



PC-VT-001-001

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

ROBERT GOLDSMITH, EARL LAWRENCE SQUIRES,
RICHARD STEMPEL, ROGER BLACKBURN, STORMY
WRIGHT, JEFF STRATTON, EDWARD BENNETT,
ROBERT GOKEY, DON PAYDON, DAVID MCKEEN,
ROBERT LAWTON, WILLIAM VERRINDER III,
CHARLES CONWAY, RANDY BLODGETT, FRED
ASHWORTH, JEROME CLEMENT, and GEORGE NEGRON,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

HOWARD DEAN, Governor of the State of
Vermont; JOHN GORCZYK, Commissioner of
the Department of Corrections of the
State of Vermont; Steven Maranville,
Superintendent of the Northwest State
Correctional Facility; Keith Tallon,
Superintendent of the Southwest Regional
Correctional Facility; Lawrence McLiverty,
Superintendent of the Southeast Regional
Correctional Facility; Stewart K. Robinson,
Superintendent of the Northwest Regional
Correctional Facility; Celeste M. Girrell,
Superintendent of the Northeast Regional
Correctional Facility; T. Michael Coxon,
Superintendent of the Southeast State
Correctional Facility; William D. Pithers,
Director of the Vermont Treatment Program
for Sexual Aggressors; Jack Bush, Director
of the Violent Offender Program; Immediate
Care Health Center; Ottauquechee Health
Center, Inc.; Dr. Judith Hill; Dr. Carleton
Stickney; Dr. John Ajamie; Dr. Jeffrey
Rothfeld; Alice Hafner, Chairperson of the
Vermont Parole Board; Ernest Torpey, Arthur
Silvester, Lorraine Graham, and Elaine
Charboneau, members of the Vermont Parole
Board, all sued in their official capacity;
and the Vermont Department of Corrections,

Defendants.

Civil Action No.

CLASS ACTION
COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY
RELIEF

On behalf of themselves and the class alleged herein, plaintiffs state the following for their complaint against defendants:

PRELIMINARY STATEMENT

1. This is a class action brought by plaintiffs on behalf of all individuals who are now or in the future will be confined in Vermont prisons. This action is also brought on behalf of individuals who are now or in the future will be subject to the policies and practices of the Vermont Department of Corrections and the Vermont Parole Board regarding the Vermont Treatment Program for Sexual Aggressors and the Violent Offender Program.

2. Plaintiffs seek declaratory and injunctive relief for deprivations under color of state law of rights, privileges, and immunities secured by the Constitution of the United States, and in particular those secured by the First, Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments thereof, as well as violations of federal statutory provisions.

3. Plaintiffs specifically seek relief from conditions at Vermont's prison facilities that fall below contemporary standards of human decency, deny basic human needs, inflict needless pain and suffering, and threaten plaintiffs' physical and mental well-being. Plaintiffs also seek relief from the policies and practices of the defendants in connection with two programs, the Vermont Treatment Program for Sexual Aggressors and the Violent Offender Program, which involve unreasonable intrusions on plaintiffs' bodily

integrity and mental processes; inflict needless pain and suffering and threaten plaintiffs' physical and mental well-being.

4. The Vermont Department of Corrections has custody of approximately 1200 prisoners including both sentenced prisoners and pretrial detainees. These numbers have been growing in recent years and are likely to increase in the future.

JURISDICTION

5. Plaintiffs seek to vindicate rights protected by the First, Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution; by Title 42 U.S.C. § 1983; and by the Americans with Disabilities Act (ADA) Title 42 U.S.C. § 12101 et. seq. This Court has jurisdiction of this civil action pursuant to Title 28 U.S.C. §§ 1331 and 1343(a)(3) and (4). Pursuant to Title 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction to declare the rights of the parties and to grant all further relief found necessary and proper.

PARTIES

6. Plaintiff Robert Goldsmith is a citizen of the United States currently incarcerated as a sentenced prisoner at the Northwest State Correctional Facility in St. Albans, Vermont.

7. Plaintiff Earl Lawrence Squires is a citizen of the United States currently incarcerated as a sentenced prisoner at the Southeast State Correctional Facility in Windsor, Vermont.

8. Plaintiff Richard Stempel is a citizen of the United States currently incarcerated as a sentenced prisoner at the Southeast State Correctional Facility in Windsor, Vermont.

9. Plaintiff Roger Blackburn is a citizen of the United States currently incarcerated as a sentenced prisoner at the Southeast State Correctional Facility in Windsor, Vermont.

10. Plaintiff Stormy Wright is a citizen of the United States currently incarcerated as a sentenced prisoner at the Northwest Regional Correctional Facility in South Burlington, Vermont.

11. Plaintiff Jeff Stratton is a citizen of the United States currently incarcerated as a sentenced prisoner at the Northwest Regional Correctional Facility in South Burlington, Vermont.

12. Plaintiff Edward Bennett is a citizen of the United States who is currently a pretrial detainee at the Northwest Regional Correctional Facility in South Burlington, Vermont.

13. Plaintiff Robert Gokey is a citizen of the United States currently incarcerated as a sentenced prisoner at the Northeast Regional Correctional Facility in St. Johnsbury, Vermont.

14. Plaintiff Don Paydon is a citizen of the United States currently incarcerated as a sentenced prisoner at the Northeast Regional Correctional Facility in St. Johnsbury, Vermont.

15. Plaintiff David McKeen is a citizen of the United States who is currently a pretrial detainee at the Northwest State Correctional Facility in St. Albans, Vermont.

16. Plaintiff Robert Lawton is a citizen of the United States currently incarcerated as a sentenced prisoner at the Northwest State Correctional Facility in St. Albans, Vermont.

17. Plaintiff William Verrinder, III is a citizen of the United States currently incarcerated as a sentenced prisoner at the Northwest State Correctional Facility in St. Albans, Vermont.

18. Plaintiff Charles Conway is a citizen of the United States currently incarcerated as a sentenced prisoner at the Northwest State Correctional Facility in St. Albans, Vermont.

19. Plaintiff Randy Blodgett is a citizen of the United States currently incarcerated as a sentenced prisoner at the Southeast Regional Correctional Facility in Woodstock, Vermont.

20. Plaintiff Fred Ashworth is a citizen of the United States currently incarcerated as a sentenced prisoner at the Southeast Regional Correctional Facility in Woodstock, Vermont.

21. Plaintiff Jerome Clement is a citizen of the United States currently incarcerated as a sentenced prisoner at the Southeast Regional Correctional Facility in Woodstock, Vermont.

22. Plaintiff George Negron is a citizen of the United States who is currently a pretrial detainee at the Southwest Regional Correctional Facility in Rutland, Vermont.

23. Defendant Howard E. Dean, M.D. is the Governor of Vermont. As such, under Chapter II § 20 of the Constitution of the State of Vermont he is authorized to appoint the Commissioner of the Vermont Department of Corrections as well as to present to the legislature the Department of Corrections' annual budget. Governor Dean is responsible for the administration and operation of all aspects of State government agencies including the Department of

Corrections and the Parole Board. He is sued in his official capacity.

24. Defendant John Gorczyk is the Commissioner of the Vermont Department of Corrections. As such, under Title 28, Chapter 3, § 101, and Chapter 7, § 403 of the Vermont Statutes, he is responsible for the administration and operation of the prisons and the parole system in the State of Vermont. Defendant Gorczyk is sued in his official capacity.

25. Defendant Steven Maranville is the Superintendent of the Northwest State Correctional Facility. He is responsible for the daily operations of that prison and is sued in his official capacity.

26. Defendant Keith Tallon is the Superintendent of Southwest Regional Correctional Facility. He is responsible for the daily operations of that prison and is sued in his official capacity.

27. Defendant Lawrence McLiverty is the Superintendent of the Southeast Regional Correctional Facility. He is responsible for the daily operations of that prison and is sued in his official capacity.

28. Defendant Stewart K. Robinson is the Superintendent of Northwest Regional Correctional Facility. He is responsible for the daily operations of that prison and is sued in his official capacity.

29. Defendant Celeste M. Girrell is the Superintendent of the Northeast Regional Correctional Facility. She is responsible for

the daily operations of that prison and is sued in her official capacity.

30. Defendant T. Michael Coxon is the Superintendent of the Southeast State Correctional Facility. He is responsible for the daily operations of that prison and is sued in his official capacity.

31. Defendant William D. Pithers is the Director of the Vermont Center for the Prevention and Treatment of Sexual Abuse, and is an agent or employee of the Department of Corrections. On information and belief, he is responsible for formulating policy and for the direction and/or oversight of the Vermont Treatment Program for Sexual Aggressors. He is sued in his official capacity.

32. Defendant Jack Bush is an agent of the Department of Corrections and has the responsibility for directing the DOC's Violent Offender Program. He is sued in his official capacity.

33. Defendant Immediate Care Health Center, a non-governmental entity, is responsible for the provision of medical treatment and care at the Northwest Regional Correctional Facility located at South Burlington, Vermont, pursuant to a contract with the Vermont Department of Corrections.

34. Ottauquechee Health Center, Inc., a non-governmental entity, is responsible for the provision of medical treatment and care to plaintiffs at Southeast Regional Correctional Facility located at Woodstock, Vermont, pursuant to a contract with the Vermont Department of Corrections.

35. Defendant Dr. Judith Hill, affiliated with the Mt. Ascutney Medical Group, is responsible for the provision of medical treatment and care to plaintiffs at Southeast State Correctional Facility located at Windsor, Vermont, pursuant to a contract with the Vermont Department of Corrections. She is sued in her official capacity.

36. Defendant Dr. Carleton Stickney is responsible for the provision of medical services at Southwest Regional Correctional Facility located at Rutland, Vermont, pursuant to a contract with the Vermont Department of Corrections. He is sued in his official capacity.

37. Defendant Dr. John Ajamie, affiliated with St. Johnsbury Family Medicine, is responsible for the provision of medical services at Northeast Regional Correctional Facility located at St. Johnsbury, Vermont, pursuant to a contract with the Vermont Department of Corrections. He is sued in his official capacity.

38. Defendant Dr. Jeffrey Rothfeld, affiliated with the Medical Center Hospital of Vermont, is responsible for the provision of medical services at Northwest State Correctional Facility located at St. Albans, Vermont, pursuant to a contract with the Vermont Department of Corrections. He is sued in his official capacity.

39. Defendant Alice Hafner is the Chairperson of the Vermont Parole Board. Under Title 28, Chapter 7, § 404, subchapter 2, § 451, subchapter 3, §§ 501-506, and subchapter 4, § 551 of the Vermont statutes, the Board is responsible for setting the

conditions that plaintiffs must meet in order to be considered eligible for release on parole and, once released, to remain at liberty under parole supervision. Defendant Hafner administers the work of the Vermont Parole Board with regard to the selection of plaintiffs for parole supervision, assessment of plaintiffs' compliance with established conditions, and revocation of parole supervision based on plaintiffs' failure to comply with stated conditions. Defendant Hafner is sued in her official capacity.

40. Defendants Ernest Torpey, Arthur Silvester, Lorraine Graham and Elaine Charboneau are members of the Vermont Parole Board. As such, under Title 28, Chapter 7 of the Vermont Statutes, they have the responsibility for setting parole eligibility criteria for plaintiffs to gain release on parole supervision, assessing plaintiffs' compliance with parole conditions, and revoking parole, thus returning plaintiffs to prison for failure to comply with stated conditions. Defendants Torpey, Silvester, Graham and Charboneau are sued in their official capacities.

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

CLASS ACTION ALLEGATIONS

42. The named plaintiffs seek to maintain this action on behalf of themselves and all others similarly situated pursuant to Rules 23 (a) and 23 (b) of the Federal Rules of Civil Procedure. They seek to represent a class of all individuals who are now or in

the future will be confined in Vermont prisons, and all individuals who are now or in the future will be subject to the policies and practices of the Vermont Department of Corrections and the Vermont Parole Board with respect to two programs, the Vermont Treatment Program for Sexual Aggressors, and the Violent Offender Program. In the absence of relief, plaintiffs represent a class of persons who have been or will be treated in the manner set forth below. As a result of such treatment, the members of the class are or will be subjected to cruel and unusual punishment and deprived of fundamental constitutional rights, as well as federal statutory rights. Plaintiffs therefore seek declaratory and injunctive relief to eliminate defendants' actions, policies, and practices which deprive them of those rights.

43. The class of both sentenced and pretrial prisoners is so numerous with approximately 1200 members that joinder of all members is impractical.

44. There are questions of law and fact common to the class, including the constitutionality of the conditions of confinement maintained by the Department of Corrections described below, which apply throughout the Vermont prison system.

45. The claims of the plaintiffs are typical of the claims of the class. The named plaintiffs include prisoners currently incarcerated at the six Department of Corrections prison facilities currently in operation. The named plaintiffs also include prisoners with disabilities who have been denied the benefit of programs and services for which they are qualified, because of

their disabilities; and prisoners who have been subjected to the policies and practices of the Defendants regarding the Vermont Treatment Program for Sexual Aggressors and/or the Violent Offender Program.

46. Plaintiffs will fairly and adequately represent and protect the interests of the class. Moreover, the plaintiffs' counsel are experienced in the protection and enforcement of the constitutional rights of prisoners.

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

FACTS GIVING RISE TO THE CAUSE OF ACTION

Medical and Mental Health Care

48. Access to physicians in Vermont's prisons is severely limited. The Department and its contractors systematically fail to provide necessary routine and emergency medical treatment to prisoners. Defendants fail to employ sufficient qualified medical personnel to properly treat its prisoner population.

49. Overcrowding, filthy conditions, and lack of adequate air circulation increase the risk of exposure of staff and prisoners to airborne communicable diseases, such as tuberculosis. Overcrowding causes and aggravates a variety of physical and mental illnesses, which are further aggravated by environmental health and safety hazards, grossly inadequate medical and mental health care, and by the defendants' failure to adequately protect prisoners from assault.

Inadequate Screening for Infectious Diseases

50. Prisoners are not properly tested for tuberculosis upon their admission to Vermont's correctional facilities. Qualified medical personnel fail to administer the PPD test to all newly-admitted prisoners and to visually inspect the implanted PPD test result on each prisoner to determine the presence of the tuberculosis infection.

51. Defendants fail to provide medical facilities equipped with negative pressure ventilation to isolate plaintiffs suffering from active tuberculosis in accordance with guidelines promulgated by the Centers for Disease Control.

52. There is no systematic, periodic retesting of prisoners or prison staff for tuberculosis; even plaintiffs infected with the Human Immunodeficiency Virus (hereinafter HIV) who may not respond to a PPD test but are at substantially higher risk of contracting tuberculosis, are not systematically retested.

53. When prisoners develop tuberculosis during their incarceration, defendants fail to determine the origin, or "source" cases, or the extent of tuberculosis infection among the plaintiff class. This raises the likelihood of an epidemic affecting correctional staff and prisoners alike.

Lack of Intake Physical Examinations

54. Defendants routinely fail to provide adequate intake health evaluations for newly-admitted prisoners, including physical examinations and basic diagnostic testing.

55. Defendants neither offer gynecological examinations to women upon their admission to prison, nor provide women prisoners with necessary gynecological or prenatal follow-up care.

56. Defendants fail to provide adequate treatment for newly-admitted plaintiffs who are undergoing detoxification from drugs or alcohol.

Sick Call

57. The defendants' sick call procedures are defective. Plaintiffs with serious medical conditions are screened in the first instance by inadequately trained, unqualified corrections personnel and/or overburdened nursing staff who fail to diagnose medical problems until grave injury occurs.

58. Plaintiffs routinely experience long delays before being seen by a physician. Sick plaintiffs thus become sicker and suffer unnecessary pain and medical complications.

59. The defendants' doctors and nurses routinely ignore and refuse to treat serious and urgent medical conditions that require consultation, testing or treatment at outside hospitals or specialty clinics.

60. As a matter of practice and policy, defendants fail to treat plaintiffs' ongoing medical conditions that began prior to their incarceration.

61. The effectiveness of outside medical treatment for plaintiffs is further compromised by the defendants' failure to ensure continuity of care and follow-up coordination between the Department and the outside medical providers. Test results and

consultation reports from outside physicians often do not reach plaintiffs' treating physicians for weeks or months. Unnecessary and serious medical complications arise because of defendants' practice of transferring plaintiffs to various facilities across the state to avoid incurring the expense of essential medical procedures, or in wanton disregard of plaintiffs' serious medical needs for such procedures.

62. Defendants fail to monitor or adequately treat plaintiffs who suffer from serious chronic illnesses, such as diabetes, coronary artery disease, hypertension, renal conditions, asthma and other respiratory ailments. Defendants' failure to attend to plaintiffs' chronic illnesses results in needless pain and suffering, the overall deterioration of plaintiffs' health, and avoidable fatalities.

Mental Health Care

63. Defendants' facilities, staff, procedures and practices with respect to providing mental health care to prisoners are dangerously deficient.

64. Defendants fail to employ an adequate number of licensed, qualified mental health treatment staff, including psychiatrists and psychologists.

65. Defendants fail to assign qualified mental health practitioners to perform intake evaluations of newly-admitted prisoners for diagnosis, and to determine appropriate treatment and placement for prisoners with acute mental illnesses and mental retardation.

66. Plaintiffs with psychiatric illnesses are not properly classified, housed, or treated. Defendants maintain no special mental health treatment units. Rather, plaintiffs suffering from mental illness are either held in "close custody," punitive segregation housing, or they are double-bunked in the general prison population. Defendants' policy and practice utilize the disciplinary system to control, classify and punish mentally-ill plaintiffs. In effect, defendants punish mentally-ill plaintiffs because they are mentally ill.

67. There is a system-wide lack of access to psychologists and psychiatrists for counseling, evaluation and ongoing treatment of acute psychiatric disorders.

68. Plaintiffs who exhibit acutely suicidal or psychotic behavior, or pose a danger to themselves or others, are not referred to mental health professionals outside the prisons even after they attempt to harm themselves. Defendants fail to establish and maintain an adequate suicide prevention program to avert the incidence of suicides or attempted suicides.

69. Psychotropic medications are routinely distributed by unqualified staff including correctional guards, particularly on evening and weekend shifts. Plaintiffs frequently experience delays in receiving their prescribed psychotropic medications. The defendants do not carry out medication orders by outside psychiatrists.

70. Defendants' failure to provide adequate mental health treatment and care causes severe and needless pain to mentally-ill plaintiffs, and causes their conditions to deteriorate.

Withholding Information on Medical Status

71. As a matter of policy and practice, defendants routinely refuse to disclose to prisoner-patients information about the nature and course of their illness. Moreover, defendants prevent outside treating physicians from communicating to prisoner-patients basic medical information, such as test results and outcomes of surgical procedures that may have life-threatening consequences. This policy and practice violates medical ethics and professional standards governing physician care, and causes pain, suffering, and the deterioration of plaintiffs' health.

Prescriptions and Medication Distribution

72. Plaintiffs frequently receive their prescribed medications from unlicensed, unqualified correctional personnel, particularly on evening and weekend shifts, resulting in frequent errors in dispensing medications.

73. Plaintiffs suffering from chronic illnesses routinely experience long delays in receiving their medications.

74. Defendants fail to examine prisoners or monitor their levels of medication prior to prescription renewal.

75. Treating physicians fail to prescribe proper diet and medication to prisoners who have, or develop, chronic illnesses and diseases requiring special attention, such as ulcers, diabetes, hypertension, or chronic heart disease. Even when such diet or

medication is ordered, defendants often fail to provide it. As a result of defendants' failure to provide medication in a timely and consistent manner, plaintiffs experience pain and suffering and frequently a deterioration of serious illnesses.

Confidentiality of Medical Records

76. Due to defendants' reliance on non-medical correctional personnel, including uniformed staff, to process plaintiffs' sick call requests and dispense medications, prisoner-patients' right to privacy is breached, as is the confidentiality of their medical illnesses. Plaintiffs consequently suffer humiliation and harassment by prison staff and prisoners, and are subject to discriminatory treatment with respect to housing and programming.

Record Keeping

77. Inadequate record keeping adversely affects the delivery of health care from diagnosis to treatment. Defendants fail to obtain essential medical records from outside doctors regarding treatment of pre-existing conditions.

Dental Care

78. Plaintiffs experience extremely long delays in receiving necessary dental care, resulting in prolonged pain and suffering, permanent tooth loss, and disfigurement.

79. As a precondition to performing extractions and other urgent dental services, the defendants, as a matter of policy and practice, routinely require prisoners to sign written waivers stating that the defendants need not perform prosthetic dental work. Plaintiffs' dental conditions interfere with their ability

to eat or maintain a proper diet, resulting in avoidable deterioration of their health.

Sanitation and Environmental Health

80. Defendants fail to provide plaintiffs with ventilation, lighting and sanitation that meet minimal standards of decency. Lighting is too dim to read by in some living quarters; in others it is so intense as to cause chronic headaches. Especially in view of the severe overcrowding in Vermont's prisons, inadequate ventilation seriously aggravates the medical problems of plaintiffs with respiratory diseases, and increases the risk to plaintiffs of airborne communicable diseases, such as tuberculosis. Extreme crowding also causes and contributes to filth, stench, and painfully high noise-levels in the prison facilities.

81. Toilet and shower facilities are so inadequate that it is difficult, if not impossible, for plaintiffs to maintain basic personal hygiene. For example, at Northwest Regional Correctional Facility, fifty men housed in the gym share three toilets, three sinks and three showerheads. The defendants do not administer adequate maintenance or preventive maintenance plans, and fail to provide plaintiffs with necessary cleaning supplies and housekeeping regimes to maintain adequate sanitation in their living quarters. Shower and toilet facilities are filthy, unventilated, in poor repair and often non-functional. Living areas are infested with vermin, and cells in some facilities include broken, cracked and leaking toilets.

82. Defendants do not provide indigent plaintiffs with personal hygiene supplies such as toothpaste, soap and shampoo.

83. Kitchen facilities and food preparation handling are unsanitary.

84. Plaintiffs suffer from respiratory, digestive and other illnesses due to environmental health hazards in Vermont prisons.

Fire Safety

85. Plaintiffs are subjected to major fire hazards by the defendants' failure to take reasonable fire safety measures. Defendants fail to conduct regular and adequate fire drills, fail to provide functioning automatic alarm, sprinkler or emergency lighting systems, and fail to provide adequate means of egress or immediate release mechanisms on the cell blocks.

Excessive Force

86. Throughout Vermont's prisons, there is a pattern and practice of excessive, malicious, and unjustified use of force by correctional officers against plaintiffs.

87. Defendants have failed to properly train, discipline or otherwise control the abusive actions of correctional officers.

Classification/Failure to Protect Prisoners

88. Defendants fail to classify plaintiffs in a rational manner so as to protect them from assault and victimization. The consequences of this failure are exacerbated by the overcrowding in Vermont's prisons.

89. As a matter of policy and practice, defendants house pretrial detainees together with sentenced prisoners, and

adolescent detainees and sentenced prisoners together with adult prisoners. Plaintiffs with no prior criminal record are typically housed together with plaintiffs who have extensive criminal histories including prior incarceration for violent offenses.

90. Defendants' failure to institute a rational classification scheme results in frequent victimization among plaintiffs ranging from harassment to repeated physical and sexual assaults, particularly of plaintiffs who are young and of slight physical stature.

Exercise and Air

91. Defendants fail to provide plaintiffs with adequate opportunity for exercise or fresh air. From October through May, the defendants deny many plaintiffs any access whatsoever to fresh air. Even during the summer months, the defendants frequently deny plaintiffs access to fresh air or outdoor exercise for days or even weeks at a time. Opportunity for exercise in general, indoors or outdoors, is unduly limited. Severe overcrowding and poor ventilation heightens plaintiffs' needs for fresh air and exercise. The deprivation of adequate fresh air and exercise results in plaintiffs' physical and mental deterioration, and heightens tensions within the facilities and the risk of provocations and assaults.

Treatment of Disabled Prisoners

92. Defendants discriminate against members of the plaintiff class with physical or mental disabilities by excluding them on the basis of these disabilities, from participation in, or denying them

the benefits of, programs, activities and services for which these plaintiffs are otherwise qualified, or for which they would be qualified with reasonable accommodation to their disabilities.

93. Defendants exclude plaintiffs who suffer from such chronic illnesses as heart disease, and those who suffer from mental disabilities, from participation in education, employment, and other programs and services offered to the general population, for which these plaintiffs, with or without reasonable accommodation, are qualified. The defendants also thereby deny these plaintiffs the opportunity enjoyed by non-disabled prisoners, to earn good time credit or release on parole through participation in such programs.

94. Defendants fail to take reasonable measures to make prison facilities accessible to and useable by plaintiffs with impaired mobility and manual dexterity, or whose major life activities are otherwise limited by physical impairments. Defendants fail to remove barriers that block these plaintiffs' access to toilets, showers, living, recreation and program areas, and fail to supply plaintiffs with wheelchairs, prosthetic devices, and other auxiliary aids to enable these plaintiffs to participate in programs and services available to the general population.

Sexual Aggressor and Violent Offender Programs

A. PROGRAM FOR SEXUAL AGGRESSORS

95. The defendants single out members of the plaintiff class who have been accused of any kind of sex-related misconduct or "deviant" sexual behavior, characterize these plaintiffs as "sexual

aggressors," and treat them as presumptively ineligible for parole. As a prerequisite to parole eligibility, the defendants require these plaintiffs to gain admission to and satisfy the requirements of the Vermont Treatment Program for Sexual Aggressors (VTPSA), whether or not these plaintiffs have ever been convicted of, or even charged with, a crime of sexual aggression.

96. As a requirement of VTPSA and a prerequisite to parole eligibility, the defendants require plaintiffs periodically to submit to manipulation with a penile plethysmograph. This device is a gauge that records changes in penis size. The defendants claim that by measuring changes in penis size in response to a variety of audio-visual sexual cues, they can evaluate plaintiffs' predilection for "deviant" sex, and predict the likelihood of plaintiffs engaging in criminal sexual activity. VTPSA staff attach plaintiffs by the genitals to the penile plethysmograph, require them to masturbate to achieve a complete erection, and subject them to slide shows and soundtracks portraying diverse sex acts, "acceptable" and "deviant" (e.g., violent rapes and sex acts involving children.) The defendants use female as well as male employees to administer and monitor the penile plethysmograph sessions.

97. As a further prerequisite to parole eligibility, defendants require plaintiffs in the VTPSA to engage in "masturbatory satiation" sessions. Plaintiffs are required to masturbate until ejaculation while voicing "acceptable" sexual fantasies, and then to continue masturbating for an additional hour

after ejaculation while voicing "deviant" sexual fantasies. Plaintiffs are required to tape-record these masturbation sessions, and to play the tape-recordings to audiences of other inmates and VTPSA staff.

98. VTPSA staff make insatiable, arbitrary and capricious demands on plaintiffs to confess to "deviant" sexual fantasies. VTPSA staff accuse plaintiffs of being "in denial" if they deem plaintiffs' accounts of their sexual fantasies to be insufficiently graphic or lewd, and routinely threaten plaintiffs with serving their maximum sentences if the "quality" of their sexual fantasies is unsatisfactory.

99. As a further prerequisite to VTPSA admission and parole eligibility, the defendants require plaintiffs to abandon any legal challenges to or appeals from their convictions, and to admit guilt. Plaintiffs are likewise required to admit guilt for additional sex crimes, unproven or even uncharged, and without a grant of immunity from prosecution. The defendants dictate the terms of these "confessions," and deem plaintiffs to be "in denial," and their participation in VTPSA unsatisfactory, unless plaintiffs produce confessions which in every detail conform to the "correct" version. The defendants further require plaintiffs to waive their right to confidentiality and permit disclosure of communications obtained from them in the course of treatment.

100. On information and belief, the defendants use agents and employees who are not properly licensed and qualified mental health

care professionals to administer the various VTPSA procedures described above.

101. On information and belief, the defendants mandate plaintiffs' participation in VTPSA not to serve any legitimate correctional goal, but merely to procure federal funding.

102. The practices, procedures, and methods employed by the defendants in VTPSA, as alleged above, are degrading, humiliating, and sadistic; have not been scientifically validated as having therapeutic or rehabilitative value for prisoners; have no significant predictive value; are not reasonably related to a legitimate correctional or governmental goal; wantonly inflict pain on the plaintiffs; and unjustifiably subject them to serious risks of significant psychological injury.

103. Plaintiffs' participation in VTPSA is coerced. The defendants require plaintiffs to choose between submission to practices which violate their fundamental human and constitutional rights, or ineligibility for parole.

B. VIOLENT OFFENDER PROGRAM

104. On information and belief, the defendants require most members of the plaintiff class to participate in the Violent Offender Program (VOP) as a condition of parole eligibility.

105. The defendants require plaintiffs in the VOP to make continual "confessions," in diaries and in group sessions, of violent, angry, or "negative" thoughts. Plaintiffs whose "confessions" do not satisfy the capricious and insatiable demands of prison guards and caseworkers are routinely deemed to be "in

denial," and hence ineligible for parole. Plaintiffs who do "confess" angry or violent thoughts as required by their guards and caseworkers are punished by the withdrawal of good-time and the denial of parole and other benefits and privileges. The defendants characterize VOP as a program for "cognitive self-change."

106. VOP is administered by prison guards and caseworkers, who are not licensed or qualified mental health professionals and are not properly supervised by qualified mental health professionals.

107. On information and belief, the defendants mandate plaintiffs' participation in the VOP not on the basis of a professional mental health evaluation, but on the basis of arbitrary criteria designed to maximize the number of participants in the program. Defendants require participation in the Violent Offender Program regardless of whether or not plaintiffs have been charged with or convicted of an offense involving violence.

108. On information and belief, the defendants arbitrarily mandate plaintiffs' participation in the VOP not to serve any legitimate correctional goal, but merely to procure federal funding.

109. The practices, procedures, and methods employed by the defendants in the VOP, as alleged above, are not reasonably related to a legitimate correctional or governmental goal; wantonly inflict pain on the plaintiffs; and unjustifiably subject them to serious risks of significant psychological injury.

110. Plaintiffs' participation in the VOP is coerced. The defendants require plaintiffs to choose between submission to practices which violate their fundamental rights, or ineligibility for parole and subjection to other penalties.

CAUSES OF ACTION

Conditions Claims

111. As alleged above in ¶¶ 48 to 94, the defendants fail to provide plaintiffs with the basic necessities of life, including adequate food, shelter, sanitation, exercise, personal safety and health care. The ill-effects of each deprivation are exacerbated or caused by related conditions, including overcrowding. The resulting conditions at defendants' prisons, taken individually, in combination, or as a whole, are incompatible with contemporary standards of decency, cause unnecessary pain, and are not reasonably related to any legitimate correctional or governmental objective. Defendants' deliberate indifference to plaintiffs' serious medical needs unnecessarily exposes members of the plaintiff class to infectious disease, causes avoidable deterioration of their physical and mental health, and inflicts on them needless pain, suffering, and premature death. Defendants' policies, practices, acts and omissions evidence and constitute deliberate indifference to the rights of sentenced Vermont prisoners and violate the Cruel and Unusual Punishment Clause of the Eighth Amendment, made applicable to the states through the Fourteenth Amendment to the United States Constitution, and Title 42 U.S.C. § 1983. Pretrial detainees confined in Vermont prisons

are subjected to impermissible punitive conditions and deprivation of the basic necessities of life including those listed above, in violation of the Due Process Clause of the Fourteenth Amendment, and 42 U.S.C. § 1983.

Americans with Disabilities Act Claim

112. As alleged above in ¶¶ 92 to 94, defendants have discriminated against members of the plaintiff class with physical or mental disabilities, by excluding them from participation in, or denying them the benefits of, programs, activities and services for which these plaintiffs are qualified, or for which they would be qualified with reasonable accommodation to their disabilities; and by failing to take reasonable measures to make prison facilities readily accessible to and useable by plaintiffs with impaired mobility and other physical disabilities. These acts and omissions violate the rights of disabled plaintiffs under the Americans with Disabilities Act, 42 U.S.C. § 12101 et. seq.

Confidential and Medical Records Claim

113. As alleged above in ¶¶ 76 to 77, the defendants' policies, practices, acts and omissions complained of herein with respect to the collection, retention and dissemination of private medical information violate plaintiffs' rights to privacy and substantive due process under the First, Fourth, Ninth and Fourteenth Amendments to the U.S. Constitution.

Excessive Force Claim

114. As alleged above in ¶¶ 86 to 87, the defendants have subjected plaintiffs to a pattern and practice of excessive,

malicious, and unjustified use of force by correctional officers, in violation of the Eighth Amendment prohibition against cruel and unusual punishment.

Sexual Aggressor and Violent Offender Programs Claims

115. As alleged above in ¶¶ 95 to 110, the defendants coerce plaintiffs' submission to degrading, humiliating, and outrageously intrusive practices in the Vermont Treatment Program for Sexual Aggressors and the Violent Offender Program. These policies and practices of the defendants needlessly inflict pain on the plaintiffs and wantonly expose them to psychological injury, in violation of the Eighth Amendment. Further, these practices unjustifiably burden plaintiffs' fundamental rights under the First, Fourth, Fifth, Ninth and Fourteenth Amendments, including the right to freedom from coerced speech; freedom from unreasonable searches and seizures and compulsory self-incrimination; freedom from outrageous and shocking intrusions upon bodily integrity; and their rights to privacy and substantive due process.

NO ADEQUATE REMEDY AT LAW

116. As a proximate result of defendants' policies, practices, acts and omissions, plaintiffs have suffered, do suffer and will continue to suffer immediate and irreparable injury, including physical, psychological and emotional injury. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs described herein. Injunctive relief sought by plaintiffs is necessary to prevent continued and further injury.

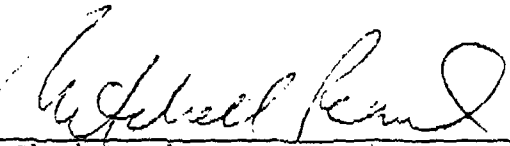
PRAYER FOR RELIEF

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

- a. Assume jurisdiction of this action;
- b. Issue an order certifying this action to proceed as a class pursuant to Rule 23 (a) and (b) (2) of the Federal Rules of Civil Procedure;
- c. Issue a declaratory judgment pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, that the policies, practices, acts and omissions complained of herein violate plaintiffs' rights as set forth above in ¶¶ 48 to 110;
- d. Issue permanent injunctive relief sufficient to rectify the unconstitutional and unlawful acts, policies, practices and conditions complained of herein;
- e. Retain jurisdiction over defendants until such time as the Court is satisfied that their unlawful policies, practices, acts and omissions complained of herein no longer exist and will not recur;
- f. Award plaintiffs reasonable attorneys' fees pursuant to 42 U.S.C. § 1988, and costs of this action;
- g. Award such other further relief as to this court seems just and proper.

Respectfully submitted,

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Dated: Washington, D.C.
December 13, 1993