

**STATE OF MICHIGAN  
IN THE COURT OF CLAIMS**

JOHN CHAPPEL CAIN, RAYMOND C. WALEN, JR.,  
ELTON FLOYD MIZELL, PAUL ALLEN DYE,  
JOHN CHANDLER EWING, DELBERT M. FAULKNER,  
C. PEPPER MOORE, RAMON COBOS, RONALD SIMPSON-BEY  
On behalf of themselves and all others similarly situated,

Plaintiffs,

HONORABLE JAMES R. GIDDINGS

Case Nos: 88-61119-AZ  
93-14975-CM  
96-16341-MP

v.

MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendant.

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Prison Legal Services, Inc. of Michigan  
Sandra Girard (P33274)  
Attorneys for Plaintiffs  
3855 Cooper Street  
Jackson, MI 49201-7517  
PH: (517)-780-6639  
FAX: (517)-780-5887

A. Peter Govorchin (P31161)  
Allan J. Soros (P43702)  
Assistant Attorneys General  
Attorneys for Defendant  
120 N. Washington Sq. – Ste 300  
PO Box 30217  
Lansing, MI 48909  
PH: (517)-335-7021  
FAX: (517)-335-7157

**AGREEMENT TO RESOLVE PLAINTIFFS' CLAIMS REGARDING  
CLASSIFICATION**

The parties, through counsel, agree to the following:

1. Plaintiffs' Complaints filed in April 1988 and as subsequently amended, including the Consolidated Court of Claims Complaint filed July 2, 1996 asserted claims regarding classification on behalf of the male prisoners in the custody of the Michigan Department of Corrections prisons and camps, under the Michigan Constitution of 1963.

2. The parties agree that Plaintiffs' classification claims should be dismissed with prejudice, except for the relief permitted by MCL 600.5531(f), and in paragraph 17 of this

Agreement, in exchange for the provisions made in this Agreement and except as set forth in this Court's October 14, 2003 Order Dismissing Certain Claims Without Prejudice.

3. The MDOC agrees to promulgate and implement the following policy directive, operating procedure, DOM and/or form modifications within 45 days after the date the order adopting this agreement is entered.

A. The Department will modify CFA OP 05.01.130 entitled, "Completion of Security Classification Forms – For Male Prisoners," effective 08/01/02 paragraph G item 5 to read as follows:

On this item, count time from the corrected date in determining whether the prisoner has served more than three years of the prisoner's sentence.

B. The Department will modify its Security Classification Screen (both Initial and Review for Male Prisoners Only), by modifying item 5 on the confinement level to read as follows:

Is prisoner within seven years ERD, or if not has served more than three years of his term?

C. The Department shall modify CFA OP 05.01.130 effective 08/01/02, section entitled, "Confinement Level (Both Initial and Review Screens)" paragraph G, item 8 by adding the following:

If the prisoner has not been found guilty of an assaultive major misconduct (003, 004, 005, 007, 008, 009, 010, 013, 014) in the preceding seven (7) calendar years, the prisoner shall not be considered a VH assault risk for purposes of calculating that prisoner's confinement level score.

4. The Department agrees to revise, as necessary, and reissue its Security Classification Manual at the conclusion of the classification working group's deliberations, as described below, no later than November 1, 2004. This revised Security Classification Manual shall be available for review on request by prisoners in each institution's law library.

5. The MDOC agrees to institute a list of reasons justifying a departure or a waiver by February 1, 2004. After that date, only the reasons on this list or a subsequently amended list

may be used to justify a departure or waiver. A departure or waiver to a higher level must be approved by the central office, except within a multi-level facility. If the warden supervises more than one institution, the warden may authorize transfer of a prisoner between those institutions, except into or out of a camp. Beginning November 1, 2004, each reason for a departure or a waiver shall be given a code that must be entered in TRATS in the security classification screen if a departure or waiver is recommended.

6. The MDOC shall provide regular reminder notices to security classification screeners and others who contribute to a prisoner's file that the work and school reports required by PD 05.01.100, paragraph FF effective 01-01-01 shall be completed in a timely fashion and accurately assessed in computing a prisoner's security classification score.

7. There will be mental health evaluations for selected segregation and Level VI general population prisoners at ICF. By November 17, 2003, Prison Legal Services of Michigan, Inc. (PLSM) may submit a list of 25 prisoners who are in segregation or in Level VI general population that PLSM believes may be seriously mentally ill, as defined in PD 04.06.180(III)(D), and require a mental health evaluation. The MDOC shall provide for new mental health evaluations of the identified prisoners in a confidential setting at ICF, by February 28, 2004. These evaluations shall be conducted by PSU and DCH staff not assigned to ICF. If the examined prisoner signs a medical release, the contents of that evaluation will be made available to PLSM.

A. DCH will select 3-4 DCH psychiatrists or fully licensed psychologists, whose names shall be provided to Plaintiffs' counsel within 14 days of the order adopting this Agreement.

B. PSU will select three to four PSU fully licensed psychologists, whose names shall be provided to Plaintiffs' counsel within 14 days of the order adopting this Agreement.

C. Plaintiffs' counsel, within 14 days of receiving the names of psychologists and psychiatrists, will let Defendant's counsel know if they have any objections to the psychologists and/or psychiatrists chosen.

D. Plaintiffs' counsel may veto one each of the selected PSU/DCH personnel identified according to subparagraphs A. and B. above.

E. The evaluations will be done jointly by a PSU/DCH team of one each.

F. Plaintiffs' counsel will be provided, with appropriate releases, updated psychiatric records of the 25 ICF prisoners identified for psychiatric evaluation under this paragraph, upon the completion of the evaluations.

G. Plaintiffs' counsel shall retain prisoners' mental health records, obtained during discovery, until November 1, 2005.

8. The MDOC will modify its prisoner placement and transfer policy, PD 05.01.140 effective 07-15-02, to indicate that it is not mandatory for a prisoner being released after 96 hours from any psychiatric unit as defined in this policy, protective environment unit, intermediate care unit or SMPU to return to the prison where he resided before he was transferred for psychiatric treatment or evaluation.

9. The cell door window covers in ICF's administrative segregation (excluding detention) and Level VI shall be open one hour per day five days per week Monday through Friday, excepting mobilizations during that time, just before expedited legal mail rounds, barring a disturbance or seriously disruptive behavior by an individual prisoner(s) during the time the window is uncovered. Only the disruptive prisoner's cell door window cover will be closed and it shall be closed for that day only. Plaintiffs shall withdraw their motion asking the Court to hold Defendant in contempt for failing to provide meaningful in-cell activity as ordered by the Court.

10. The MDOC shall not automatically classify male prisoners into administrative segregation solely upon a finding of guilty for a substance abuse misconduct.

11. Any damage claims possessed by Plaintiffs who were classified to administrative segregation at Macomb Correctional Facility based solely on a finding of guilty for a substance abuse major misconduct prior to October 17, 1997 shall be dismissed without prejudice.

12. No later than October 31, 2003, the Department will establish four working groups composed of MDOC and/or DCH persons to consider issues raised concerning security classification and placement, program classification, approaches to long-term segregation, reception and guidance center testing/evaluation and psychological services for prisoners. Each Working Group shall consider the issues set forth in paragraphs 11-14 but may consider other issues in their subject area. Each Working Group shall have a chairperson appointed by the MDOC Director. Each Working Group shall have an organizational meeting no later than December 20, 2003 and shall meet at regular intervals at least once every 3 months beginning with the Classification and Long-Term Segregation Working Groups in February 2004, the Psychological/Psychiatric Services Working Group in March 2004 and the Reception and Guidance Center Testing/Evaluation Working Group in April 2004. It is expected that the members of the Working Groups will communicate between meetings to ensure that the work of the Working Groups is ongoing. The Working Groups should determine the type of reports and/or data that should be collected or produced to assist their considerations and studies. Documents prepared by or submitted to members of these Working Groups shall be considered privileged and shall not be shared outside of the Working Groups.

A. Security Classification Working Group. This group will have a minimum of five MDOC representatives initially including Classification Director Joe Barrett, Douglas Kosinski, Barbara Hladki, an ADW and a program classification director. The parties agree that Sandra Girard, Executive Director of Prison Legal Services of Michigan, Inc. (PLSM) or her successor and A. Peter Govorchin, Assistant Attorney General will also participate in the deliberations of this working group as non-voting members. PLSM may arrange for the participation in or presentation to this Working Group of PLSM's classification expert, Chuck

Montgomery and/or Dutch Brewer, and/or another expert offered by PLSM, in person, by telephone or in writing at PLSM's expense.

B. Long-Term Segregation Working Group. The MDOC will establish a long-term segregation working group consisting of four MDOC personnel including one representative of the MDOC Psychological Services Unit (PSU) and one representative of the Department of Community Health (DCH). Initially, members will be Joe Barrett, Roger Groves, RPA MacMeekin, Clayton T. Straseske and Robert Naples. Sandra Girard as Executive Director of PLSM or her successor and A. Peter Govorchin, Assistant Attorney General, will also participate in this Working Group's deliberations as non-voting members. PLSM may arrange for the participation in or presentation to this Working Group of PLSM's expert(s), Chuck Montgomery, Dutch Brewer, Terry Kupers, Stuart Grassian, Bud Kraft, Don Anderson and/or another expert offered by PLSM in person, by telephone, or in writing at PLSM's expense.

C. Reception and Guidance Center Testing/Evaluation Working Group. The MDOC shall establish a Reception and Guidance Center testing/evaluation working group consisting of four MDOC members and one member of the DCH as follows: initially including Clayton T. Straseske, J. DeRose/Jim Gormek, Dr. Bruce Wright, Barbara Hladki and a DCH representative. Sandra Girard as Executive Director of PLSM or her successor and A. Peter Govorchin, Assistant Attorney General, shall participate in the Working Group's deliberations as non-voting members. PLSM may arrange for the participation in or presentation to this Working Group of PLSM's expert(s), Chuck Montgomery, Dutch Brewer, Terry Kupers, Stuart Grassian, Bud Kraft, Don Anderson and/or another expert offered by PLSM in person, by telephone, or in writing at PLSM's expense.

D. Psychological/Psychiatric Services Working Group. The MDOC shall establish a psychological/psychiatric services working group consisting of three MDOC representatives and two representatives from the DCH. Sandra Girard, as Executive Director of PLSM or her successor and A. Peter Govorchin, Assistant Attorney General, shall participate in this Working Group's deliberations as non-voting members. Initially, the MDOC representatives will be Clayton T. Straseske, Joe Barrett, Barbara Hladki and two members of DCH. PLSM may arrange for the participation in or presentation to this Working Group of PLSM's expert(s), Chuck Montgomery, Dutch Brewer, Terry Kupers, Stuart Grassian and/or another expert offered by PLSM in person, by telephone, or in writing at PLSM's expense.

13. The Security Classification Working Group shall consider, study and recommend:

A. whether there should be modifications to the specific list of mandatory and discretionary departures and waivers developed;

- B. whether the MDOC should continue reliance on the Sheriff's Questionnaire for security classification;
  - C. whether the MDOC should give less weight to placement in administrative segregation as part of the "management" security classification score;
  - D. whether there should be changes in the points assigned to different types of guilty misconduct findings;
  - E. whether there is an adverse impact on prisoner completion of therapy, educational and vocational training programs of lateral transfers and transfers to reduced custody. If so, what changes, if any, should be implemented;
  - F. whether Assaultive Offender Therapy (AOT), Substance Abuse Therapy (SAT) and/or Sex Offender Therapy (SOT) should be provided in first years of prison time;
  - G. whether allowing voluntary periodic room/cell assignment changes with the approval of housing unit staff would be beneficial;
  - H. whether multi-level facilities have an impact on idleness and programming and whether such facilities should be continued;
  - I. whether positive points should be earned for completing program recommendations;
  - J. whether the psychologists "therapy hold" for prisoners in AOT, SOT and RTP should be set forth in PD 05.01.140;
  - K. whether the MDOC should continue the Level VI security level; and
  - L. whether the Assault Risk score should be considered for security classification.
14. The Long-Term Segregation Working Group shall study and recommend:
- A. whether there should be changes or additions to the in-cell activity provided at ICF. The Working Group shall make its interim recommendation(s) on this issue no later than June 15, 2004;
  - B. whether the MDOC should discontinue double-bunking administrative segregation at the Chippewa Correctional Facility;
  - C. whether the MDOC should revise the criteria for placing and continuing a prisoner in administrative segregation. If so, what those criteria should be, including whether there should be a presumption in favor of release after a certain period of time;

- D. whether the MDOC should clarify steps in the approval release process;
- E. whether a multi-disciplinary team review should be required for placement in segregation;
- F. whether MDOC staff should be regularly rotated in and out of segregation units;
- G. whether there should be a “break” or other reward integrated into segregation practices to encourage general population qualifying behavior; If so, how should the “breaks” be implemented;
- H. whether prisoners should receive an explanation for placement in Level VI;
- I. whether the purpose of Level VI should be redefined and criteria for placement in Level VI should be developed? If so, what should they be;
- J. whether there should be greater use of transition units to step down from administrative segregation toward general population/release;
- K. whether the number of prisoners placed in administrative segregation should be reduced; and
- L. whether larger segregation units should be broken into smaller units within different general population prisons.

15. The Reception and Guidance Center Testing/Evaluation Working Group shall study and recommend:

- A. whether there should be a standardized, system wide computer program used to track RGC recommendations, parole board recommendations and/or prisoner special needs, program needs, wait list assignments, program enrollments, program participation and/or program completions or constraints;
- B. whether there should be a standardized, system wide computerized program to record prisoners’ six month program classification reviews that are required by PD 05.01.100(1);
- C. whether vocational testing should be given to prisoners in RGC or should be administered after a prisoner completes their educational recommendation or receives a waiver or exemption from educational programming;
- D. whether prisoners in academic programs should have a periodic break;

- E. whether the Psychological Services Unit at RGC should review SASSI scores at the time of the intake evaluation;
- F. whether every person with a sentence of guilty but mentally ill should receive full psychological testing and be interviewed by a psychiatrist in RGC;
- G. how to ensure identification and tracking of developmentally disabled prisoners;
- H. whether RGC staff should request prisoners' prior mental health records of treatment in the community and should a computerized tracking and followup system be developed; and
- I. whether not being assigned to a recommended program should be grievable.

16. The Psychological/Psychiatric Services Working Group shall study and recommend:

- A. whether any psychological/psychiatric interview that is required by policy or deemed necessary by staff must be done in a confidential setting versus being done at the cell front or through a closed door;
- B. whether a legible narrative report should be done of the above described psychological/psychiatric interview instead of or in addition to a checklist;
- C. whether prisoners who are identified on the SUITRACK data set should receive any focused treatment or attention;
- D. whether a change in mental health diagnosis indicating that the prisoner is no longer suffering a severe mental illness must be justified in a narrative which includes an explanation of why the original diagnosis was wrong and whether such a change should be reviewed by additional DCH and/or PSU staff from a different region; and
- E. whether there should be an increase in the number of RTP beds, outpatient beds and transition unit beds.

17. Quarterly, the MDOC shall arrange for and allow the class representatives to meet together at JCF from 1:00 p.m.-4:30 p.m. with PLSM's attorney staff at mutually agreed upon date(s).

18. It shall be the responsibility of each of the Working Groups to prepare a draft report within 30 days of each group's third quarterly meeting for presentation to the MDOC Director discussing each of the topic areas assigned to the Working Groups and recommending any or all of the topic areas for implementation. It shall be up to the MDOC/DCH Director, as appropriate, to accept, reject, modify or request additional work on the recommendations within 30 days of receipt. The Working Groups shall prepare a final report, which the parties agree is privileged and preliminary to the final agency decision, within 30 days after their sixth quarterly meeting, but no later than September 15, 2005, for presentation to the MDOC Director. The MDOC Director shall issue the final agency decision to accept, reject or modify the recommendations by October 18, 2005.

19. Dispute resolution:

A. A party must bring an alleged violation of this Agreement to that party's counsel within 30 days of becoming aware of the alleged violation.

B. Within 30 days notice of a violation of this Agreement, counsel complainant will give written notice to opposing counsel, with any supporting documentation of the alleged violation.

C. Within 10 business days of receipt of a complaint alleging a violation of this Agreement, the respondent shall submit its response to the complainant.

D. If the initial complaint and response do not resolve the issue to the parties' satisfaction either party may, but is not required to, supplement its submissions to the other party.

E. If either party believes, after reviewing the above described submissions, that the other party is not in compliance and has not come into compliance with this Agreement in regard to the situation described in the submissions, that party may set forth the basis for the alleged non-compliance in writing and file that complaint with the arbitrator. A copy of the documents filed with the arbitrator shall be simultaneously mailed to the other party.

F. The responding party shall submit a response to the arbitrator and the complaining party within 10 business days of receipt of the complaint filed with the arbitrator.

G. The arbitrator may request additional information from either party, at the arbitrator's discretion, relevant to the complaint presented. The arbitrator may request a telephone conference or meeting with the parties' counsel on the issues presented in the complaint.

H. Within 30 days of the arbitrator's receipt of the complaint, the arbitrator shall decide whether neither, either, or both parties are in violation of the Agreement and send that decision in writing to the parties.

I. Each party, regardless of the outcome of the complaint, is responsible for its own costs and attorneys fees.

J. The arbitrator's fees shall be paid as follows:

1. If the arbitrator determines that the respondent is in violation of the Agreement, the respondent shall be responsible for the arbitrator's fee.
2. If the arbitrator finds that the respondent is not in violation of the Agreement, the complainant shall be responsible for the arbitrator's fee.
3. If the arbitrator finds that both parties are in violation of the Agreement, each party shall be responsible for one half of the arbitrator's fee.

K. The arbitrator may order a party found to be in violation of the Agreement to comply with the Agreement by taking the actions specified by the arbitrator and the arbitrator's written decision. The arbitrator may consult with the parties in determining what is a reasonable time for compliance. Neither party may appeal or otherwise seek review of the arbitrator's decision.

L. The parties have agreed that the Hon. Michael G. Harrison should serve as the Arbitrator under this Agreement. If for any reason the Hon. Michael G. Harrison becomes unavailable, the parties shall mutually agree on a substitute Arbitrator to act until such time as the Hon. Michael G. Harrison is again available. That substitute arbitrator shall be Carolyn Koenig.

M. The parties agree that compliance with this Agreement is enforceable through arbitration as described above, under MCL 600.5001, et seq and the decision of the arbitrator shall be enforceable under MCL 600.5025.

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Prison Legal Services of Michigan, Inc.  
Counsel for Plaintiffs  
Sandra Girard (P33274)

\_\_\_\_\_  
A. Peter Govorchin (P31161)  
Allan J. Soros (P43702)  
Assistant Attorneys General  
Counsel for Defendant

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Govorchin/CAIN CASE/Settlement Documents/Classification Settlement Agreemt.103103