

Imprisoned Citizens Union v. Shapp



PC-PA-005-014

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

IMPRISONED CITIZENS UNION, et al.	:	CIVIL ACTION
	:	
	:	Nos. 70-2054
vs.	:	71-513
	:	71-1006
	:	70-2545
MILTON SHAPP, et al.	:	

CONSENT DECREE

The parties hereto are mutually desirous of disposing of as many of the issues raised by this suit as possible without further litigation, and for that reason plaintiffs and defendants are willing to consent to the entry of the following judgment. The plaintiffs acknowledge that defendants already have instituted voluntarily many of the programs and procedures described herein. This Consent Decree shall in no way be interpreted as an admission by defendants of any violation of state or federal law.

The court being fully advised in the premises, and having conferred with the parties and their attorneys herein, having reviewed all aspects of this case to date, having fully considered the desirability of disposing of the matters contained herein by means of a consent judgment and knowing the same to be freely agreed to by the plaintiffs and defendants herein as is evidenced by their signatures and/or the signatures of their counsel hereto does HEREBY ORDER, ADJUDGE AND DECREE that the following judgment be and the same is hereby entered as the judgment of this court in this matter:

7. CODE OF CONDUCT

Defendants will promulgate a Code of Conduct covering all aspects of institutional life relating to the conduct of residents and the conduct of custodial and administrative personnel.

A. Said Code must specify inter alia the type of punishment to be imposed for the infraction of any regulation contained therein. Where such punishment is the removal of a resident from the general population of the prison wherein he is confined, the Code shall provide for a mandatory periodic review by the sentencing panel, but no longer than thirty (30) days or after one half of the sentence is served, or whichever is less. Defendants acknowledge that the primary aim of segregation from the general prison population is to allow inmates to control their behavior so that they may be returned to the general population without further danger to the staff, other inmates or the segregated inmates themselves. Defendants' policy is to return segregated inmates to the general population as soon as such inmates have so modified their behavior.

B. Said Code must specify inter alia the type and nature of a prisoner's conduct that would constitute an infraction of the Code, and such conduct must be defined so as to apprise the prisoner of the conduct that is prohibited. No conduct will be punished unless it constitutes an infraction of the Code.

C. Following approval by the court said Code shall be reproduced in full and distributed to the entire inmate population of all state correctional institutions and to all custodial and administrative personnel of said institutions. The Bureau will continue to distribute the Code to new inmates and staff.

IV. RIGHTS OF PRISONERS

Following approval of the Consent Decree, Defendants shall amend Administrative Directive BC-ADM 201, Adjustment of Sanction, to provide that all residents charged with a violation of the Code of Conduct which is or may be punishable by the loss of any privilege or punitive change of population status (including punitive transfer to another institution) shall have the following rights:

- A. Written notice of the charges against the resident;
- B. A hearing before an impartial panel, which panel shall not include any participants in the incident or incidents from which the charges arise;
- C. The right to question witnesses presented in support of the charges, provided however, that the right shall be limited to the resident who is charged;
- D. The right to call witnesses in his or her own defense, provided however, that no resident shall have the right to compel testimony from any other resident who does not wish to testify;
- E. Adequate opportunity to prepare a defense;
- F. The right to assistance and advice in preparing and presenting a defense from any resident in general population or staff member at the institution where the hearing is held, provided that such resident or staff member is willing to serve in such an advisory capacity for the resident so charged;
- G. The right to a decision based upon a preponderance of the evidence, and, if said decision is adverse to the resident, the right to written notice of the decision accompanied by a summary of the reasons in support thereof;

II. A written summary of the hearing. Inmates shall have the right to submit a concise summary of the hearing which summary shall be made a permanent part of the file.

III. MINOR INFRACTION PROCEDURE

Punishment for minor acts of misconduct shall be in accordance with Administrative Directive 801 (Rev. 2-77).

IV. HEALTH CARE

Defendants agree to the continuation or, if not already in effect, the implementation of the Health Care provisions contained in Appendix A of this Consent Decree within the period of time specified in said Appendix A.

V. COMPLIANCE WITH ADMINISTRATIVE DIRECTIVES

Defendants shall comply with the regulations of the Bureau of Correction (hereinafter the "Administrative Directives") and the amendments and additions thereto.

Defendants shall expend their best efforts to assure compliance with this Consent Decree and with the Administrative Directives and the amendments and additions thereto by all institutional staff members, and all other persons subject to defendants' jurisdiction.

VI. MAIL

A. Administrative Directive EC-ADM 803 Resident Mail Privileges shall be amended to provide:

"Correspondence or other writings containing threatening obscene material are prohibited. A breach of the above regulation may result in action being taken under Section IV of this Directive."

B. Defendants agree to permit prisoners to correspond freely with the news media. Such correspondence may be restricted only if it can be shown to constitute an attempt to have members of the news media assist in transferring contraband, participating in escape attempts, or instigating a riot within the institution.

C. Defendants shall amend the aforesaid Administrative Directive to permit non-privileged, outgoing mail to be sealed and placed directly in the mail boxes provided in each housing unit, except that defendants reserve the right to "spot-check" all outgoing mail where there exists a reasonable belief that security is being impaired by such mail or that such mail is being used in the commission of a crime. Inmates shall be given the opportunity to be present when their privileged mail is "spot-checked", except in circumstances where the inmate's presence would create a serious security risk or interfere with an on-going investigation of alleged criminal activity.

A log shall be kept of such instances where such outgoing mail is spot-checked and the resident whose mail is being spot-checked shall be notified immediately, unless such notification would impede investigation of criminal activity in which case he or she shall be notified at the completion of the investigation.

Pursuant to this change in regulation, postage-free envelopes shall be substituted for postage-free letterheads.

Notwithstanding the above, the sending of outgoing mail which violates BC-ADM 803 constitutes an abuse of the mail privilege, and proceedings may be instituted under the applicable provisions of the Code of Conduct against residents who so abuse the mail privilege.

D. Residents shall continue to refrain from writing to persons who have indicated that they do not wish to receive mail from such residents, provided however, that this regulation shall not be interpreted to restrict the right of residents to correspond with public officials with respect to the latter's official duties.

E. Defendants shall notify the sender of mail which is non-deliverable pursuant to BC-ADM 803 that such mail is non-deliverable, and such mail shall be returned to the sender.

VII. PUBLICATIONS

An amended BC-ADM 814 Administrative Directive on Incoming Publications shall be promulgated as follows:

A. PURPOSE

It is the policy of the Bureau of Correction to give wide latitude to residents in selecting publications and subscribing to periodicals in order that educational, cultural, information, religious, legal and philosophical needs of individuals will be satisfied.

It is the purpose of this Directive to establish procedures regarding incoming publications which shall be applicable to all institutions in the Bureau of Correction.

B. SCOPE

The procedures outlined in this Directive shall cover the purchase and/or receipt of all outside publications including legal publications, fiction and non-fiction books paper-backs, correspondence courses, training manuals, reference materials, magazines, newspapers, religious tracts and pamphlets.

C. GENERAL PROCEDURES

1. All publications except newspapers and magazines may be received from any source, with the following proviso: Covers of hard-bound publications received from sources other than the original source (e.g., publisher, bookstore, distributor or department store) may be damaged or removed where inspection of the cover is deemed necessary and no reasonably available alternative form of inspection is adequate. Magazines and newspapers must be mailed directly from the original source (e.g., publisher, bookstore, distributor or department store) with the following proviso: Small letter-sized pamphlets may be received in regular correspondence from family members, friends or religious advisors.

2. The staff committee shall rule on resident requests to receive publications within ten (10) days after receiving such publication and shall immediately communicate its decision to the resident, with the reasons for the decision if the publication is disapproved.

3. Residents shall have the right to appeal to the Superintendent any staff committee decision disapproving publication. The Superintendent shall communicate his decision to the resident within fifteen (15) days after receiving such an appeal.

4. Should the Superintendent concur with the staff committee's disapproval, a resident may appeal to the Commissioner of Correction who shall evaluate the publication in conjunction with the Office of the Attorney General. The findings of the Commissioner and the Attorney General shall be communicated to all institutions, and the Commissioner's decision shall be communicated to all residents.

D. CRITERIA

1. Requests shall be approved unless the publications contain one or more of the following:

- a. Information regarding the manufacture of explosives, incendiaries, weapons or escape devices; or
- b. Instructions regarding the ingredients and/or manufacture of poisons or drugs; or
- c. Writings which advocate violence, insurrection or guerrilla warfare against the government or any of its institutions or which create a clear and present danger within the context of the correctional institution; or
- d. Judicially defined obscenity.

2. No publication shall be prohibited solely on the basis that such publication is critical of penal institutions in general, of a particular institution, or a particular institutional staff member, of an official of the Bureau of Correction or of a correctional or penological practice in this or in any other jurisdiction.

3. The above Criteria should not be interpreted so broadly as to affect recognized textbooks in chemistry, physics or the social sciences.

E. POSSESSION OF PUBLICATIONS

1. A reasonable quantity of reading materials shall be permitted to be retained by an inmate. Neatness and good order should be of primary concern rather than a specified number of publications. Excessive quantities shall be disposed of by amicable agreement with the resident if possible. The following shall be considered as a guide:

200

A. An Administrative Directive governing the basic items distributed to residents upon admission and replacement of these items shall be promulgated to provide at a minimum for the following items:

- (1) Administrative Directives Manual (Handbook)
- (2) 10 Free Letterheads
- (3) Soap
- (4) Toothbrush
- (5) Shoe
- (6) Trousers
- (7) Belt
- (8) Shirts
- (9) Handkerchief
- (10) Towel
- (11) Socks
- (12) Case
- (13) Mirror
- (14) Cup
- (15) Soap
- (16) Toothpaste or Toothpowder
- (17) Toothbrush
- (18) Safety Razor
- (19) Razor Blades
- (20) Shaving Brush or Brushless Shaver

B. Material and substances for cleaning

B. Defendants further agree that they will not charge residents for these items.

C. Defendants agree not to deprive any resident of any of the above items unless the possession of any such item by a particular resident or residents presents a clear and present danger to the security of the institution or a clear and present danger to the safety of the resident or others within the institution.

XI. USE OF RESTRAINTS

Before the signing and final approval of this Consent Decree, defendants voluntarily adopted or promised to adopt an amended Administrative Directive governing use of restraints by staff members. Plaintiffs have reviewed this Directive, which is attached hereto and incorporated by reference herein as Appendix C, and agree that it meets or exceeds present legal requirements with respect to the matters contained therein.

XII. USE OF MACE

Before the signing and final approval of this Consent Decree, defendants voluntarily adopted or promised to adopt an amended Administrative Directive governing use of mace by staff members. Plaintiffs have reviewed this Directive, which is attached hereto and incorporated by reference herein as Appendix D, and agree that it meets or exceeds present legal requirements with respect to the matters contained therein.

XIII. SEARCHES OF RESIDENTS AND CELLS

Before the signing and final approval of this Consent Decree, defendants voluntarily adopted or promised to adopt an amended Administrative Directive governing searches of residents and cells by

staff members. Plaintiffs have reviewed this Directive, which is attached hereto and incorporated by reference herein as Appendix E, and agree that it meets or exceeds present legal requirements with respect to the matters contained therein.

XIV. VISITING PRIVILEGES

Bureau of Correction's Administrative Directive BC-ADM 812, Resident Visiting Privileges, shall be amended as follows:

A. Specific provisions will be added to enable residents to visit with visitors not on the residents' approved list who may come from substantial distances at infrequent intervals to visit the resident.

B. The number of approved visitors which each resident may designate in advance shall be increased to twenty (20). Residents who can show that they have more than twenty regular visitors may add additional names to their approved lists. Members of a single family living at the same address shall continue to be counted as one visitor for this purpose.

C. The provisions governing frequency of visits shall be amended to allow visits at least as frequently as one per week. Additional visits may be permitted unless the resident's program status makes it impractical.

XV. HOUSING

A. Within both the fulfillment of sound objectives for the Bureau of Correction and the operating budget of the Bureau, defendants shall expend their best efforts on a priority basis to equip and furnish all cells within the subject institutions which are used to house residents on a daily basis to a similar extent and in a similar manner. The objectives of this program are to:

(1) provide the maximum amount of artificial illumination for each cell which the electrical system of the particular institution can safely maintain;

(2) where not already provided, provide individually controlled toilet facilities for each cell.

(3) where not already provided, provide individually controlled hot and cold running water for each cell;

(4) provide a writing desk and chair for each cell, except to the extent that the security of the institution dictates otherwise; and

(5) provide the maximum amount of natural illumination and ventilation for each cell within the inherent limitations of the physical structures of the subject institutions.

B. Defendants shall continue to refrain from using the following cells for the housing of residents, unless defendants first obtain court approval for the use of such cells:

(1) the cells located in the east wing of the basement of the Rockview Institution;

(2) the two psychiatric cells in the hospital area and the "big cell" at the Huntingdon Institution;

(3) the "sweat-box" cells at the Dallas Institution.

XVI. TRANSFER OF RESIDENTS.

When a resident has been temporarily transferred from one institution to another institution within the Commonwealth's correctional system for any purpose except punishment of the resident, defendants shall endeavor, subject to changes in the resident's training program, to place such residents in the same or similar institution job at the same or similar wage, both at the transferee institution and at the transferor institution when the resident is returned.

XVII. CIVILIAN CLOTHING

Defendants shall permit residents to wear civilian clothing when residents are housed in general population except to the extent that the Superintendent of each institution requires institutional issue to be worn for work. However, defendants reserve the

right to require residents to wear specific articles of clothing issued solely for the purpose of visitation during a resident's presence in the visiting areas of the institution. Furthermore, defendants reserve the right to impose reasonable regulations with respect to civilian clothing on the basis of safety, sanitary and security considerations.

XVIII. USE OF RESIDENTS' RECORDS

Defendants agree that they will take no action against any resident because of such resident's participation in this or any other civil litigation, nor will defendants make any adverse recommendation against any resident to the Parole Board, Board of Pardons or any other agency because of such resident's participation in this or any other civil litigation.

XIX. RIGHT TO AMEND ADMINISTRATIVE DIRECTIVES.

Defendant Commissioner of Correction reserves the right to amend, suspend, alter or modify any of the Administrative Directives and the additions and amendments thereto as provided in this Decree, and plaintiffs reserve their right to contest in this Court any such amendment, suspension, alteration or modification of the provisions of this Consent Decree. For a period of three (3) years following the Court's approval of this Consent Decree, defendant Commissioner of Correction shall not amend, suspend, alter or modify any Directive, rule or regulation covered by this Decree without first advising counsel for plaintiffs of his or her intention in this regard and providing counsel with fifteen(15) days notice prior to issuing any such Directive, rule or regulation within which plaintiffs may move this Court to prohibit the proposed amendment or modification. If

plaintiffs object to any such proposed amendment or modification, defendants shall not institute the proposed change without first obtaining approval of this Court upon good cause shown.

Plaintiffs also reserve the right to contest in this Court, at any time, by any appropriate legal proceeding, any institution or system wide pattern of failure or refusal by defendants or their agents or employees to follow the provisions of this Consent Decree.

XX. PLAINTIFFS' ACCEPTANCE OF ADMINISTRATIVE DIRECTIVES

Plaintiffs accept the Administrative Directives and the amendments and additions thereto as provided in this Decree as a complete statement as of the date of this Decree of their rights and privileges in those areas covered by this Decree.

XVI. REPORT

Within ninety (90) days of the approval of this Consent Decree, defendants shall submit to the Court and counsel for plaintiffs a written report of any new procedures, directives, etc. which are intended to effectuate the provisions of the Decree.

XVII. CONSENT DECREE - NO ADMISSION

This Decree shall not operate as an admission on the part of defendants of the truth or any of the allegations of plaintiffs' Complaint. Plaintiffs agree that failure by defendants to comply with the provisions of this Decree occurring prior to the entry of this Decree shall not in and of itself create a cause of action in any party. Plaintiffs reserve their rights to sue for alleged violations of state or federal law.

XXIII. VIOLATION OF DECREE

This Decree shall not create a private cause of action in any individual against any of the defendants. Nor, except as provided in paragraph XIX above, shall this Decree provide a basis for contempt proceedings. Nor shall any of the defendants be liable to any individual for damages for failure to comply with this Decree unless the alleged failure constitutes a violation of state or federal law, or unless the Court imposes such damages as part of a contempt proceeding pursuant to this Decree.

XXIV. PLAINTIFFS' APPROVAL OF DECREE

The Court shall not approve this Decree until plaintiff class has been notified of the proposed Decree and members of the class have been given the opportunity to submit to the Court any objections to the provisions contained therein.

XXV. DEFENDANTS' APPROVAL OF DECREE

The Court shall not approve this Decree until the Attorney General of the Commonwealth of Pennsylvania and the Commissioner of Correction have agreed in writing.

XXVI. NOTICE

Notice of the proposed Consent Decree shall be given to all members of the class in the manner specified by the Court.

APPENDIX A
TO
CONSENT DECREE

HEALTH CARE PROVISIONS

It is understood and agreed by and between plaintiffs and defendants that although defendants will attempt to implement those provisions of Appendix A which are not already in effect within ninety (90) days of the date of the approval of this Consent Decree, there may be some provisions which require either additional funding or major construction or both, which cannot be implemented within the ninety (90) day period. As to such provisions, defendants agree to treat the implementation of these programs and procedures as a priority item and to implement them as soon as reasonably possible.

1. Defendants will make special diets available to all inmates when such diets are prescribed by the institution's physician.

2. Defendants will not use isolation cells for long term detention of psychiatric cases. Defendants will, as soon as possible, transfer such cases to community mental health facilities or other mental health hospitals whenever a determination is made that special housing of psychiatric cases is necessary. For emergency psychiatric problems, when a prisoner must be isolated pending transfer, the room used for such isolation will meet accepted standards for such facilities, and the patient will be kept under appropriate supervision by health professionals or properly trained custodial staff or personnel.

3. Defendants will continue their policy of not permitting medically unnecessary surgical procedures and medical treatment. The prescription of placebos and the use of tranquilizer drugs will continue to be done only under the strict supervision of a physician.

4. At all Bureau of Correction facilities which provide inpatient treatment for inmates, the Bureau shall provide twenty-four (24) hour medical care to such inmates. The standards for training and qualification of medical personnel such as inmate nurses and staff personnel working in such hospitals will be developed and implemented by the Bureau in consultation with outside professional sources.

5. There will be a daily sick call at all institutions by a properly trained health professional.

6. The Bureau will continue its policy of permitting all residents, no matter where they are housed in the institution, to have access to health professionals at the institution.

7. All medicines prescribed and given to inmates shall be properly labeled and identified. Medication shall be ground, pulverized or delivered in a fluid suspension only at the direction of the inmate's physician.

8. Institutions' physicians have been and will continue to be authorized to make the final decisions regarding medical treatment for inmate patients.

9. Prosthetic devices, including but not limited to dentures and hearing aids, shall continue to be furnished free of

charge to the inmates with the exception of eyeglasses. With respect to eyeglasses, the Bureau of Correction will pay the cost of the prescription ground lens in a standard plastic frame. However, if the inmate desires a more expensive framing, the difference between the total price and the Bureau's allotment will be deducted from the inmate's institution account.

10. At each institution a physician will conduct a monthly inspection of all food preparation and food storage spaces, the institution hospital and infirmary, and all other facilities connected with health care and health care delivery. The physician shall submit a report of his inspection to his superintendent immediately after his inspection, and these reports shall be maintained at each institution.

11. All persons who handle food at any institution shall be inspected daily by the steward in charge of the section. Any evidence that any such person is or may be suffering from a communicable disease shall be immediately reported to the medical dispensary and to the superintendent.

12. The Bureau of Correction will continue its attempts to obtain funds for a program which will enable the Bureau to provide every inmate with a full medical evaluation. The purpose of such evaluation shall be to determine the present health status of each inmate and to establish an appropriate plan of treatment for any medical problems which are diagnosed as the result of the evaluation.

13. The Bureau of Correction will establish a uniform sick-call procedure in each institution which will continue to permit

inmates to have immediate medical attention in emergency situations and which will permit inmates to see a health care professional within twenty-four (24) hours following request for routine medical care.

14. Each institution which does not already employ a full-time institutional pharmacist shall employ a registered pharmacist from the area on a part-time-consultant basis for the purpose of advising the institution staff on the proper manner of handling the prison pharmacy.

15. The Bureau of Correction will develop and implement a plan for the regular inspection of food preparation and medical facilities within each institution by public health personnel or other experts not directly related to the prison system.

16. The Bureau of Correction will establish and implement a plan for handling intake physical examinations of all new inmates and for providing follow-up treatment when appropriate.

17. The Bureau of Correction will develop and implement a medical record system that will provide for uniformity of records throughout the state and will protect the inmate's right to confidentiality of such records.

18. The Bureau of Correction will continue its procedures for handling dental care of inmates stressing the preventative aspects of such care.

19. The Bureau of Correction will continue to develop and implement plans for adequate staff training programs for health professionals and custodial officers assigned to work in the prison health system. This program has included and will continue to include a training program directed at enabling institutional health professionals and custodial personnel in recognizing emergency health problems and providing emergency health care.

20. The Bureau of Correction will continue to utilize the Governor's Health Task Force as a civilian resource outside the prison system in order to regularly evaluate the quality of health care being delivered within the prison system.

APPENDIX B
to
CONSENT DECREE

USE OF FORCE

An Administrative Directive governing the Use of Force shall be promulgated as follows:

A. Force may only be used against a resident in one of the following situations:

(1) A staff member may use force against a resident when he reasonably believes such force is necessary for self-defense, in order to protect himself from bodily harm.

(2) A staff member may use force against a resident when he reasonably believes such force is necessary for the defense of others, in order to protect others from bodily harm.

(3) A staff member may use force against a resident when he reasonably believes such force is necessary for the defense of property, in order to protect such property from damage or destruction.

(4) A staff member may use force against a resident when he reasonably believes such force is necessary to prevent the escape of a resident or to recapture an escaped resident.

B. A staff member may not use any greater force against a resident than is necessary to protect himself, to protect others or to protect property.

C. A staff member may not use force against a resident for purposes of punishment or revenge.

D. A staff member may only use deadly force against a resident, i.e. force which could reasonably be expected to result in death, when such force is necessary to prevent death or serious bodily harm to himself or to another person.

E. A staff member may not use deadly force to protect

property from destruction or damage. A staff member may only use deadly force to protect property from destruction or damage where the staff member reasonably believes that the destruction or damage of property will result in death or serious bodily harm to a person.

F. Deadly force may not be used if some lesser degree of force will likely safeguard against death or serious bodily harm.

G. A staff member may use deadly force against a resident to prevent an escape or to recapture an escaped resident in conformity with state law. However, a staff member may not use deadly force to prevent an escape or to recapture an escaped resident if some lesser degree of force will likely prevent the escape or enable recapture of an escaped resident.

APPENDIX C
to
CONSENT DECREE

USE OF RESTRAINTS

Within ninety (90) days after approval of the Consent Decree, an Administrative Directive governing the Use of Restraints shall be promulgated as follows:

- A. Instruments of restraint shall never be applied as punishment.
- B. Instruments of restraint designed to inflict pain or humiliation shall never be used.
- C. Except as otherwise provided herein, instruments of restraint may only be used as a precaution against escape or as a protection against a resident injuring himself or other persons.
- D. Instruments of restraint may be used on medical grounds at the direction of a medical officer.
- E. Instruments of restraint may be used when a resident is confined in a cell only on medical grounds at the direction of a physician, or by order of the superintendent or his designated representative, if the physician is unavailable, if other methods of control fail in order to prevent a resident from injuring himself or other persons or from damaging property. The superintendent or his designee shall immediately consult a medical officer as well as promptly reporting the use of such restraint to the Commissioner of Correction.

APPENDIX D
to
CONSENT DECREE

USE OF MACE

The following procedures shall be standard policy for the use of chemical Mace at all state correctional institutions:

A. When to be Used.

The use of Mace shall be restricted to such instances where a resident barricades or arms himself and cannot be approached without definite danger to personnel or to himself and when it is determined that a delay in apprehension would constitute a serious hazard to the resident or other persons or result in a major disturbance or property damage. Mace may also be used in situations where the use of force is permissible as provided by Paragraph IX of this Consent Decree so long as there is imminent danger of bodily harm or of substantial property damage.

B. Availability and Storage

1. Mace shall not be carried by personnel except as specifically provided herein. It shall be stored in a secure area of the control center, accessible to authorized personnel only.
2. If in the opinion of the Superintendent (or, in his absence, the highest ranking prison official present and available), a scheduled or unscheduled gathering of residents, general institution climate or the conditions in a specific area of the institution, present a danger to staff or other residents, the Superintendent or such official may decide to arm officers with Mace. In these instances, the Superintendent or such official shall supervise the issuing of the Mace and its collection and storage when the danger subsides.

3. When residents are to be transferred to other institution, court, hospital or other authorized movement outside the institution, and a determination has been made that the resident involved present a danger to staff or other residents, the decision to use Mace may be made.

4. The officer-in-charge of the Behavior Adjustment Unit, with approval of the Superintendent, or such other officer designated in paragraph 2 herein, shall determine the need for the use of Mace and the use thereof during the movement of the resident, e.g., bathing, and similar activities based upon the circumstances, type and attitude of the resident involved and the safety of himself and of his fellow officers.

C. How to be Used.

1. Mace should not intentionally be directed at the eyes. It should be aimed at the face but rather aimed at the face. Permanent eye damage may be done if the spray is directed into the eyes.

2. Mace should not be dispensed at ranges closer than

3. Mace should not be used in small rooms where there are many people. In extreme cases and then all persons should be evacuated immediately, for severe damage may result.

4. Prolonged inhalation of Mace.

5. When using Mace, the stream should be in a short burst, not more than 10 seconds in duration. If control

achieved within fifteen (15) seconds after the first firing, a second burst may be fired.

D. Medical Staff Role

1. Except when the circumstance requires immediate action, the Medical Staff shall be contacted prior to the use of Mace to determine whether or not the resident has any disease or condition that would make the use of Mace particularly dangerous.

2. If the resident has respiratory or cardiovascular disease, chronic dermatitis or psychosis, Mace may be extremely harmful. Use of it on any resident with any of these diseases is prohibited except in the most exigent of circumstances where to refrain from its use could cause death and other lesser means to subdue the resident have been considered or attempted and determined to be ineffective. Also, if the resident is already known by the psychiatrist, the psychiatrist should, whenever possible, be consulted regarding the best method of managing a resident.

3. The resident's eyes shall be flushed with cold water when possible, within five (5) minutes after exposure. All exposed surfaces shall be washed and contaminated clothing shall be changed.

4. The resident shall be examined immediately by a member of the medical staff and at twenty-four (24) hour intervals for a minimum of fourteen (14) days.

E. Reporting Use of Mace

In all cases where Mace is used, a full written report of the circumstances including medical reports, shall be submitted to

the Superintendent and forwarded to the Commissioner of Correction.

F. Training

All personnel shall receive training in the proper use of mace at the training schools or during the institutional orientation phase. Training shall include the review of the directive and actual use of Mace canisters.

APPENDIX E
to
CONSENT DECREE

SEARCHES OF RESIDENTS AND CELLS

An Administrative Directive governing searches shall be issued by the Commissioner of Correction to the Superintendents of the subject institutions for distribution to all institutional staff members and provide substantially as follows:

A. Purpose

The introduction or presence of weapons or other contraband can have a serious or dangerous effect on the security and proper management of a correctional institution. Of concern also is that searches for such contraband be appropriately conducted to avoid indignities to and harassment of the person searched. Accordingly, it is the purpose of this directive to establish guidelines for the searching of residents and their cells to reduce contraband and to insure that searches are properly conducted.

B. Times of Search

1. Strip Search:

a. A strip search shall be conducted only upon the following circumstances:

- (1) Before and after every contact or open visit.
- (2) Upon residents' return from outside activities, supervised outside leave and furloughs.
- (3) Upon reception, return from court and return after resident has left the institution on reservation for any other reason.

- (4) Following activities where residents have mingled freely with outside groups, particularly where there are large numbers of people under minimal supervision.
 - (5) Periodically for residents in a trusty status who have the freedom to move in and out of the gate areas.
 - (6) When a resident is reasonably suspected to be involved in an escape plot or to be in possession of contraband.
- b. Strip searches shall be conducted in an area separate from other residents and to assure privacy and minimum embarrassment. Female residents shall be searched by female correctional personnel and males, by male correctional personnel. At no time (except for c (2) below) shall it be necessary for a staff person to place his hand(s) on the resident. The search shall be conducted in a tactful, professional manner.
- c. The following specific procedures shall be utilized in conducting the strip search:
- (1) Have resident remove all clothing.
 - (2) Examine resident's head. You may run a finger or a large, wide-toothed comb through the hair.
 - (3) Using a flashlight, look behind the ears, into the mouth, under the tongue, and into nostrils.
 - (4) Request resident to lift arms and then carefully examine armpit area.
 - (5) Request resident to open hands and carefully examine backs, palms and between fingers.
 - (6) Look over resident's body. If pieces of tape or bandages are present, have resident remove them and replace with fresh ones [Removal and replacement by medical staff when originally applied by medical staff wherever practicable].
 - (7) Using a flashlight, examine resident's groin area.

- (8) Require resident to turn around, bend over and spread buttocks. Then, with flashlight, examine buttocks for contraband.
- (9) Require resident to lift the feet so that you can examine soles and between the toes carefully.
- (10) Carefully search each item of clothing before being returned to the resident or placed in storage.

2. Frisk Search

- a. Residents may be frisked at random, particularly under the following circumstances:
 - (1) when a resident is a known contraband or weapons carrier; or
 - (2) when a resident is reasonably suspected of carrying contraband in a specific instance.
- b. Frisk searches may be conducted in any area of the institution. However, if possible, some degree of privacy shall be afforded. They shall be conducted in a professional manner with tact and proper attitude displayed.
- c. The following procedures shall be utilized in conducting the frisk search:
 - (1) The resident shall remove all items from pockets and place them in a hat or on a shelf, desk, or other suitable place. They should be placed in an area away from the resident. These items shall be examined to assure that they are not contraband.
 - (2) The resident shall stand still with feet apart and arms extended outward.
 - (3) Run the resident's shirt collar between the fingers, carefully feel for small hidden wires, hacksaw blades, etc.
 - (4) Move the hands downward, running them over the shoulders, down the outside of the resident's arms to the shirt cuffs. Then move the hands up the inside of the arms to the armpits.

ADDENDUM

- . Related orders of the Court on litigated issues
- . Stipulation amending the proposed Consent Agreement
- . Opinion on maximum security cell blocks and conjugal visits

- (5) Then run the hands down the shirt front, checking the pocket, and stop at the resident's belt line.
- (6) Check the waistline by running the fingers around the waistband, feeling for small articles.
- (7) From the waistline, run the hands down the resident's buttocks, all the time feeling the places that might contain contraband.
- (8) Then move both hands to the leg and run them carefully down the leg. At the bottom of the leg, make a point of checking the trouser cuff for concealed articles. Repeat the process on the other leg.
- (9) As the last step to the frisk search, run the hand over the resident's lower abdomen and crotch carefully, looking for concealed articles that may be taped to these areas.

3. Internal Examination or Search

Internal examinations shall be conducted only by a medical doctor or registered nurse, within the confines of the institution dispensary or hospital.

4. In all instances where an inmate is to be searched, the inmate shall be given the opportunity to be present unless his presence would present an immediate threat to security, or where the search takes place under emergency conditions or where the inmate's presence would impair or ongoing investigation of criminal activity or violation of institutional regulations.

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- (9) As the last step to the frisk search, run the hand over the resident's lower abdomen and crotch carefully, looking for concealed articles that may be taped to these areas.

3. Internal Examination or Search

Internal examinations shall be conducted only by a medical doctor or registered nurse, within the confines of the institution dispensary or hospital.

4. In all instances where an inmate's cell is searched, the inmate shall be given the opportunity to be present unless his presence would present an immediate threat to security, or where the search takes place under emergency conditions or where the inmate's presence would impair an ongoing investigation of criminal activity or violation of institutional regulations.