

IN THE UNITED STATES DISTRICT COURT **FILED**
FOR THE DISTRICT OF NEW MEXICO UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

DWIGHT DURAN, et al.,

AUG 11 1997

Plaintiffs,

vs.

Civil No. 77-0721-JC

R. J. Tommach
CLERK

GARY JOHNSON, et al.,

Defendants.

**ORDER APPROVING AMENDED STIPULATION AND SUGGESTING
MODIFICATION OF THREE-JUDGE COURT'S APRIL 3, 1997 ORDER**

On March 29, 1996 the parties in this civil action filed, and the court entered an order approving, a stipulation concerning the assignment of certain New Mexico inmates to certain facilities in Texas. The parties have now filed an amended stipulation to supplant the March 29, 1996 stipulation in its entirety (the "Amended Stipulation").

The Amended Stipulation addresses a wide variety of population issues, including continued use of out of state beds in Texas and Arizona, continued use of a limited number of day room beds, and implementation of certain measures designed to better manage the NMCD population. In a separate filing directed to the three-judge court empaneled in this action, the parties have stated that, in their opinion, the Amended Stipulation adequately addresses population management in the near term, which is to say through the 1998 legislative session. According to the parties, the combination of the continued use of out of state beds and the "non-bed" related measures included in the Amended Stipulation appears to have ameliorated on an interim basis the population concerns that led to the order convening the three-judge court.

The court has carefully reviewed the Amended Stipulation and finds that it adequately addresses population management issues on an interim basis. Accordingly, the court will

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approve the Amended Stipulation, and enter it as the order of this court.

The court also notes that the Amended Stipulation is a comprehensive agreement between the parties as to the interim use of certain out of state facilities. As such, it addresses the concerns that led to the final operative paragraph of the April 3, 1997 order entered by the three-judge court, in which that court abrogated "any restrictions concerning the transfer and housing of prisoners out-of-state" until the merits are resolved. Moreover, the Amended Stipulation provides a comprehensive framework for the continued use of certain out of state facilities under terms and conditions that this court finds to be neither unreasonable nor deleterious to the interim resolution of the defendants' population issues. Thus, it appears that the parties have accomplished by agreement the overall result that the final paragraph of the April 3 order was intended to reach, and that the conflict between the Amended Stipulation and that paragraph should be resolved by modifying or withdrawing that portion of the April 3 order. Although the Amended Stipulation does not finally "resolve the merits" it does provide a framework for population management, including continued use of certain out of state facilities, that eliminates, at least on an interim basis, the need to abrogate all restrictions on the out of state transfer of inmates.¹

Accordingly, the court will direct the clerk of court to provide a copy of this order and the Amended Stipulation to Circuit Judge Kelly and District Judge Black for their consideration of the potential modification or withdrawal of the last paragraph of the April 3 order.

¹ The court also notes that the parties simultaneously filed a joint motion addressed to the three-judge court seeking to defer the trial scheduled for September 22, 1997 until after the 1998 New Mexico legislative session. The parties propose to file a joint status report within forty-five days of adjournment of that session. Thus, the parties have proposed a procedure whereby the merits can finally be resolved, as required by the April 3 order, albeit on a somewhat different time schedule.

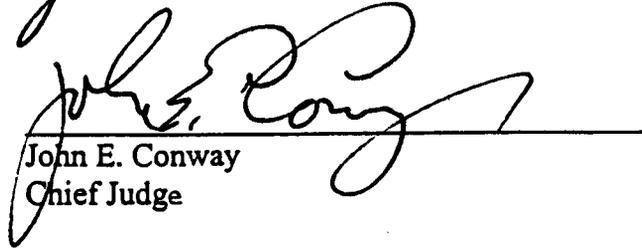
The court being fully advised in the premises and for good cause shown,

IT IS HEREBY ORDERED that the Amended Stipulation shall be and hereby is approved.

IT IS FURTHER ORDERED that the Amended Stipulation shall be and hereby is entered as an order of this court.

IT IS FURTHER ORDERED that the clerk of court shall forward a copy of this order and of the Amended Stipulation to Circuit Judge Kelly and to District Judge Black.

DATED this the 11 day of August, 1997.


John E. Conway
Chief Judge