



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

May 1, 1996

The Honorable Parris N. Glendening  
Governor, State of Maryland  
State House  
Annapolis, Maryland 21401

Re: Notice of Findings of Investigation:  
Maryland Correctional Adjustment Center

Dear Governor Glendening:

I am writing in reference to our investigation into conditions within the Maryland Correctional Adjustment Center ("Supermax") in Baltimore, Maryland. As you know, we notified your predecessor in December 1994 of our intent to investigate Supermax pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997 et seq., to determine whether there exist any violations of the federal constitutional rights of inmates housed at this facility.

Despite initial resistance to our on-site investigation, in May and June 1995, we finally toured Supermax with consultants in the fields of medical care, mental health care, and general penological issues. Unfortunately, our investigation continued to be met with resistance, causing one of our consultants to note that the tour was unique in terms of its adversarial and confrontational nature. The reports of these consultants are enclosed with this letter. Although our access to certain information was restricted by state officials, consistent with the statutory requirements of CRIPA, we now write to advise you of the findings of our investigation.

Based on our investigation, we believe that certain conditions at Supermax violate the constitutional rights of the inmates. The facts and law supporting our determination of constitutional violations and the necessary remedial measures to correct these violations are set forth below.

CRIPA Investigation



PC-MD-002-002

## I. LEGAL FRAMEWORK

CRIPA gives the Department of Justice standing to bring actions against a State whenever the Attorney General has reasonable cause to believe that the State is depriving prisoners of "rights, privileges, or immunities secured or protected by the Constitution of the United States." CRIPA § 3, 42 U.S.C. § 1997a. It is well past dispute that the Eighth Amendment requires that prison officials provide inmates with such minimum essentials as adequate food, shelter, clothing, medical care, and reasonable safety. Farmer v. Brennan, 114 S. Ct. 1970, 1976 (1994); Estelle v. Gamble, 429 U.S. 97, 102 (1976).

### A. Medical and Mental Health Care

Like other conditions of confinement, medical care provided to inmates is subject to scrutiny under the Eighth Amendment's prohibition against cruel and unusual punishment. Helling v. McKinney, 113 S. Ct. 2475, 2480 (1993). "Medical needs" include not only physical health needs, but mental health needs as well. Bowring v. Godwin, 551 F.2d 44, 47 (4th Cir. 1977). The Eighth Amendment also requires States to provide a system of ready access to adequate medical and mental health care. Collins v. Romer, 962 F.2d 1508, 1513 (10th Cir. 1992); Madrid v. Gomez, 889 F. Supp. 1146, 1256 (N.D. Cal. 1995). Prisoners must be able "to make their medical problems known to the medical staff." Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982). In addition, there must be a "systematic program for screening and evaluating inmates in order to identify those who require mental health treatment." Madrid, 889 F. Supp. at 1256-57; Balla v. Idaho State Board of Corrections, 595 F. Supp. 1558, 1577 (D. Idaho 1984). This is particularly so since "[s]everely mentally ill inmates cannot make their needs known to mental health staff" on their own. Madrid, 889 F. Supp. at 1257. Finally, a minimally acceptable correctional health care system must review the quality of medical care being provided. Madrid, 889 F. Supp. at 1258.

As was long ago established in Estelle, unnecessary and wanton infliction of pain on inmates is inconsistent with contemporary standards of decency and violates the Eighth Amendment of the Constitution. Estelle, 429 U.S. at 103-104. Conditions that inflict serious mental pain or injury also implicate the Eighth Amendment. States cannot, consistent with contemporary notions of humanity and decency, forcibly incarcerate prisoners under conditions that will, or very likely will, make them seriously ill. See, e.g., Helling, 113 S. Ct. at 2475. Where conditions of segregation greatly exacerbate mental illness, and the period of segregated confinement is prolonged or indefinite, feasible alternative custodial arrangements should be explored. Jackson v. Meachum, 699 F.2d 578, 584-5 (1st Cir. 1983); see also Hutto v. Finney, 437 U.S. 678, 686 (1978) (length

of confinement relevant to deciding whether confinement meets constitutional standards); Pepperling v. Crist, 678 F.2d 787, 789 (9th Cir. 1982) ("The deprivations associated with an institutional lock-up, including twenty-four hour confinement, and curtailment of all association, exercise and normal vocational and educational activity, may constitute a . . . violation of the Eighth Amendment, if they persist too long.").

Conditions of extreme social isolation and reduced environmental stimulation, like the conditions at Supermax, violate evolving standards of humanity and decency when imposed on those who are at a particularly high risk for suffering very serious or severe injury to their mental health. Madrid, 889 F. Supp. at 1265-67 (placing inmates who were already mentally ill or who had a history of prior psychiatric problems or chronic depression in Marion-like isolation was "the mental equivalent of putting an asthmatic in a place with little air to breathe. The risk is high enough, and the consequences serious enough, that we have no hesitancy in finding that the risk is plainly 'unreasonable,'" quoting Helling, 113 S. Ct. at 2481). See also Davenport v. DeRobertis, 844 F.2d 1310, 1317 (7th Cir.), cert. denied, 488 U.S. 908 (1988) (isolating state prisoners from other human beings year after year or even month after month can cause substantial psychological damage even if the isolation is not total).<sup>1</sup> Evaluating the Pelican Bay prison, where conditions are similar to those found at Supermax, the court noted that the "need for psychiatric services and monitoring cannot be overemphasized." Madrid, 889 F. Supp. at 1216.

#### B. Right to Exercise

It is clear that exercise is important to the psychological and physical well-being of inmates confined in segregation. See, e.g., Spain v. Procunier, 600 F.2d 189, 199-200 (9th Cir. 1979). Failure to provide sufficient exercise opportunities to Supermax inmates implicates the Eighth Amendment. Mitchell v. Rice, 954 F.2d 187, 191-92 (4th Cir.), cert. denied, 113 S. Ct. 299 (1992); Davenport, 844 F.2d at 1315 (failure to provide at least five hours a week of outside the cell exercise raises serious constitutional questions); Ruiz v. Estelle, 679 F.2d 1115, 1151-52 (5th Cir.) (one hour of daily exercise for inmates segregated more than three days is mandatory), amended in part, vacated in

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<sup>1</sup> The United States operates a "Supermax" in Florence, Colorado, which has assumed the functions of its former Supermax at Marion. The federal Supermax, after which the Maryland Supermax purports to be modelled, excludes mentally ill inmates and those whom the mental health staff feel are at risk for developing a serious psychiatric condition. Madrid, 889 F. Supp. at 1236.

part, 688 F.2d 266 (5th Cir. 1982), cert. denied, 460 U.S. 1042 (1983). Furthermore, denial of fresh air and regular outdoor exercise implicates the Eighth Amendment. Spain, 600 F.2d at 199-200, quoted with approval by the Fourth Circuit in Mitchell, 954 F.2d at 192.

### C. Indefinite Segregation

States may not inflict punishment on prisoners without penological justification. Rhodes v. Chapman, 452 U.S. 337, 346 (1981). Prolonged and indefinite segregated confinement is a factor to be considered in a constitutional challenge to prison conditions. Sweet v. South Carolina Department of Corrections, 529 F.2d 854, 861 (4th Cir. 1975). Due process requires a periodic review in a meaningful way and using relevant standards to determine whether prisoners should be retained in segregation or returned to the general population. Kelly v. Brewer, 525 F.2d 394 (8th Cir. 1975).

### D. Abuse

The deliberate indifference standard applies to challenges to conditions of confinement involving the Eighth Amendment's proscription against cruel and unusual punishment. Wilson v. Seiter, 501 U.S. 294, 302-03 (1991). The Eighth Amendment prohibits prison officials from using excessive physical force against inmates. Farmer, 114 S. Ct. at 1976. Subjecting inmates to intolerable, deplorable conditions, especially when solitarily confined, violates the Eighth Amendment. McCord v. Maggio, 927 F.2d 844, 846-47 (5th Cir. 1991) (Eighth Amendment violated when prisoner punished by placement in vermin infested, windowless, unlit cell with no furniture and sewage backup on floor); Madrid, 889 F. Supp. at 1161-62 (punitive cagings under harsh conditions were evidence of use of excessive force).

## II. **FACTUAL SUMMARY**

The following factual summary is derived from the reports of our consultants, inspections of the prison, interviews with inmates, and the documents provided by the facility.

### A. General Conditions

Inmates at Supermax are subjected to extreme social isolation. Inmates are confined to single person cells 24 hours a day, except for a brief period (less than an hour) every two to three days when they are permitted, one at a time, out of their cells to shower and walk around a dayroom area.<sup>2</sup> Inmates are

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<sup>2</sup> Inmates are also allowed out of their cells to see visitors and, as indicated, to see medical staff.

not permitted outdoors due to staff shortages. Inmates eat all of their meals in their cells. Food trays are passed through a narrow food port in a cell door, solid except for a vision window. Inmates are not allowed to participate in any prison job opportunities or any other prison recreational or educational programs. No recreational equipment is provided. Inmates in adjoining cells can hear but not see each other. The sole opportunity for socialization occurs during the out-of-cell time, when the inmate released from his cell may socialize with other inmates on his block, who are locked behind their cell doors.

Although Supermax has a capacity of 288, in June 1995, the census was only 205. In the five month period before the Justice Department was finally allowed access to the Supermax, the census dropped by 44.

Staffing of officers on the housing units is inadequate on both the day and night shifts. There is no staffing flexibility at all to deal with unusual or unforeseeable situations. There are not enough officers to staff the outdoor tower posts. While this obviously has an impact on security and public safety, the effect on the inmates has been the elimination of outdoor exercise. This will be discussed in more detail below. On the late night shift, staffing is dangerously low, jeopardizing the health and safety of the inmates.

Food served to the prisoners at Supermax is prepared at the penitentiary across the street and brought to Supermax in bulk. At Supermax, the food is placed into individual compartmentalized thermal trays for distribution to the prisoners in their cells. Food placed in the trays is not promptly covered; trays brought to the housing units are not promptly served. As a result, food is served lukewarm or cold. Food must be served at temperatures that conform to accepted health standards.

## B. Medical and Mental Health Care

### 1. Medical Care

Access to meaningful sick call is not adequate. For routine medical problems, Supermax inmates obtain sick call requests from correctional officers, fill them out, and return them to the officers. Supermax is thus failing to follow Department of Corrections policy that "submission and collection of sick call requests will be conducted by medical personnel only." This policy is consistent with the standard in the field and recognizes the importance of free access to medical care, without the interposition of custody staff between patient and medical provider.

For most medical problems, meaningful sick call includes an opportunity for a medical provider to make a full visual assessment and some hands-on examination. Supermax, at the time of the consultant's visit, did not record where a sick call encounter takes place. To the extent that physician assistant encounters are occurring while inmates are behind the cell doors (which are solid except for a vision window and a slot through which food trays are passed), for most encounters, this is inadequate access to meaningful sick call. For most encounters, the inmate should be brought at least to the sergeant's room for the visit by the physician assistant.

Since January 1, 1995 (following the Department of Justice's notice to Maryland that it was initiating an investigation of Supermax), Supermax policy requires physician assistants to make rounds for sick call seven days a week on each housing unit. Medical staff at the facility report that such sick call only occurs five days a week; a few inmates in the general housing units report that in person sick call only occurs twice a week.

Access to health care at Supermax may also be impeded by the fee system. Significantly, although Supermax inmates have no opportunity for prison jobs, they are responsible for medical co-payments for each inmate-initiated medical encounter and for each non-psychiatric prescription resulting from such an encounter unless the inmate is indigent. Inmates are being charged for encounters where no real medical service is rendered. There was a significant decrease in the number of visits made by inmates to physicians' assistants and the number of non-psychiatric prescriptions filled between the fourth quarter of 1994 and the first quarter of 1995 at Supermax. The medical co-payment requirement became effective January 1, 1995. Although a payment system is not illegal per se, it is imperative that all inmates receive adequate medical treatment, regardless of their ability to pay.

The full-time medical staff at Supermax consists of one registered nurse and one physician assistant. A physician comes to Supermax as needed, which may only be every other week. This is inadequate. A physician should work on-site at Supermax at least once a week, at least to supervise the physician assistant.

Upon arrival at Supermax, a nurse screens the inmate's medical record and schedules a medical visit if indicated. No face-to-face receiving screening occurs. This is contrary to the standard in the field, which requires a face-to-face intake screening.

## 2. Mental Health Care

Maryland has created a prison which, given its mission and environment, results in extensive demand for mental health services. The conditions at Supermax require close psychiatric monitoring and substantial psychiatric services. Yet, systemic deficiencies render Supermax's mental health care system incapable of satisfying minimum constitutional standards. Given current conditions and lack of treatment services, inmates with serious mental illnesses will likely experience no improvement in their condition, or worse, will experience further mental deterioration. Furthermore, because of the prison's inadequate screening and treatment services, inmates with mental health problems are at risk of developing serious mental illnesses.

The mental health services at Supermax are grossly deficient. First, Supermax is not adequately screening inmates for the presence of mental illness, either upon admission or during incarceration at the prison. As shown by the prison-wide screening completed just before the Justice Department was given access to Supermax, Supermax can reasonably successfully screen its population for the presence of mental illness. However, the fact that the ad hoc screening resulted in 20 inmates with serious mental illness being transferred to a facility equipped to provide mental health services and an additional 35 inmates being identified as needing mental health services is evidence that routine screenings are inadequate. In addition, Supermax's special purpose screening was not completely successful because inmates demonstrating active psychotic symptoms remained at Supermax during tours by the Justice Department.

The problems with Supermax's inadequate screenings are compounded by two other facts. One, Supermax fails to provide confidential psychological evaluations without adequate penological justification. Because some inmates have masturbated in the presence of Supermax's female psychologist during evaluations, all evaluations are now done in the presence of correctional officers. It is inappropriate to generalize this specific remedy to all inmates requiring mental health intervention. Inmates have reported that certain correctional officers have been verbally provocative concerning issues relevant to their mental illness. And two, mental health staff do not make rounds, relying instead on referrals for mental health services from correctional staff or from the inmates themselves. It is critical that mental health staff closely monitor all inmates to detect the presence of mental illness and effectively identify those inmates in need of mental health services, both upon their arrival and during their confinement. Mentally ill prisoners may not seek mental health services because the nature of their mental illness makes them unable to recognize their illness or ask for assistance. Further, custody staff should not be making medical judgments that should be

reserved for clinicians. Rounds by mental health staff would help identify mental health problems before they become serious mental illnesses.

The second major problem with Supermax's grossly deficient mental health care services, and further reason why seriously mentally ill prisoners cannot be treated at Supermax, is that treatment for mental health is essentially limited to medication management. Adequate programming and psychotherapy are not available to inmates with serious mental illness. The prison is simply not staffed to provide any inpatient or intensive outpatient treatment.

Third, although required by facility policies and procedures, inmates placed in isolation are not being routinely evaluated by mental health staff within 12 hours of their placement in isolation. Supermax must ensure that anyone placed in isolation receives a psychological evaluation within twelve hours of such confinement.

Fourth, quality assurance is considered standard practice in virtually every health care facility in the country and is considered a fundamental part of a health care operation. Supermax, however, has no quality assurance system for its mental health services.

Fifth, the mental health records at Supermax are poorly organized, fail to contain essential information such as past psychiatric history or blood test results, and contain significant discrepancies concerning diagnoses.

Sixth, inmates are receiving lithium with inadequate assessments, placing them at risk for significant medical problems.

### C. Exercise

By Maryland Division of Correction policy, which is consistent with professional standards, each inmate is entitled to receive one hour of out-of-cell time daily. However, due to insufficient staffing, inmates generally have less than an hour of indoor out-of-cell time every second or third day. Furthermore, again due to insufficient staffing, inmates never go outdoors and never receive exposure to natural light and fresh air. A number of inmates have alleged that incidents of inmates throwing feces at staff increased substantially when the outdoor yards were closed. Supermax's failure to provide sufficient out-of-cell time on a daily basis as well as its failure to provide any opportunity to go outdoors is unconstitutional, especially given the highly restrictive regimen of daily life at the Maryland Supermax.



D. Indefinite Segregation

Supermax uses Maryland Division of Correction's objective classification point system to make decisions regarding transfers out of Supermax. However, the system, which may be working well in other penal institutions in Maryland, is not working at Supermax. Under Maryland's point system, an inmate must amass 24 points to qualify for transfer. However, at most, a Supermax inmate may only amass 21 points through good behavior. The remaining three points must be amassed through classification elements beyond the inmate's control, mainly relating to the crime committed by the inmate or the sentence imposed. Because many of the inmates at Supermax have committed very serious crimes, they can only get one point in this category. As our consultant pointed out, Supermax inmates are "quite literally caught in a 'Catch 22' situation, which leaves them perpetually 2 points short of qualifying for transfer."

For all practical purposes, there is no objective means of earning a transfer out of Supermax. Instead, decisions about who will transfer out of Supermax turn virtually exclusively on the subjective judgments of staff. Staff state that between 90 and 99% of all transfers out of Supermax have been through such subjective judgments. The generally accepted norm in the field for an objective classification system would tolerate a maximum of about 20% of transfer decisions being made by such subjective judgments. The potential for unfairness and abuse of discretion by staff are obvious. More important, inmates know that they cannot obtain a transfer out of Supermax by complying with the mandates of the Supermax program, which may be causing disincentives to comply. At any rate, inmates repeatedly complain about what they perceive to be unfairness in decisions regarding transfer.

Although the average length of time spent at Supermax is 548 days, a number of inmates have been incarcerated at Supermax virtually from the facility's opening in January 1989. Other inmates are being held at Supermax although they have been infraction-free for long periods of time. For instance, our consultant reviewed the record of an inmate who had had no misconduct reports at Supermax since December 18, 1991.

E. Abuse

Supermax used its "pink room" for isolation purposes until right before the Justice Department tours last spring. When we toured in May and June, according to Supermax officials, the pink room had just been closed and would not be used in the future.

The pink room was an unheated strip cell inappropriately located in the medical unit where an inmate was held in isolation for punishment. The cell was made of concrete and contained no

furniture or mattress. Inmates remained in the pink room, sometimes as long as four days, wearing only underwear and a three piece restraint (leg irons, handcuffs, and a waist chain connected to the handcuffs and holding the hands very close to the body). Inmates used a hole in the floor as a toilet. The cell was filthy, covered with old feces and urine. Because hands were chained to waists, inmates were usually forced to urinate or defecate on themselves. Inmates in the pink room could not feed themselves with their hands due to the restraints. There was no running water in the pink room.

The pink room has been replaced by cadre cells, which are normal cells in an isolated area, for disciplinary purposes. The doors to the cadre rooms have large metal closers on the inside of the doors which present a suicide risk.

Our consultant was unable to find evidence of a pattern of physical abuse by Supermax staff against inmates. However, we feel an obligation to bring to your attention that we have received and continue to receive a substantial number of inmate allegations that staff at Supermax are using excessive force against the inmates out of the range of Supermax cameras.

### III. **NECESSARY REMEDIAL MEASURES**

#### A. General Conditions

1. Correctional Officer Staffing: Supermax must provide sufficient relief and escort officers on all shifts to maintain an acceptable level of officer coverage in the housing units at all times. On the late night shift, staffing must be increased to levels that will ensure the health and reasonable safety of inmates. Opportunities for out-of-cell and outdoor exercise must not be compromised due to staff shortages.

2. Food Temperature: Supermax must ensure that food is served at proper temperatures to protect against food-borne illnesses.

#### B. Medical and Mental Health Care

##### 1. Medical Care

a. Access to Medical Services: Supermax must ensure compliance with Department of Corrections policy that submission and collection of routine sick call requests will be conducted by medical personnel only. Supermax must ensure that sick call includes an opportunity for a medical provider to make a full visual assessment and some hands-on examination of the inmate. Medical staff must make rounds for sick call seven days a week on each housing unit. Supermax must evaluate its fee

charging system to determine the adverse consequences of the disincentive to seek care and the propriety of charging fees for encounters that result in no medical services being delivered. Supermax must ensure that all inmates, irrespective of their ability to pay, receive adequate medical treatment.

b. Medical Staffing: A physician must work on-site at Supermax at least once a week and provide supervision to the Supermax physician assistant.

c. Intake Screening: Supermax must provide face-to-face intake screening by medical and mental health staff to each inmate transferred to the facility.

## 2. Mental Health Care

a. Screening: Supermax must develop and implement an effective screening process that will detect mental health problems at intake as well as during incarceration at Supermax. Supermax must provide confidential psychological evaluations and opportunities for treatment. It is only appropriate to have correctional personnel present during evaluations and treatment for inmates who have demonstrated behaviors requiring such security and only until the behaviors can be remedied by treatment. Supermax must also ensure that correctional officers not verbally abuse inmates concerning their mental health problems. Mental health staff must conduct rounds, at least once per week, to observe all inmates for the presence of signs and symptoms of mental illness.

b. Transfer of Inmates with Serious Mental Illnesses: With the exception of inmates who have been appropriately treated for mental illness at other correctional facilities, declared to be treatment failures by treating professionals, and transferred to Supermax for security reasons, Supermax must immediately transfer all inmates with serious mental illnesses and all inmates who are at risk for developing serious mental illnesses to a facility that will provide treatment for these illnesses.

c. Mental Health Services: For inmates experiencing mental health problems that do not require transfer out of Supermax, the facility must ensure that adequate mental health services are provided on a routine basis. Supermax must create and implement comprehensive policies and procedures for the provision of such mental health care. Supermax must develop and implement a quality assurance system for its mental health services. Supermax must ensure that mental health records are maintained in a manner consistent with medical standards.

d. Psychological Evaluations During Isolation: Supermax must ensure that inmates placed in isolation are evaluated by mental health staff within 12 hours of their placement in isolation. Of course, inmates placed in isolation due to behaviors related to mental illness must be seen by mental health staff within a much shorter period of time according to accepted professional standards.

e. Lithium Assessments: Supermax must implement policies and procedures concerning the use of lithium, including, but not limited to, pre-lithium blood chemistries and appropriate testing for post-lithium blood levels.

C. Exercise

Supermax should provide, consistent with the Department of Corrections' policy, one hour of out-of-cell time daily. At least five times per week, this out-of-cell activity should occur outdoors, weather permitting.

D. Indefinite Segregation

Supermax must develop and implement an objective classification instrument that would indicate when an inmate has sufficiently complied with Supermax's program to warrant a transfer to another, less secure institution.

E. Abuse

1. The Pink Room: Supermax must ensure that the pink room or any similar type of isolation cell is never used again at Supermax.

2. The Cadre Cells: The cadre cells must be renovated to eliminate the risk for suicide presented by the heavy metal closers on the inside of the cell doors.

Pursuant to CRIPA, the Attorney General may initiate a lawsuit to correct deficiencies at an institution 49 days after appropriate local officials are notified of them. 42 U.S.C. § 1997b(a)(1). We expect to hear from you as soon as possible, but no later than 49 days after receipt of this letter, with your response to our findings and a description of the specific steps you have taken, or intend to take, to implement each of the minimum remedies set forth above. If you do not respond within the stated time period, we will consider initiating an action against your jurisdiction to remedy the unlawful conditions.

We look forward to working with you and other state officials to resolve this matter in a reasonable and expeditious manner. If you or any member of your staff have any questions, please feel free to contact Judith C. Preston, 202/514-6258, or Shanetta Y. Brown, 202/514-0195, the attorneys assigned to this matter.

Sincerely,

Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division

Enclosures

cc: The Honorable Stuart M. Nathan  
Assistant Attorney General  
Maryland Attorney General's Office

Mr. Eugene Nuth  
Warden  
Maryland Correctional Adjustment Center

Allen Louckes, Esquire  
Assistant United States Attorney  
District of Maryland