreement, at three (3) month intervals, on the request of plaintiffs' counsel, defense counsel shall provide access to the videotapes specified in paragraph 163.

185. For a period of three (3) years following the Court's approval of the Settlement Agreement, the DOC at three (3) month intervals shall identify which facilities offer a non-admitter sex offender program.

VI. HIV/AIDS

A. Substantive Provisions

186. The DOC shares the view that discrimination against people with HIV based on the risk of transmission of HIV

is not justified. In this regard, the DOC agrees to the following:

a. The DOC is committed to a policy of full and equal employment opportunity for prisoners with HIV. As a general rule, individuals with HIV infection, including individuals included on any contagious disease notification list, will be precluded from a work assignment only if the individual would pose a direct medical threat to the health of others.

b. Negative reactions of DOC employees do not justify restrictions on the employment of HIV positive individuals.

c. As a general rule, negative reactions of other prisoners do not justify restrictions on the employment of HIV positive individuals.

d. DOC recognizes that unjustified fear or prejudice against people with HIV cannot be overcome without consistently firm enforcement of nondiscriminatory policies by DOC at both the central office and institutional level. The problem of negative prisoner or employee reaction will be strongly dealt with through education and a tangible commitment on the part of DOC to implement an equal employment policy.

e. On occasion, the negative reactions of other prisoners to the presence of a prisoner with HIV in a particular job may pose a significant, documented risk that can be

prevented most effectively by removing the individual with HIV from the job or not placing him in that job in the first instance. On such occasions, the institution's administration may act accordingly. The security justification for such removal shall be specific and documented in the prisoners record. Reasonable efforts will be made to place the prisoner in a job with comparable pay. While a transfer may be considered, the DOC will exercise this option based on its assessment of custody and classification concerns, program and space availability. Further, the prisoner shall have a remedy under the grievance system to challenge the security justification. If it is determined that the prisoner was improperly excluded from employment the prisoner will receive the differential between the lost pay occasicned by the improper security-based denial of employment and any compensation s/he received from the DOC. The DOC, as part of its ongoing program of education and training, will attempt to reduce unjustified fear of HIV among prisoners.

f. The DOC recognizes that the problem of negative prisoner reaction to an HIV-infected prisoner may be reduced by staff scrupulously protecting the prisoner's medical privacy. At present, there are no special or distinct medical screening requirements for individuals

with HIV. Special or distinct medical screening requirements may be instituted for prisoners with HIV only upon a medically based determination that it is appropriate for the control of this disease.

187. The DOC agrees that the policy of universal precautions as set forth in OM 105.03 constitutes the most effective way to address infection control issues regarding HIV infection. Full implementation of OM 105.03 renders the Contagious Disease Notification Policy (CDNP) unnecessary and counterproductive as a means of infection control.

188. The DOC and the Certified Union Representative of its custody staff, AFSCME, will enter into good faith negotiations for a new contract. The DOC will bargain in good faith during the upcoming negotiations and its position will reflect the principles set forth in paragraph 187. During the course of these negotiations, the DOC will bargain for the replacement of the CDNP with a policy to address possible security concerns arising from inmate attempts to use a disease as a weapon or method of intimidation. The DOC may propose a new policy that would:

(a) allow correctional staff to be notified of the identities of inmates with contagious diseases, as presently defined in the CDNP, who have a record of serious violent behavior. "Serious violent behavior" shall mean a history of actual or threatened violent or assaultive behavior such as

— assaults, biting, scratching or the use of blood or excrement as a weapon, or means of intimidation;

(b) include periodic review of the list of inmates and the removal of the name of any inmate who has demonstrated an ability to positively modify serious violent behavior; and

(c) not be framed as a medical policy, and expressly state that notification to staff is founded on security concerns and is not required or intended as a means of infection control.

Nothing in this paragraph relates to or affects the DOC's recognition of corrections officers as first responders for the purposes of Act 148 of 1990.

189. The parties anticipate and intend that a notification list as defined in paragraph 188 above would contain far fewer names than the current CDNP.

190. If the DOC and AFSCME are unable to reach an agreement reflecting the terms set forth in paragraphs 187 through 189 above, and the issue of contagious disease notification is submitted to binding arbitration, the DOC will advocate the position set forth in paragraphs 187 through 189.

191. The parties believe that acceptance by all staff of the universal precautions policy embodied in OM 105.03 is enhanced by effective HIV education.

192. In order to enhance the current education program, the DOC will implement the following changes:

(a) Establish the goal of limiting HIV training sessions to fifty participants, as resources allow.

(b) Ensure that every training session is conducted by an educator or educators who is or are qualified to address both correctional and medical issues. Qualification to address medical issues consists of formal nursing, medical or public health training.

(c) Replace the current training film, "Beyond Fear," with a more up-to-date production. Plaintiffs' counsel and the DOC will both attempt to identify alternatives.

(d) Establish an HIV Educational Review Panel, drawn from members selected by AFSCME and management and convened by an independent contractor or the Office of Administration, to review educational materials and practices at reasonable intervals to ensure that training remains responsive to institutional policies, medical facts, social developments and the concerns of staff.

193. The DOC will work with the Governor's Office of Administration to provide an intensive HIV training course for

management and AFSCME union leaders and opinion-makers from all DOC institutions. Such training shall:

(a) be completed within one year of the signing of this agreement;

(b) include both substantive HIV education as well as discussion/ evaluation of current educational programs and the educational needs of correctional staff; and

(c) identify individuals in AFSCME and management to participate in periodic future evaluations of HIV education as set forth in paragraph 192(d) above.

194. The parties note that AFSCME has agreed to ask plaintiffs to present their position on notification and universal precautions to its H-1 Policy/Negotiating Committee.

B. **MONITORING**

195. At the intervals stated below, DOC shall compile a list for each institution of the prisoners with HIV who have signed a written consent to disclosure form, which complies with Act 148 of 1990, for this particular purpose and are holding job(s) (including vocational education programs, such as barber school). Plaintiffs' counsel will provide the DOC with a mutually acceptable release form and a letter explaining the purpose of the release, which shall be provided to each inmate whose name is selected under this monitoring system. As to the prisoners with HIV who have not signed written consent to disclosure forms, the DOC will supply only the number of

prisoners working and their jobs assignments so long as that number is not reasonably likely to lead to the possible identification of the individual(s). For purposes of this agreement, whenever the total number of prisoners working at a defined type of job is less than five more than the prisoners with HIV, there will be a presumption that disclosing the number of prisoners with HIV assigned to that job will likely reveal the identity of those prisoners. The answers will be supplied to plaintiffs' counsel six months, one year, two years and three years after the approval of this agreement. At the same time, DOC will also provide copies of:

(a) any policy changes or new policies relevant to HIV or that would impact on the HIV infected prisoners' employment;

(b) any grievance (including all decisions by DOC) by a prisoner arising from a denial of prison employment based on HIV status, harassment by inmates or staff because of HIV status, or disclosure of HIV information; and

(c) a summary of every disciplinary procedure against an employee (but excluding the name and information that could reasonably lead to their identification) initiated against an employee for any breach of confidentiality owed to, or concerning discrimination against, a prisoner with HIV.

The involved prisoner will be requested to sign a written consent to disclosure form. Subject to the waiver, the prisoner's name will be disclosed to counsel for all parties under the protective order and its amendments.

196. At six month intervals over the three years following the approval of this agreement, DOC will provide to plaintiffs' counsel each institution's current contagious disease notification list compiled under the CDNP or subsequent policy developed pursuant to this agreement. Such list will be edited to remove identifying inmate information, but shall include the specific contagious disease(s) with which each inmate has been diagnosed, the dates of first inclusion on the list, and, with respect to any successor policy to the CDNP as discussed in this agreement, the security justification for the inmate's inclusion.

197. With respect to a policy developed pursuant to this agreement, in addition to the material described in paragraph 196 above, the DOC shall provide complete documentation supporting the finding that an inmate has a record of serious violent behavior. Such documentation shall be provided for the second and fifth inmate on each institution's list provided pursuant to paragraph 196 above. The information will be redacted to remove identifying information, unless the inmate has signed a written consent to disclosure form, subject to which the information will be disclosed to counsel for both parties. Plaintiffs' counsel will provide the DOC with a mutually acceptable release form and a letter explaining the purpose of

the release, which shall be provided to each inmate whose name is selected under this monitoring system.

VII. ENVIRONMENTAL/FIRE SAFETY ISSUES

A. Substantive Provisions

System Wide

198. The DOC has in place a policy that requires all reused mattresses and bedding materials be sanitized before reissuance. The mattress ticking and cotton cores (otherwise known as batting) of these mattresses are made flame retardant by being boric acid treated.

199. The DOC, as is true of all departments of the Commonwealth of Pennsylvania, has and continues to develop five (5) year Capital Budget plans. Plaintiffs have reviewed the present five (5) year Capital Budget plan and have found it to be acceptable.

200. The DOC conducts annual inspections of all food service areas by properly trained individuals employed by the DOC but who are not employed in the institutions they inspect.

201. The Department of Environmental Resources (DER) performs routine site inspections at all DOC water and sewer treatment plants as well as inspecting those operated by municipal authorities from whom the DOC purchases such services.

202. The DOC will establish standardized preventative maintenance programs system-wide. This will consist of a personal computer for each institution with a software package designed for this purpose. It is estimated that this will be accomplished within one year after the funds become available.

203. The use of temporary housing areas is in the process of being phased out as appropriate additional bed space comes on line. The DOC has no present intent to reopen those temporary housing areas. The basement cells in S Block, SCI-Dallas have never been considered temporary housing as they are permanent cells. Designation of multiple occupancy cells will be consistent with the prototypical standards based on security level and square footage.

204. Vermin control is addressed at all DOC institutions on an ongoing basis.

205. The DOC is committed to purchasing appropriate light fixtures that are rated to provide 20 foot candles of light at desk level and grooming area whenever required to complete new or renovation construction. In addition, hi-intensity type desk lamps may be purchased by the inmates and used in the housing units (except where prohibited such as in restricted housing units).

206. The State Correctional Institutions at Dallas, Graterford, Huntingdon and Rockview have passive thermal convection ventilation shafts located in each cell. Plaintiffs are encouraged by the plans to employ these cells as single occupancy cells. As a consequence of the Life Safety Code project completed at SCI-Rockview and the Life Safety Code projects scheduled for SCI-Graterford and SCI-Huntingdon the ventilation in common areas (corridors) of the cell blocks will be enhanced. Once the Life Safety Code projects are completed at

all three of these institutions, conditioned supply air will be provided by air handling units which will both draw return air from the cell blocks and fresh air from outside. In each project, a portion of the cell block air is exhausted to the outside.

207. Only inmates who have been appropriately trained and certified will be used in DOC abatement projects. The DOC has in place a policy establishing safety standards for asbestos containing materials. The present policy is in the process of being revised. Abatement at some DOC institutions is an ongoing process.

208. Issues concerning food temperatures

(a) The DOC is currently updating its Food Service policies and procedures to reasonably assure that all U.S.F.D.A. recommendations are met. Satellite feeding will be reduced with the phasing out of some temporary housing areas. Satellite feeding at permanent areas (e.g., RHUs, infirmaries) is presently being evaluated to assure sanitation requirements are met.

(b) The DOC monitors all refrigeration and freezing units to assure compliance with ACA accreditation standard No. 4-4036.

(c) The DOC, as part of the revised Food Service policies, is establishing a procedure to monitor the accuracy of thermometers.

209. The DOC agrees that whenever a sanitary fixture is inoperable and incapable of repair within twenty-four hours that the inmate(s) assigned to that area will be provided access to sanitary facilities.

210. The water supplies for the DOC's institutions comply with DER's requirements.

Individual Institutions

SCI-Cresson

211. (a) Food Service - the garbage room wall and ceiling have been renovated, The satellite kitchen dishwasher room has been closed (so that the metal rack is no longer in use) and any mold growth and peeling paint were removed as part of ongoing inspection and improvement programs. Similarly, a smoking ban in kitchen is strictly enforced, the lighting for the dishwasher area and walk-in cooler has been improved, the air gap in the pot and pan sink has been corrected, numerous holes and openings in the kitchen area have been closed and extermination efforts have been improved. The freezers and refrigerators are maintained at proper temperatures and a covering for the overhead light in the vegetable preparation room has been reinstalled.

(b) Living Conditions - E block's (also known as the RHU) temperature variance was corrected by rebalancing HVAC system.

(c) Health and Safety - The items listed (discontinuance of the outside pill line, proper storage of butane gas, proper storage and disposal of biomedical waste and

proper disposal of x-ray waste) have been corrected as part of ongoing inspection and improvement programs. The pill line has been moved in doors.

SCI-Dallas

212. (a) Food Service - The mold growth from the produce cooler, milk cooler ceiling and dishwasher room was removed as part of ongoing inspection and improvement programs. Similarly, light guards have been installed for all food service lights, and any peeling paint in the cooling units has been fixed. A hand washing sink has been provided in the kitchen area and all food service personnel are required to wash their hands before work. The necessary sanitation agent is provided, all food contact surfaces are sanitized and inmate food service workers are trained in appropriate sanitation practices. An air gap in the scrap sink spray nozzle has been corrected, the dishwasher is maintained at proper temperatures and previous mold growth in that area has been addressed.

(b) Space and Occupancy - The items identified in plaintiffs' expert report regarding the S Block basement area have been corrected as part of ongoing inspection and improvement programs. Sanitary fixtures are being properly maintained. K Dorm is not being used for housing as a consequence of phasing in of new prisons. A ventilation system for D-Block Annex is to be requested in the 1997/98 DOC Capital Budget Five (5) Year Plan. It is estimated that it can be completed within four years of obtaining legislative approval. Water temperature levels are

controlled by temperature controlled tempering valves. The DOC has had the Department of General Services assess the structural integrity of the mattress factory walls. It is the determination of the Department of General Services that the walls do not pose a threat to the inmate population because: 1. the brickwork is a facade which is separate from the cement block wall; 2. the walls are non-load bearing; and 3. inmates are kept away from the outside brickwork by fences. Roof repairs have been part of an ongoing maintenance program. Further funds will be sought in the next capital budget. The leak that caused problems in S Block basement corridor has been corrected. Replacing and repairing cell window screens are part of ongoing preventative maintenance.

(c) Health and Safety - SCI-Dallas maintains adequate supplies of mattresses, pillows, pillow cases, blankets, sheets and mattress covers. All mentally unstable inmates are housed in psychiatric observation rooms which do not have the strong hooks.

SCI-Frackville

213. (a) Food Service - Bread boxes are placed on the counter, a sanitizing agent is employed for washing the tables and the mold on the ceiling in the dishwasher room has been eliminated.

(b) Space and Occupancy

(1) The ventilation imbalance in the infirmary has been corrected.

(2) The DOC has discontinued use of the CI dorm as a housing area consistent with existing phase-in of new facilities.

(3) Any problems with the hot and cold water in the Modular Unit have been corrected.

(4) Improved shower ratios will be achieved through phasing in new facilities. SCI-Frackville provides the opportunity to shower to all inmates according to DOC policy and American Correctional Association recommended frequencies.

(c) Health and Safety - Biomedical waste in the Infirmary is being properly stored.

SCI-Graterford

214. (a) Food Services - Broken, cracked or sprung windows in the kitchen corridor are corrected as necessary as part of the ongoing maintenance of the institution. Food service equipment is being properly maintained, the water temperature in the inmate wash room near the kitchen has been reduced, the air gap in the kitchen sink has been eliminated and the dishwasher in the O.S.U. kitchen is fully operational and maintained. Noise levels in the dining rooms will be reduced with construction of 4 new dining rooms scheduled for completion December 1996.

(b) Living Conditions - The ventilation system in the O.S.U. has been repaired as has the ventilation for its showers. The shower rooms for the five (5) original cell blocks are being improved as part of the Life Safety Code Project, presently estimated to be completed by the end of May 1995.

Noise levels will be also reduced with completion of the Life Safety Code Project. The ratio of shower heads to prisoners in the five (5) original cell blocks will improve upon completion of Life Safety Code Project in May 1995. The number of shower heads will increase from 32 shower heads for approximately 400 cells to 56 shower heads for approximately 390 cells (or in other words, as these cells are considered one person cells there will be one shower head for each seven inmates). Maintaining sanitary fixtures in a clean and operational manner, providing vacuum breakers for all toilets, maintaining an adequate water supply and maintaining the RHU hot water temperatures in the proper range, are all part of ongoing maintenance. A new water line was completed by end of January 1994. A back flow preventer has been installed on the janitor's sink in the shoe shop. The O.B.U. was closed in August 1992 and has not reopened. The old windows in cell blocks A through E are in the process of being replaced. The roof leaks in the O.S.U. have been corrected. Any need for stools in the O.S.U. dining area will be obviated by new dining rooms which are part of the kitchen/dining room project. Similarly, improved sanitary fixtures in the O.S.U. are a part of ongoing maintenance. Lastly in regard to the O.S.U., the sewage leak in the rear of the O.S.U. has been corrected. Additional toilets and attorney visiting rooms in the visiting area will be addressed in next DOC Capital Budget Five (5) Year Plan. The smoking ban in the Commissary is enforced and the overhead leak has been corrected. Scraping and repainting ceiling of the

Commissary will be corrected upon completion of the Life Safety Code Project to be completed May 1995. Vacuum breakers have been installed on the visiting area hose and dairy hoses and screens are provided for all operable windows.

(c) Health and Safety - Insuring proper tool control practices in C.I. shops is already part of procedures. The only wiring which is in the Chemical Storage Room (which reference defendants understand to be to the C.I. flammable storage room) has been installed by the contractor working on the Life Safety Code project for the emergency lighting. The saw in the Carpenter Shop has a safety guard, the vent system made of cardboard and electrical hazards identified by plaintiffs' experts in the Electrical Shop has been removed and corrected, the polarity of the receptacle in the Welding Shop has been corrected. The receptacle with the missing cover in the D&A Unit has been corrected and the inoperable lights in the Warehouse have been corrected. The upholstered chairs in the Barber Shop are being repaired one at a time as chairs have to be sent out to SCI-Dallas. When one is returned, another is sent. It will take approximately six to eight months to complete this project.

SCI-Huntingdon

215. (a) Food Services - H Block has tables in the cells. B Block will be converted into a D&A Unit and classified a general population housing unit within two years. The smoking ban is enforced in the Kitchen and both the air gap in the

kitchen and "pots and pans" sinks and the proper temperatures for each cycle of the dishwasher have been corrected.

(b) Living Conditions - The "F" and "H" dorms are to be closed as new facilities are fully activated and, as mentioned above, B Block will become the D&A Unit, a general population housing unit, which resolve plaintiffs' concerns for an indoor exercise area for this unit. "H" dorm will be closed in approximately three months from the date the agreement is approved. The D&A Unit will be moved to "F" dorm as a temporary housing area for that unit until the Life Safety Code project is completed on B-Block (estimated to be completed within two years). Replacing toilets is a part of ongoing maintenance. The air bubbles observed in toilets, toilets not operating on the first flush, and an observed overhead pipe leak in the shirt and pants factory during the sanitation tour were isolated incidents which have been corrected. A vacuum breaker has been installed in the hose connection in the Carpenter Shop. The ratio of showers to inmates is being addressed by reduction in population. SCI-Huntingdon provides the opportunity to shower to all inmates according to DOC policy and at ACA recommended frequencies. The number of water closets, urinals and sinks in each C.I. shop meets or exceeds the requirements established in 34 Pa. Code, Chapter 42 (§§41.41 through 41.105).

(c) Ventilation - The ventilation system in the D Block basement area, increased ventilation for the B Block shower, the need for vents in the B Block store room and the

temperature and humidity disparities observed on B Block will be addressed by the Life Safety Code Project. While there is no estimated completion date for this project, the best estimate presently available is that phase 1 of the two phase project will begin October 1994. The wood covering that was located over the pipe chase roof has been corrected. Monies to address concern for improved ventilation in the Carpenter Shop is to be addressed through the 1994/95 budget. The ventilation in the Paint Shop has been improved and an exhaust system has been installed. Hearing protection is supplied to inmates working in the C.I. Shops. The filters in the ventilation system for Modular Units # 3 & 4 are changed monthly and the air circulated by that system includes fresh air. Three exhaust fans have been installed in the print shop. The beam in the D Block shower room, the sewage pipe in the E Block basement, the leak in the Modular Unit #1 roof and the peeling paint have all been corrected. The money necessary to repair the leak in the C.I. areas (buildings #5 & 5A) have been requested in 1994/95 budget request.

(d) Health and Safety - The electrical wires and cable wires in the utility tunnel have been separated, the electrical box for the grill has been corrected, excess laundry lint buildup has been reduced, excessive storage of old machinery in the C.I. attic has been reduced, the support columns in the Modular Unit #1 have been secured, hazardous chemicals in the Print Shop are being properly disposed of and the chemicals in the Cutting Room are properly marked. Smoke detectors in the

inmate property room will be addressed by the Life Safety Code Project. Radiator covers for the radiators in the D&A area are to be installed by October 1994. Plaintiffs' concerns regarding the infirmary (improved control of sharps, repair of the window in the patient bathroom, assuring that the Drug Room cabinet is locked when not in use, proper storage of biomedical waste and medical equipment and routine meetings for the infection control committee) have been addressed and corrected.

SCI-Retreat

216. (a) Food Services - The kitchen floor leak is being corrected as funding has been identified. All cleaning chemicals are properly labeled, the drain line for the vegetable sink and potato peeler have been repaired, the peeling ceiling paint has been repaired and the spray nozzle for the scrap sink has had a vacuum breaker installed. Food contact surfaces are maintained in a clean condition as part of the ongoing sanitation program. The proper temperatures for the cycles of the dishwasher are maintained. The pipe leak in the basement storage area has been corrected. Inmate worker training in proper sanitation practices is an ongoing process.

(b) Living Conditions - Improved shower ratios will be achieved through phasing in new facilities. There are 12 showers per cell block (A through D). There are presently 110 cells in each of those cell blocks. SCI-Retreat provides the

opportunity to shower to all inmates according to DOC policy and at ACA recommended frequencies.

SCI-Rockview

217. (a) Food Service - Ventilation in the dishwasher area, hot holding carts, mold growth in the bakery, the use of plastic garbage bags for food transport and the hole in the Cannery pipe have been corrected. All utensils are being handed out by food service workers who are wearing plastic gloves. A handwashing sink has been installed in the bakery and a three bay sink is being installed in the ice cream room. Food pans are stored on a Baine-Marie and not on counter tops.

(b) Living Conditions - The need for vacuum breakers for the East Wing (and other areas if applicable), repair of the West Wing Sewer cap, maintaining proper water temperatures at all sanitary fixtures (including Modular Units 1 & 2), the leaks in the B Block roof and the roofs of Modular Units 1 & 2, the volume of the East Wing and West Wing speakers, operation of the outside louvers on East Wing and Modular Unit #2, the need for a dust collection system in the Carpentry Shop, ventilation in the welding area and better balance of temperatures between top and bottom tiers have been corrected. Removal of mold, soap scum and stains on shower walls is an ongoing preventative maintenance item as is repair of fixtures. Downdraft unit heaters will be installed to reduce drafts on East Wing and West Wing. A hose to prevent possible contamination of the potable water supply in the B block shower room has been

installed. Improved shower ratios will be achieved through phasing in new facilities. SCI-Rockview provides the opportunity to shower to all inmates according to DOC policy and at ACA recommended frequencies.

(c) Health & Safety - There are no cells that are triple locked. The fire door in the paint shop area has been made operational. The strong hooks have been removed from all cells. Chemical waste from the dental dark room is properly disposed of. The cross connection in the janitor's closet noted by plaintiffs' expert has been corrected. The institution insures that chemical, toxic and biomedical waste from the infirmary is properly disposed of.

SCI-Smithfield

218. (a) Living Conditions - Removing peeling paint, corrosion, water damage to ceilings, walls and floors in the showers is part of the ongoing maintenance program at the institution. The problem with the surface water leaking into the day rooms is being addressed. The institution laid the pipes necessary to tie the new spouting into the storm drains. This has resolved most of this problem. Presently, the institution is regrading the slope of the ground against the dayroom walls to cause the water to run away from building foundations. This should resolve the remaining problem. The C.I. Dorm has been closed and is now used for its original intended purpose.

(b) Health and Safety - Non-flammable storage cabinets have been installed in the Auto Shop to contain

flammable liquids. Plans have been developed and corrections will be implemented as resources permit to insure storage of any chemicals in a warehouse that is properly ventilated. All chemicals are properly labeled.

SCI-Waymart

219. (a) Food Services

(1) Food Sanitation - A sanitizing agent is used to clean dining tables and food contact surfaces. The potato peeler has been repaired and an insulated box, which is specifically designed for food transportation, is used to carry food to the Powerhouse.

(2) Food Maintenance - Flammable liquids are properly stored and the pressure gauge on the dishwasher has been replaced.

(b) Living Conditions

(1) Sanitary Fixtures - All showers have methods to control the flow of water. The repair of inoperable or leaking fixtures is a part of ongoing maintenance. Hot water is provided to all cell blocks (including C-1 AND G-1 Dorms). The institution has doubled the duration that shower water will flow from a single push of the button.

(2) Laundry - A centralized laundry has been installed.

(3) Space and Occupancy - Two dorms contain more than fifty occupants, beds are not placed against wall vents or fireplaces (which are not used and are sealed). If the

plaintiffs insist, a minimum of five linear feet between breathing areas when prisoners on their beds will be established through compulsory assignment of direction that prisoners may lay on them.

(4) Noise - Levels have been reduced.

(c) Health and Safety - Beds are not placed in close proximity to electrical boxes. Storage is properly labeled and stored for fire safety. X-ray and photo fluids and biomedical waste are properly disposed of by an outside vendor.

B. Monitoring

220. The DOC is negotiating a Memorandum of Understanding with the DER to provide, within its area of expertise, independent oversight of the DOC's compliance of the environmental aspects of this agreement as to the food service facilities at the State Correctional Institutions at Cresson, Dallas, Graterford, Huntingdon, Rockview and Waymart. This Memorandum will be in effect for a period of three (3) years from the date of the Court's approval of the Settlement Agreement and will provide for annual inspections at the six institutions listed above in this paragraph. The DER will assign individuals with appropriate credentials. In addition, the DOC will either contract with the DER or another appropriate source which is independent of the DOC (such as a university) to inspect and verify compliance with the specific assurances made in Section VII above regarding the State Correctional Institutions at

Cresson, Dallas, Graterford, Huntingdon, Rockview and Waymart that are not part of the inspection of food services.

221. The DOC will produce for inspection and copying (subject to the protective orders filed in this case) the following documents pertaining to the State Correctional Institutions at Cresson, Dallas, Graterford, Huntingdon, Rockview and Waymart upon request and not more frequently than once every six months, pertaining to the agreements made above: entries from block logs showing sanitizing/replacing of mattresses upon specific request; DER reports concerning water treatment and sewage treatment; reports as to the census of temporary housing areas which the DOC has stated it intends to phase out; incident reports which pertain to any instances when asbestos exposure has resulted in medical monitoring of an inmate; inspection reports for asbestos; reports pertaining to improvements to SCI-Smithfield to deal with ground water drainage; biennial surveys performed for the Department of General Services; annual food service inspection reports; semi-annual reports updating the status of Life Safety Code Projects at SCI-Graterford, SCI-Huntingdon and SCI-Waymart; the preventative maintenance plans for SCI-Graterford and SCI-Camp Hill (once devised); extraordinary occurrence reports regarding fires or which implicate an environmental or fire safety hazard as the cause of a significant injury; and the revised asbestos policy, once it has been finalized.

VIII. FIRE SAFETY CHECKLIST

A. All Institutions

222. The DOC provides non-combustible privacy curtains for purchase through the commissary at institutions in which such curtains are permitted. The use of door wedges on any fire door will be discontinued as automatic releases tied into the smoke detectors are installed and all fire/smoke doors will be labeled: "Close at all times." The DOC agrees that improper use of extension cords should be avoided and agrees to enforce existing policy on this issue. Fixed wiring will not be installed in place of the proper use of extension cords. Emergency releases have been installed in all walk-in coolers. Every institution maintains a complete set of material safety data sheets for the hazardous substances located at that institution. These are available twenty-four (24) hours a day, seven (7) days a week, for review upon appropriate request. All institutions comply with the 1981 life safety code requirement in that emergency lighting is available within ten (10) seconds of a power failure.

223. The DOC will provide in each cell as part of the cell furnishings a non-combustible wastebasket within six months of the Court's approval of the terms of dismissal. The DOC will provide in each cell as part of the cell furnishings a non-combustible storage container of approximately 5.8 cubic feet for each inmate assigned to the cell. It is presently estimated that these will be phased in over the three (3) year monitoring period. In addition, each inmate may purchase either two file

boxes or a_footlocker. This will provide each inmate with approximately 4 cubic feet of additional storage space.

224.

(a) SCI-Cresson - All housing units are capable of being evacuated within Life Safety Code time frames. The gym exit door is not chained shut. MHU clean and dirty linens are not stored together. A fusible link has been installed in the parts washing machine. There is at least an 18 inch clearance between the sprinkler heads and any obstruction.

(b) SCI-Dallas - All housing units are capable of being evacuated within Life Safety Code time frames. The fire alarms and smoke detectors are operable, the polarity of the receptacle in the mattress factory has been reversed, an exhaust system has been installed in the maintenance garage and the open ground in the duplex receptacle in the tailor shop has been eliminated. There is at least an 18 inch clearance between the sprinkler heads and any obstruction. The integrity of the Mattress Factory walls at SCI-Dallas has been studied as stated in paragraph 212(b). A safety catch has been installed to the hydraulic auto lift in the garage.

(c) SCI-Frackville - The accumulation of storage above the control panel for the air handling unit in Housing Unit #6 has been removed. SCI-Frackville has a maintenance contract for the fire alarm system in place. No spray painting is permitted inside any building at SCI-Frackville.

(d) SCI-Graterford - The emergency unlocking procedures, block compartmentalization, additional emergency lighting, the smoke detection system, the compartmentalization of the C.I. Shops from the main corridor and the smoke detection system in the former EDCC will be addressed by the Life Safety Code Project which is under way and anticipated to be completed by May 1995. Adequate clearance is maintained for sprinkler head in all storage areas and all exit lights have been repaired.

(e) SCI-Huntingdon - Proper storage facilities for chemical drums in the C.I Soap Plant and eye wash facilities in areas in which chemicals are used have been established. All open ground receptacles in the C.I. Garment Plant have been eliminated. In addition, eight new properly grounded outlets have already been installed. The improvements to the paint spray booth (exhaust system, explosion proof electrical fixtures, and compartmentalization) have been accomplished. An automatic sprinkler system is to be completed by the end of July 1995. Improvements to the locking system and a dust collection system for the Carpenter Shop will require additional funding under the Capital Projects Budget. A smoke detection system for blocks A through F, an improved emergency exit emergency lights and closing devices for the doors for the D&A Unit, further compartmentalization of D Block and a fire alarm system are the subject of the Life Safety Code Project.

(f) SCI-Retreat - There is a maintenance contract for the fire alarm system. The infirmary suction machine is

wired to the emergency generator. Shelves have been installed in the inmate property room for the storage of clothes and the sprinkler valve in the storage room is chained and locked in the open position.

(g) SCI-Rockview - The fire alarm panel in Modular Units 1 & 2, the smoke detectors in Modular Units 3 & 4, the dust collection system for the Carpentry Shop, the receptacles in the Refrigerator Shop, Electrical Shop and Sheet Metal Shop, guards for the metal rolling machine, a fusible link for the parts washing machine in the Auto Shop a carbon monoxide system in the Tractor Shop and protective guards for the fan in Forestry Camp Dorm 2 have been corrected or installed as appropriate. The fire alarm system is connected to a central control station.

(h) SCI-Smithfield - Combustible material HAS been removed from the stairwell leading to the main observation tower. Mattresses for the RHU are not stored in the exit area or the bathroom. The accumulation of combustibles has been removed from the abatement area inside the Recreation Storage area.

(I) SCI-Waymart - Improvements to the locking system and additional emergency lighting smoke barriers and upgraded smoke detectors will be addressed by Life Safety Code Project. The lights are now connected to the emergency generator, all exit lights have been repaired, as necessary, and the alarm system in D-1 Block has been corrected.

B. Compliance Procedures

225. The DOC is in the process of negotiating a memorandum of understanding with the DER or an independent entity (such as a university) to provide, within its area of expertise, independent oversight of the DOC's compliance. The Pennsylvania Department of Labor & Industry will continue to provide those services set forth in their statutory and regulatory mandate (that is, inspect buildings after construction/substantial reconstruction for the purpose of issuing Occupancy Permits and responding to complaints that a structure does not meet requirements under the Code Against Fire and Panic).

226. Reporting - For a period of three (3) years from the date of the Court's approval of the Settlement Agreement, the DOC agrees to provide at six (6) month intervals, upon request, the following reports to verify the DOC's continued compliance with its assurances concerning the Environmental/Fire Safety Issues: fire alarm maintenance contracts for SCI-Frackville and SCI-Retreat; capital budget projects and non-recurring maintenance projects. In addition, defendants will supply plaintiffs' counsel with an affidavit or declaration stating when the DOC started using boric acid treated cotton batting for institutional mattresses for general population housing areas.

227. Implementation Timetable - Unless otherwise stated above, the DOC will implement the various provisions concerning the Environmental/Fire Safety issues within two years of the Court's approval of the Settlement Agreement, provided

that appropriations are obtained to cover the costs these proposals will incur.

IX. MISCELLANEOUS

228. This Settlement Agreement is not a consent decree nor do the parties intend it to be construed as such. It does not operate as an adjudication of the merits of the litigation.

229. The Court's approval of this Agreement is sought solely to comply with Rule 23 of the Federal Rules of Civil Procedure and not to convert this Agreement to a court order or otherwise convert this Agreement to a consent decree.

230. Nothing in this Agreement is intended to, nor shall it be construed as, an admission of liability of or by any party.

231. This Settlement Agreement is not enforceable by the plaintiffs or plaintiff class. If the Agreement is accepted by the Court, the action will be dismissed without prejudice on the following terms and conditions:

(a) The defendants shall make all good faith efforts to effectuate the provisions of Sections III-VIII of the Settlement Agreement.

(b) As the case is dismissed without prejudice, the plaintiffs may at any time file a new Complaint raising some or all of the issues presented in this action, and any other issues that are justiciable in this Court.

(c) If within three (3) years of the date of the dismissal of this action, the plaintiffs, by their current class

counsel, refile on any issues presented by this action, the parties agree that the case should be considered a "related case" under the Local Rules of Civil Procedure for the District Court for the Eastern District of Pennsylvania and agree it should be assigned to the Honorable Jan E. DuBois.

(d) All discovery that has been provided by the parties in this action shall be deemed to be part of discovery in any new action filed pursuant to ¶231(c). Plaintiffs' counsel shall maintain control and custody of all discovery provided to date for a period of three years to allow for proper monitoring of this Settlement Agreement. Plaintiffs' counsel shall continue to abide by the provisions of all protective orders and/or other agreements with respect to the discovery material.

(e) If any of the corrections issues that were the subject of testimony in the trial of the corrections phase are raised in a new action filed pursuant to ¶231(c), the testimony and evidence introduced in the corrections phase of this case shall be admissible on the merits in the new action.

(f) Notice of the Settlement Agreement shall be provided to the plaintiff class by personal notice to all class representatives. In addition, copies of the notice will be posted in all law libraries. The Court will hold whatever hearings it deems appropriate before it approves or rejects the Settlement Agreement. After Court approval of the Settlement Agreement, the case will be dismissed without prejudice immediately thereafter.

(g) [The issue of the application of this Agreement to institutions other than the thirteen (13) institutions named in the complaint has by agreement been left to the Court for decision. The decision of the Court on this issue will be inserted here in place of this language once a decision is made.]

(h) The parties have agreed to a $1.4 million dollar payment of counsel fees and costs to the attorneys for the plaintiff class. This agreement and payment includes any claims for fees and costs that plaintiffs could make under 42 U.S.C. §1988 or any other federal statute or rule of procedure for all work done and costs expended in the litigation of this matter, to and including the date of the approval of this Settlement Agreement. This settlement of the fees and costs specifically includes all fees and costs requested in Plaintiff's Motion for Fees and Costs for the Injunction proceedings on the tuberculosis (TB) issues. Upon payment of the agreed upon fees, plaintiffs agree to the dismissal of that Motion with prejudice.

(i). The $100,000 fee in connection with the Plaintiffs' Motion For Fees and Costs for the Injunction proceedings on the tuberculosis issues will be paid within thirty (30) days of June 30, 1995 which is the date the tuberculosis claims will be dismissed without prejudice. The remaining fees and cost agreed to in Paragraph 231(h) will be paid within thirty (30) days of the Court's approval of this Agreement and the

dismissal without prejudice of the corrections, other medical, mental health, HIV, fire safety and environmental claims.

232. The parties have agreed to the following fee schedule for the monitoring phase of this litigation. Plaintiffs will submit quarterly fee and costs statements setting forth the time and costs expended, based upon a 50% discount of normal fees. It is estimated that monitoring costs will not exceed $60,000 per year for the three year monitoring period which begins on the date the court approves the Settlement Agreement. The parties agree that any disputes regarding attorneys fees during the monitoring phase will be submitted to arbitration.

233. Except as otherwise provided in Section III, the DOC agrees to provide on a quarterly basis copies of the monthly executive SCAN reports to Stefan Presser.

234. All documents, reports and other information provided to plaintiffs in the monitoring phase shall be subject to the protective orders issued on August 15, 1991, March 26, 1992 and October 26, 1992.

235. The parties have agreed to certain procedures for the monitoring of this Settlement Agreement. These procedures are detailed in Sections III-VIII relative to the agreements in the respective subject matter areas.

DATE

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Joseph D. Lehman
Commissioner
Pa. Department of Corrections

(2/15/94) 2 p.m.
REVISED - 5 p.m.

FISCAL YEAR 94-95 HEALTH CARE POSITIONS

SCI		TOTAL
COAL	(2) RN, (1) CT II, (1) RNS, (1) LPN	5
DALLAS	(3) RN, (1) CT II, (1) RNS, (2) LPN	7
GRATERFORD	(2) RN	2
HOUTZDALE	(1) DENTAL ASSISTANT, (2) LPN	3
LAUREL HILL	(1) RNS, (1) RN (QA), (1) RRA, (9) RN	12
MUNCY	(1) RN (QA), 3 LPN	4
NEWCASTLE	(1) LPN, (1) CT II, (3) RN	5
NORTH	(1) RN (QA), (2) LPN	3
ROCKVIEW	(1) RN (QA), (1) RN	2
SMITHFIELD	(1) RN (QA), (3) RN	4
WAYNE	(1) RN (QA), (1) CT II, (1) RN (INF. CONTROL), (3) LPN, (1) RNS	7
SOMERSET	(1) RN (QA), (1) RN (INF. CONTROL), (1) RNS, (1) CT II	4
GREENE	(1) RN (QA), (1) RN (INF. CONTROL), (1) RN, (1) DENTIST, (1) HYGIENIST, (1) CT II	6
WAYNESBURG	(1) RN (QA/INF. CONTROL), (2) RN, (1) CT II, (1) DENTAL ASSISTANT	5
PITTSBURGH	(1) RN, (1) DENTAL ASSISTANT	2

ATTACHMENT 1

HERCEAK	(1) CT II	1
BHCS CENTRAL OFFICE	(1) RN (MEDICAL STAFF DEVELOPMENT)	1
TOTAL		**78**

FACILITY MEDICAL/MENTAL HEALTH STAFFING REPORT
SCI-_____
FOR THE MONTH OF _____, 199

OCCUPATIONAL AREA	SALARY POSITION Filled	SALARY POSITION VACANT	WAGE POSITION FILLED	WAGE POSITION VACANT	VENDOR POSITION FILLED	VENDOR POSITION VACANT
Clerical						
Medical Records						
Healthcare Administrator						
Psychiatrists						
Psychiatric Nurses						
Nurse Supervisor						
Registered Nurses						
Licensed Practical Nurses						
Medical Director						
Supervisory Physicians						
Physicians						
Dentists						
Dental Assistants						
Dental Hygienists						
Totals						
Grand Total						

* denotes positions which are not full-time explanation required
for non-FTE staff, list hours per week/per physician

The following items will be available at all State Correctional Institutions. The list is prioritized:

1. Call bell systems
2. Oxygen Concentrator
3. Peak flowmeter
4. Word Processor
5. Free standing movable file cabinets
6. Computer
7. Pulse oximeter
8. Crash Carts (not defibrillator)
9. Hospital beds
10. Hoyer lifts
11. Two (2) Autoclaves (1 for dental and 1 for medical)
12. Addressograph, and embossers
13. Locked medicine cabinet for drug delivery
14. Geriatric chairs
15. Shower chairs
16. Ultrasonic dental machine
17. Gurneys - SCIR, SCIA, SCI-Mahanoy
18. Paper Shredder
19. Two (2) Refrigerators (1 inpatient infirmary, 1 drug room)
20. Equipment for RHU Exam Room and RHU Exam Room area
21. Ice machine
22. Motorized (golf cart) wheel vehicle

ATTACHMENT 3

The following itemized lists identify by priority each institution needs:

FIXED ASSET LIST FOR SCI-CAMP HILL

1. Call bell systems
2. Oxygen Concentrator
3. Peak flowmeter
4. Free standing movable file system
5. Computer
6. Pulse oximeter
7. Crash Cart
8. Addressograph and embosser
9. Locked medicine cart
10. Geriatric chair
11. Dental Ultrasonic machine
12. Paper shredder
13. Refrigerator for the inpatient infirmary
14. Ice Machine

SCI-FRACKVILLE

1. Oxygen concentrator
2. Word Processor
3. Free standing movable file system
4. Pulse oximeter
5. Crash cart
6. Autoclave
7. Addressograph and embosser
8. Locked medication cart
9. Geriatric chair
10. Paper shredder
11. Refrigerator for infirmary
12. RHU equipment in exam room
13. Ice machine
14. Motorized wheel vehicle

SCI-GRATERFORD

1. Call bell system
2. Oxygen concentrator
3. Peak flowmeter
4. Free standing movable file system
5. Two computers
6. Pulse oximeter
7. Crash cart
8. Two (2) autoclaves
9. Addressograph and embosser
10. Four (4) locked medication carts
11. Shower chair

12. Ultrasonic dental machine
13. Motorized wheel vehicle

SCI-GREENSBURG

1. Call bell system
2. Peak flowmeter
3. Word Processor
4. Free standing movable file system
5. Computer
6. Pulse oximeter
7. Crash cart
8. Addressograph and embosser
9. Locked medication cabinet
10. Geriatric chair
11. Paper shredder
12. Equipment for the exam room
13. Ice machine
14. Motorized wheel vehicle

SCI-MAHANOY

1. Oxygen Concentrator
2. Peak flowmeter
3. Word Processor
4. Free standing movable file system
5. Pulse oximeter
6. Hoyer lift
7. Addressograph and embosser
8. Geriatric chair
9. Shower chair
10. Motorized wheel vehicle

SCI-MERCER

1. Oxygen concentrator
2. Word Processor
3. Free standing movable file system
4. Pulse oximeter
5. Crash cart
6. Addressograph and embosser
7. Operating room light
8. Motorized wheel vehicle

SCI-RETREAT

1. Oxygen concentrator
2. Peak flowmeter
3. Word Processor
4. Free standing movable file system
5. Pulse oximeter
6. Crash cart

7. Addressograph and embosser
8. Geriatric chair
9. Shower chair
10. Paper shredder
11. RHU exam room and equipment
12. Ice machine
13. Motorized wheel vehicle

SCI-ROCKVIEW

1. Oxygen concentrator
2. Peak flowmeter
3. Word Processor
4. Free standing movable file system (one section to add to the present system)
5. Computer
6. Pulse oximeter
7. Ten (10) manually operated beds
8. Addressograph and embosser
9. Geriatric chair
10. Shower chair
11. Motorized wheel vehicle

SCI-SMITHFIELD

1. Oxygen concentrator
2. Peak flowmeter
3. Word Processor
4. Free standing movable file system
5. Pulse oximeter
6. Crash cart
7. Addressograph and embosser
8. Locked medication cart
9. Geriatric chair
10. Shower chair (for over a 175 lb. person)
11. Ultrasonic dental machine
12. Paper shredder
13. Small refrigerator for inpatient infirmary
14. Exam room and equipment for the RHU
15. Ice machine
16. Motorized wheel vehicle

SCI-SOMERSET

1. Oxygen concentrator
2. Peak flowmeter
3. Word Processor
4. Free standing movable file system
5. Pulse oximeter
6. Crash cart
7. Medical autoclave
8. Addressograph and embosser

9. Locked medication cart
10. Geriatric chair
11. Shower chair
12. Ultrasonic dental machine
13. Ice machine

SCI-WAYMART

1. Two (2) wheel chairs
2. Peak flowmeter
3. Word Processor
4. Free standing movable file system
5. Electric hospital bed
6. Hoyer lift
7. Addressograph and embosser
8. Paper shredder
9. Ice machine
10. Motorized wheel vehicle

SCI-WAYNESBURG

1. Call bell system
2. Oxygen concentrator
3. Peak flowmeter
4. Word Processor
5. Free standing movable file system
6. Oxygen oximeter
7. Crash cart
8. Medical autoclave
9. Addressograph and embosser
10. Geriatric chair
11. Ultrasonic dental machine
12. Small refrigerator for the inpatient unit
13. Ice machine
14. Motorized wheel vehicle

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that the foregoing Memorandum of Law In Support of Proposed Settlement Agreement with Exhibits A through E was served upon the defendants by placing it in the United States mail, postage prepaid, certified, return receipt requested, this 20th day of October, 1994 to the following address:

Francis Filipi, Esq.
Office of the Attorney General
Strawberry Square, 15th Floor
Third and Walnut Streets
Harrisburg, PA 17120

/s/
Stefan Presser