

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 97-2806-CIV-HUCK  
MAGISTRATE JUDGE BROWN

MARK OSTERBACK, et al.,

Plaintiffs,

v.

MICHAEL W. MOORE, et al.,

Defendants.

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DEFENDANTS' REVISED OFFER OF JUDGMENT

Defendants, MICHAEL W. MOORE, et al., pursuant to Rule 68, Fed. R. Civ. Pr., denying liability and that the inclusion of provisions of this offer are all constitutionally mandated and that the failure to implement one or more of the terms of Rule 33-601.800, F.A.C. causes a constitutional deprivation, offer that a Judgment for Injunctive Relief may be entered against them, this offer and that relief to be construed consistent with The Prison Litigation Reform Act, 42 U.S. C. § 1997e and 18 U.S.C. § 3626. This offered Judgment shall provide that Defendants, by October 1, 2003, shall have fully implemented Rule 33-601.800, F.A.C., ( attached as Exhibit A and B to the initial September 27, 2001, offer of judgement) governing Close

Management (“CM”) as outlined herein. Program implementation terminology below is defined in that rule.

This offer of judgment contemplates a promptly phased implementation of a close management system to involve consolidation at four facilities (three institutions for male inmates and one institution for female inmates) operated by the Florida Department of Corrections (“The Department”).

The purpose of the Department’s close management system shall be to confine inmates, separate from the general inmate population, for reasons of security and for the order and effective management of the institution, because such inmates, through their individual behaviors, have demonstrated inability to live in the general population without abusing the rights and privileges of other inmates. The goals of the Department’s close management program shall be (1) progressive assignments of each inmate to the least restrictive level necessary and appropriate to manage each inmate and for the least amount of close management time deemed necessary by competent corrections and medical staff to assure the security and order of the institution and public safety, and (2) close management is not punishment.

In furtherance of these purposes and goals, the Defendants offer this phased plan to efficiently and effectively assure that there will be no constitutional deficiencies in the Department’s close management system and to provide Plaintiffs with timely enforcement means, as permitted by The Prison Litigation Reform Act, 42 U.S. C.

1997e, and 18 U.S.C. 3626 , to remedy constitutional deficiencies in the CM system

By this offer Defendants intend that Plaintiffs can seek to enforce violations of constitutional minima in Federal Court by communications to Defendants' counsel and if required by motion practice and hearings; however no liberty interest, no other constitutional entitlement, and no rights under state law are intended or otherwise established by this offer for judgment.

## THE OFFER

### I. The Phased Consolidation Plan

#### A. Plan Overview and Components

Effective operation and management of prisons require that certain inmates be confined apart from the general inmate population, due to risk of harm to others or threat to institutional security.

In order to minimize potential harmful effects of close management housing, Defendants have developed a Close Management Consolidation Plan, the key components of which include the following:

1. Reduce the number of institutions that house CM inmates from ten to four (one for females and three for males), to consolidate security, program, and mental health staff resources; and to facilitate more uniformity of program operation;

2. Conduct staff training on mental health issues relevant to the CM population;
3. Perform mental health screening before and after CM placement to help ensure timely access to necessary mental health services;
4. Assess behavioral risk for each CM inmate, in order to provide more objective information that will be useful for mental health and other service planning, as well as for administrative decision-making (e.g., modification of CM level or termination of CM status);
5. Provide full range of outpatient mental health services (e.g. group/individual counseling; case management; psychiatric consultation; psychotropic medications; and timely referral to inpatient care), commensurate with clinical need, as determined by the Defendant's mental health staff;
6. Provide self-betterment/stimulation programming to CM inmates.

#### B. Consolidation of CM Institutions

The current and future CM population will be consolidated from the current 10 locations to four institutions: Dade C.I (females); Florida State Prison (FSP); Santa Rosa C.I.; and Charlotte C.I. The consolidation shall occur in two phases. In phase

1, the FSP physical plant shall be modified, and its staffing enhanced to house and treat most of the approximately 750 S-3 inmates who are currently assigned to CM. Phase I is scheduled to be completed by July 31, 2002, at which time, FSP will have a CM capacity of 1,074, and its primary mission shall be housing/treating CM inmates who are assigned a mental health grade of 3(S-3), as defined by Health Services Technical Instruction 15.05.18.

Phase II involves modification of the physical plants, and enhancement of staffing at Charlotte C.I. and Santa Rosa C.I., with a beginning date of July 15, 2002, and a scheduled completion date of *October 1, 2003*. With full implementation of phase II, Santa Rosa C.I. (CM capacity of 1,170) will house CM inmates who are classified as S-1 or S-2; and Charlotte C.I. (CM capacity of 780) will also house CM inmates who are classified as S-1 or S-2, as defined by Health Services Technical Instruction 15.05.18. CM inmates classified as mental health grade S-3 may be housed at these two institutions if the Department's mental health staff have determined that they do not require the more intensive services that will be available at FSP provided that sufficient outpatient mental health services will be available at the secondary institutions.

Because of the small number of female inmates in Close Management, all female CM inmates will be housed in the same institution regardless of CM level or

psychiatric grade and all mental health and health services will be delivered based upon need of the individual inmate. All privileges, activities and services for CM inmates shall be equally available, regardless of whether the CM inmate is male or female.

#### C. Staff Training

All security, classification, and program staff assigned to the four designated CM institutions shall receive training on suicide prevention (2 hours) and other mental health issues of relevance to care of CM inmates (3 hours), within 60 days after assignment and annually thereafter.

#### D. Mental Health Screening

Before CM placement, each inmate shall be referred to mental health staff, who shall advise classification staff as to whether the inmate is in need of mental health services, the level of outpatient mental health services required (and hence, in which of the three male CM institutions the inmate must be placed), or whether the inmate must be admitted to inpatient care (transitional or crisis stabilization) in lieu of CM placement. The determination made by mental health staff will in part be based upon a clinical interview of the inmate conducted not more than 30 days prior. Mental Health recommendations for placement shall be included on the Close Management Referral form and shall include the following:

- a. Inmate is classified S-1 and mental status evaluation (clinical

interview) within the past 30 days indicated no significant mental or emotional impairment. Inmate may be placed at any Close Management institution.

- b. Inmate is classified S-2 and mental status evaluation (clinical interview) within the past 30 days indicated signs of mild to moderate mental or emotional impairment. Inmate may be placed at any Close Management institution that provides mental health services to S-2 inmates. Mental health staff will provide necessary care.
- c. Inmate is classified S-3 and mental status evaluation (clinical interview) within the past 30 days indicated inmate is mentally/behaviorally stable. Inmate may be placed at any Close Management institution that provide mental health services to S-3 inmates. Mental health staff will provide necessary care.
- d. Inmate is classified S-3 and mental status evaluation (clinical interview) within the past 30 days indicated signs of mild to moderate mental and/or behavioral instability. Inmate may be placed at any Close Management institution that provides mental health services to S-3 inmates. Mental health staff will provide

necessary care.

- e. Inmate shows symptomatology that requires inpatient mental health care, and he/she has been referred for admission to an infirmary isolation room, transitional care unit, or crisis stabilization unit.

After CM placement, each inmate shall receive ongoing mental health evaluation (clinical interview) at periodic intervals to assess mental functioning, and thereby determine need for mental health services. CM inmates who are classified as S-3 shall receive mental health screening at least every 30 days. CM inmates who are classified as S-1 or S-2 shall receive mental health screening at least every 90 days.

The results of initial and ongoing mental health screening will be made available to the institutional classification team (ICT) and the state classification office (SCO). The ICT and SCO shall consider such information, together with other information relevant to an inmate's institutional adjustment, in making recommendations or decisions regarding changes in CM level or CM status. The Director of Mental Health Services or designee shall serve as a consulting member to the State Classification Office.

In addition to conducting the above periodic mental health screening, mental health staff will also perform weekly rounds in each CM unit, by personally observing

each inmate at cell front, and inquiring whether he/she has any mental health related problem. Inmates who are observed to present with new problems, whose known problems seem to be worsening, or who report mental health problems will be scheduled for clinical interview outside the cell.

#### E. Behavioral Risk Assessment

Behavioral risk for each CM inmate shall be determined by a multi-disciplinary services team (MDST) composed of mental health, security, classification, and program staff. Behavioral risk shall be determined by the rating of specific risk factors such as “intentional self-injury” and “threat to safety of others.” Behavioral risk assessment will be performed within 14 days of CM placement; within three working days of a CM inmate’s involvement in a critical event (escape/attempt; suicide attempt or other action that could cause serious bodily harm; homicide/attempt; physical assault/attempt); and each time that the MDST reviews a CM inmate’s individualized service plan.

The following will use behavioral risk assessment results:

The MDST will use behavioral risk assessment results to help identify mental health related problems, and to plan appropriate mental health related services.

The institutional classification team will consider behavioral assessment results,

together with other information relevant to an inmate's institutional adjustment, in making recommendations for modification of CM level or status.

The state classification office will consider behavioral risk assessment results, together with other information relevant to an inmate's institutional adjustment, in its decisions regarding changes in CM level and CM status.

#### F. Mental Health Treatment Services

A full range of outpatient mental health treatment services (e.g. psychiatric consultation; psychotropic medication; individual counseling; group counseling) will be provided in appropriate settings outside of the inmate's cell, as part of an individualized service plan (ISP), which will be established and revised as needed by the MDST. An ISP will be developed/implemented within 14 days of CM placement, for each inmate having an Axis I Mental Disorder, Borderline Personality Disorder, Schizotypal Personality Disorder, or Mental Retardation; and for each inmate who is at risk for developing such disorder, as determined by mental health staff. CM inmates who are receiving mental health treatment services will typically be classified as a mental health grade 2 (S-2) or mental health grade 3 (S-3).

The ISP shall include mental health, education, and other program services addressing assessed needs, as determined by the MDST.

CM inmates who are classified as S-1 will not typically have an open ISP, and

will not typically receive mental health treatment services, unless the inmate requires treatment for a mental disorder that does not impair his/her ability to function in the prison setting. For example, the CM inmate who is enrolled in sexual disorder group for a diagnosis of paraphilia, who presents with no other symptoms of mental disorder, and whose institutional adjustment is acceptable, may appropriately be classified as S-1, while receiving group treatment through an ISP.

All CM inmates shall be allowed out of their cells to receive mental health services specified in the ISP, unless, within the past 48 hours, the inmate has displayed hostile, threatening, or other behavior that could portend harm or danger to others.

Security staff shall determine the type and level of restraint devices that the CM inmate will be subjected to while he is receiving mental health services outside of his/her cell. CM-1 and CM-2 inmates generally will wear restraints when outside of their cells, while CM-3 inmates will not.

#### G. Self Betterment/Stimulation Programming for CM Inmates.

##### 1. Reading Material.

CM Inmates shall immediately be permitted to obtain 3 soft cover books per week from the institutional library and shall immediately be permitted 1 magazine subscription (with no more than 4 issues in the cell at a time) and 1 newspaper

subscription (with no more than 4 issues in the cell at a time).

## 2. Social Phone Calls.

CM inmates shall immediately be permitted, in progressive stages based upon their respective individual classifications, to make monitored telephone calls of length established by rule via cordless phones provided by the institution in the CM unit as follows:

- a. CMI Inmates: 1 call every 30 days after 30 days of satisfactory adjustment;
- b. CMII Inmates: 1 call every 14 days after 30 days of satisfactory adjustment;
- c. CMIII Inmates: 1 call every 7 days after 30 days of satisfactory adjustment.

[However if a CM inmate is transferred to less restrictive level due to satisfactory adjustment, the adjustment period is waived].

## 3. Broadcast media:

1. Radio: CM inmates of all levels may immediately purchase one headphone/personal portable type radio through the institution Canteen.

2. Television:

CMII and CMIII inmates shall be allowed access to social television

programs during day room periods, as described in section I.G.7.

4. In-Cell Educational Opportunities:

Educational and literacy courses shall be immediately be available to all CM levels unless precluded by safety or security concerns.

5. Cell-Front Tutoring:

Wellness services shall be immediately expanded to CM inmates of all levels who request participation in tobacco cessation, wellness education puzzles and the wellness education courses.

6. Canteen:

a. CMI and II Inmates, following 30 day satisfactory adjustment period, shall immediately have canteen privileges one time per week to include up to 5 non-food items and 5 food items per week.

b. CMIII Inmates, following 30 day satisfactory adjustment period, shall immediately have canteen privileges one time per week to include up to 5 non-food items and 10 food items.

[However if inmate is transferred to less restrictive level due to satisfactory adjustment, the adjustment period is waived].

7. Day Room Access:

1. CMII Inmates: After 30 days satisfactory adjustment, day room access

shall be immediately provided 2 days per week, not to exceed 4 hours daily or beyond 10 p.m., when day room is not being used for organized program activities.

2. CMIII Inmates: After 30 days satisfactory adjustment, day room access shall be immediately provided 5 days per week, not to exceed 4 hours daily or beyond 10 p.m., when day room is not being used for organized program activities.

[However if an inmate is transferred to less restrictive level due to satisfactory adjustment, the adjustment period is waived. The number of inmates participating at any one time will be determined based upon considerations such as day room size, seating, and safety and security issues associated with the availability of supervising staff .]

8. Individual exercise shall be:

a. After 30 day satisfactory adjustment period, 6 hours per week (3 days, 2 hours each) or assignment to restricted labor squad or other outside work squad 1 day per week. [Note: Exercise will increase from 3 hours per week to 6 hours week as the CM Consolidation Plan is phased in. The 6-hours per week of exercise will be fully implemented as of July 1, 2003 unless the CM Consolidation Plan is completed earlier].

b. Exercise apparatus provided in exercise yard.

9. Non-Contact Visits shall be:

a. CMI Inmates: After 30 days with no major disciplinary infractions, one 2-hour visit every 30 days by appointment.

b. CMII Inmates: After 30 days with no major disciplinary infractions, one 2-hour visit every 14 days by appointment.

10. Contact Visits shall be:

CMIII Inmates: After 30 days with no major disciplinary infractions, one contact visit every 14 days by appointment.

[However if an inmate is transferred to less restrictive level due to satisfactory adjustment, the adjustment period is waived].

11. The above privileges may be suspended or reduced by an Institutional Disciplinary Team only for documented good cause consistent with the goals and purposes of close management.

II. Volunteers:

Volunteers shall be recruited from the community, to the extent possible, to assist with chaplaincy and educational services.

III. Implementation:

The Defendants shall promptly promulgate all rule changes necessary to implement the Offer of Judgment and Injunction described herein. That implementation, and the services to be provided in this offer of judgment that are

necessary to avoid constitutional deficiencies in the CM program shall and can occur within appropriations by the Florida legislature to the Florida Department of Corrections for the initial phase in of the Close Management Consolidation Plan for fiscal year 2001-2002 ending June 30, 2002. A budget request, Issue Code 4500100 for 234 additional FTES and approximately \$8.3 million, for the final phase of the Close Management Consolidation Plan has been submitted to the Florida Legislature for fiscal year 2002-2003. Defendant Secretary Moore shall immediately advise the Court in the event an appropriations short fall or budget over run jeopardizes his ability to implement this offer and plan.

#### IV. Enforcement of Constitutional Deficiencies:

A. Monitoring of the implementation of the Injunction and Judgment shall include the processes and authority of the Correctional Medical Authority (CMA), as provided in Fla. Stat. § 945.601, et seq. Defendants shall take corrective action required by the CMA so as to comply with constitutional obligations of this Judgment and Injunction as to provisions for medical care.

B. The Plaintiffs may also avail themselves of the procedures in the Administrative Grievance Procedure in Chapter 33-103 F.A.C.;

C. In addition to A and B above, and preferably upon the failure of the Defendants to respond within 30 days of receipt written allegations of constitutional

violations of the offer and Judgment and Injunction to Secretary Moore, Plaintiffs may, through their counsel, move the court for an enforcement order to remedy constitutional violations. This 30-day respond and cure time is preferred, except for constitutional violations deemed life threatening in which such events Plaintiffs' counsel should telephonically and in writing specifically inform the general counsel of the Department of Corrections and litigation counsel of the details of such alleged constitutional violations. Compliance with Rule 7.1 A. 3, Local Rules for the Southern District is subsumed into this offer.

D. Defendants shall provide quarterly written CM implementation status reports and CMA public record reports to Plaintiffs' counsel and to the Court beginning January 15, 2002, and shall afford Plaintiffs' counsel reasonable access to the CM facilities, upon request for same, twice annually in 2002 and 2003.. That access shall be for one day per CM facility unless additional access time is ordered by the Court sua sponte or upon motion of the Plaintiffs.

#### V. Attorneys Fees:

Defendants shall pursuant to Rule 68, Fed. R. Civ. Pro., the Prison Litigation Reform Act, 42 U.S. C. 1997e, 18 U.S.C. 3626 and 42 USC § 1988 be subject to Judgment for reasonable costs and attorneys fees which have accrued to the date of the receipt of this offer on Plaintiffs' counsel, that sum to be in an amount to

be determined by the Court upon negotiation between the parties within 45 days of entry of Judgment and Injunction, or by adjudication of Plaintiffs' Motion for Attorney Fees after that time. Defendants shall be subject to additional attorney fees and costs exposure for enforcement activity by Plaintiffs' counsel to remedy constitutional violations upon their motion practice and prevailing party status as allowed by the Prison Litigation Reform Act, 42 U.S. C. 1997e, 18 U.S.C. 3626 and 42 USC § 1988.

VI. Termination of Injunction:

The injunction entered pursuant to this Offer of Judgment shall be subject to termination in accordance with the Prison Litigation Reform Act, 18 U.S.C. §3626(b).

Respectfully submitted,

ROBERT A. BUTTERWORTH  
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