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NOTICE TO ALL PRISONERS AT CMF-MAIN AND NRC:SETTLEMENT OF GATES v. DEUKMEJIAN

This notice describes your rights to comment on a proposed negotiated settlement of a lawsuit concerning the conditions of confinement at CMF and NRC.

Gates v. Deukmejian is a class action federal lawsuit filed in Sacramento. It was filed by several prisoners alleging that certain conditions at CMF and NRC were unconstitutional or violated a federal law prohibiting discrimination against disabled persons. Because you are a prisoner at CMF or NRC you are a member of the class of plaintiffs in Gates. The parties in Gates have reached an out-of-court settlement.

Before the settlement is approved by the Court you are entitled to comment on the fairness of the settlement. ALL COMMENTS MUST BE FILED WITH THE COURT BY January 19, 1990. All comments must be in writing and addressed to Clerk - United States District Court, Eastern District; 650 Capitol Mall; Sacramento, California 95814; Attention: Gates v. Deukmejian.

The Court will hold a hearing at 10:00 a.m. on January 24, 1990 to consider all written comments and to decide whether the Consent Decree is fair, just and reasonable and should become a Court Order. Until the Court decides that it is fair, just and reasonable, the Consent Decree will not be enforceable as a Court Order.

THE LAWSUIT

In the lawsuit, the plaintiffs claimed that they were not receiving adequate medical and psychiatric care, that the prison was overcrowded causing general conditions to worsen, and that prisoners with disabilities were not receiving proper treatment or access to programs. The plaintiffs asked the Court to order defendants to change the health care system to provide proper psychiatric and medical care, to reduce crowding and improve conditions, and to provide wheelchair inmates with meaningful access to places and programs within CMF.

The lawsuit also included a subclass of inmates confined to the Special Program Unit as a result of being HIV-positive or as having AIDS. The subclass claimed that they were unlawfully segregated from the general population and given discriminatory treatment. The subclass asked the Court to order defendants to end their policy of total involuntary segregation of inmates who have AIDS or who are HIV-positive from the rest of the prison population, and to order defendants to give them the same treatment in all conditions of confinement that they give to other inmates.

The trial began on September 11, 1989. For almost two months plaintiffs presented their case to the Court. In November, plaintiffs and defendants began serious settlement negotiations. Those negotiations resulted in an out of court settlement, called a Consent Decree, by which defendants agree to make many changes in the care and treatment of prisoners, including the AIDS subclass, without admission of wrongdoing or court determination that changes are legally required.

## CLASS ACTION

The court has certified this as a class action. Because it governs the claims of all prisoners at CMF-Main and NRC, the Consent Decree will have a significant legal effect on your right to bring further actions concerning conditions at this prison. One effect of the Decree is to limit your ability to litigate all issues that it covers. If the court approves the Decree, the defendants may move the court to dismiss lawsuits seeking injunctions concerning alleged violations of federal constitutional rights filed by prisoners at CMF-Main and NRC concerning the issues covered by the Consent Decree while the Decree is in effect, which is at least three years. If defendants do not comply with the terms of the Decree, however, prisoners will have a remedy through the review process described in parts VII and IX of the Consent Decree. This review process is described below under the heading "How The Settlement Works."

This Decree will not prevent prisoners from filing lawsuits in federal court seeking damages for alleged violations of the Constitution and federal law. It will not affect existing actions for damages. Also, this Decree will not prevent prisoners from filing lawsuits in state court based on state statutes, regulations or the California Constitution.

## TERMS OF THE AGREEMENT

The most important terms of the Consent Decree are summarized below. Not all of the terms of the Consent Decree and changes defendants agreed to make are described in this Summary. If you are in the general population and would like to review the full text you may read a copy of the Consent Decree at the law library. If you are in a closed unit, you can get a copy of the Consent Decree to read from your Correctional Counselor.

### MEDICAL CARE ISSUES (See Part III of Consent Decree, pages 6-10)

1. There will be written treatment guidelines for certain medical conditions.
2. The treatment guidelines will include criteria concerning when patients should be transferred to an accredited outside hospital.
3. Problem lists and flow sheets will be put in the medical records of patients who suffer from certain medical conditions.
4. CMF has a program called a Quality Assurance program to review the medical care provided to make sure CMF is providing proper care. An outside healthcare organization will evaluate and help improve and expand the QA program to assure that it is consistent with standards used in accredited hospitals and clinics. The outside organization will regularly report on whether the program is working.
5. Defendants will make sure equipment to diagnose and treat inmates with lung disorders is appropriately located and used.
6. Defendants will make sure that medical staff are properly using computer Drug Interaction Profiles to make sure patients who need to take a combination of drugs do not get bad side effects as a result.

7. Defendants will study and report on whether more doctors are needed at CMF on nights, weekends, or holidays.

MEDICAL DISABILITY ISSUES (See Part IV of Consent Decree, pages 10-14)

1. CMF will now have a section of the medical department for Physical Medicine and Rehabilitation, including physical medicine, physical therapy, occupational therapy, and psychology.

2. Medical care given by the Physical Medicine and Rehabilitation section will be covered by the Quality Assurance program discussed above under Medical Care Issues.

3. A treatment plan will be developed for each disabled inmate (defined in the settlement agreement as inmates who are mobility-impaired because they need a wheelchair or prosthetic device) and reviewed regularly. The adequacy of any treatment plan, including such things as whether an inmate has need of periodic evaluation of his wheelchair, artificial limb or brace to make sure it is working properly, or training in the use of a wheelchair, artificial limb, or brace will be reviewed by the Quality Assurance program to make sure it is proper.

4. Training in Activities of Daily Living (for example, dressing, bathing) will be given to inmates who need it, and help will be given to inmates who cannot do Activities of Daily Living on their own.

5. Defendants will make sure that there are enough available hours of time from a physiatrist (a doctor who specializes in the treatment of physically disabled patients) to treat the inmates who need specialized treatment.

6. Defendants will make sure that physical therapy aides do only what they are qualified to do according to professional standards.

7. Defendants will make sure that there are enough available hours of time from physical therapists to treat inmates who need physical therapy.

8. Mobility impaired disabled inmates will be housed in a wheelchair-accessible environment unless they refuse placement there.

9. An independent expert in access by disabled persons (someone not a Department of Corrections or CMF employee) will evaluate program and housing areas to make sure that disabled inmates have meaningful access to housing and program areas, including beds, toilet facilities, showers, lavatories, mirrors, water fountains, exercise yards, and the gym.

10. Disabled inmates will have equivalent access to package pickup, canteen, and laundry services.

11. Disabled inmates who are qualified will have the opportunity to participate in work, exercise, educational, and vocational programs available at CMF. A disabled inmate will not be disqualified because he is unable to participate for a full work day or because getting to the program requires the inmate to be searched.

12. Defendants will study and report on whether the existing prerelease program gives disabled inmates the information and help they need to meet their special needs after release.

MENTAL HEALTH ISSUES (See Part V of Consent Decree, pages 14-25)

1. A suicide prevention program will be in place at CMF no later than July 31, 1990. The program will include training for custodial and psychiatric staff, appropriate housing and treatment for prisoners at risk for suicide and a review of policies concerning the use of 5-point restraints, isolation and strip cells.

2. A psychiatrist is and will be present at CMF at all times. Defendants will study whether an additional psychiatrist is necessary for nights, weekends and holidays.

3. Tasers will not be used to restrain a prisoner to administer involuntary psychiatric medication. Tasers will only be used on prisoners with psychiatric classifications or taking anti-psychotic medications as a last resort and after (except in an emergency) consultation with a psychiatrist.

4. Appropriate access to inpatient psychiatric care will be provided to all prisoners at CMF. CDC/CMF medical staff will be eligible to obtain admitting privileges to the DMH Unit by March 1, 1990.

5. Defendants will provide appropriate psychiatric screening for each incoming inmate and will provide appropriate psychiatric evaluation and treatment for all inmates at CMF as medically indicated. By June 30, 1990, defendants will begin a program to provide appropriate outpatient care to prisoners discharged from the inpatient units at CMF and Atascadero State Hospital. The program will be designed to facilitate increased functioning, participation in prison programming and return to the general population.

6. Prisoners will not be declassified from psychiatric classifications without the written approval of a psychiatrist made after a psychiatric evaluation, including an interview.

7. Prisoners with psychiatric classifications will not be housed in Willis Unit without prior approval of a psychiatrist, psychologist or social worker ("clinician") except in an emergency. All prisoners with psychiatric classifications now housed in Willis Unit will be evaluated by a clinician who will determine whether they should be housed in Willis Unit. Defendants will begin a pilot program by June 30, 1990 for housing and treating certain prisoners with psychiatric classifications in Willis Unit. Appropriate psychiatric care will be provided to all prisoners based in Willis Unit. Prisoners with psychiatric classifications will be housed separately from other prisoners in Willis Unit.

V and AIDS ISSUES (See Part VI of Consent Decree, pages 25-27)

1. Within four (4) months of the Court's approval of this proposed Consent Decree, CMF will begin a "pilot program" to place some number of known HIV-positive inmates into a single, open, general population program at CMF. There will be twenty (20) thirty (30) inmates placed in this general population program within the first three months of the program's operation. The number of inmates may increase to more than thirty (30) by the end of the pilot program.

2. The goal of the pilot program is to show that it is possible to place HIV-infected inmates in a general population program at CMF consistent with medical, behavioral and security considerations.

3. The inmates in the pilot program will include inmates presently in the SPU at CMF and may include newly discovered HIV-infected inmates coming into or identified at CMF.

4. Criteria for placement in the general population component of the pilot program are listed in the Consent Decree. These criteria will not be binding on any future program. Inmates who are placed in the general population component of the pilot program will be housed in the open unit and they will have greater freedom of movement and greater access to prison programs than inmates currently in the Special Program Unit.

5. There will be regular AIDS education for all prisoners at CMF.

6. Within eleven (11) months of the date the Court signs the Consent Decree, defendants will report on the success of the pilot program and describe their plans for housing and programming HIV-infected inmates at CMF. These will be subject to a review process provided for in the Decree. This review process is described below under the heading "How The Settlement Works."

7. "HIV infected inmate" means any inmate who has tested positive for the HIV virus.

#### GENERAL CONDITIONS ISSUES (See Part VII of Consent Decree, pages 27-33)

1. All prisoners in Willis Unit, the Psychiatric Management Unit, and the Special Program Unit will be permitted a reasonable opportunity to go to and use the law library.

2. Prison officials will maintain housing assignments in a way that minimizes violence and takes a prisoner's medical and mental condition into account.

3. Prisoners cannot be double-celled if a physical or mental condition requires single celling. Double-celling of reception center inmates in pocket cells can occur only if prison officials make all reasonable efforts to maximize the time prisoners spend out of their cells, they are not confined in the cells more than 12 hours a day for more than 60 days, and prisoners have adequate recreation 5 hours per day 5 days per week.

4. Prisoner clerks may not have access to any information that would threaten the safety of any other prisoner or staff member.

5. Prisoners cannot be housed in Disciplinary and Detention cells if they suffer from serious mental illness or have a recent history of attempted suicide. A term in these cells cannot last longer than 10 full consecutive days.

When prisoners are placed in Disciplinary and Detention cells they must be examined by a psychiatrist, psychologist or physician within 24 hours, and then every 72 hours. The flaps on the doors of these cells cannot be closed unless prisoners misbehave in such a way as to make that necessary.

Within 60 days after the Consent Decree is approved, prisoners in Disciplinary and Detention cells will generally have control over their own lights and plumbing. The cells must be clean. A garbage bag must be provided once a day.

6. Prison officials must determine whether there are enough toilets, sinks and showers at CMF and NRC to meet the needs of all prisoners.

7. Each prisoner in a closed unit will have the opportunity for outdoor exercise 10 hours per week, except that exercise can be suspended for 10 days for individual misbehavior or institution security. Exercise can also be reduced by a doctor's order.

8. Prison officials will review their procedures for providing emergency assistance to prisoners in Willis Unit on the first watch to assure that upon discovery of an emergency a prisoner is removed from his cell promptly in a manner consistent with security requirements.

9. Defendants will review staffing levels to determine whether there are adequate custody staff to supervise properly and to provide escorts for prisoners, and report their conclusions and recommendations.

10. Under normal conditions, prison officials must report their intention to convert space for housing prisoners 30 days before the conversion takes place. Any conversions will be subject to a review process provided for in the Decree. (See the next section in this notice.)

#### HOW THE SETTLEMENT WORKS

(See Parts VIII and IX of Consent Decree, pages 33-41)

A person called the Mediator will be appointed by the Court to oversee the Consent Decree. Prison officials must report to the Mediator regularly and tell the Mediator what they have done pursuant to the Consent Decree. The plaintiffs' attorneys will get copies of reports that defendants have to prepare under the Consent Decree. Once the Mediator is appointed, the Mediator has the power to receive complaints from inmates and to meet with inmates if he or she chooses.

The Mediator will report to the Court and both sides every 90 days during the first year and every 180 days after the first year about how defendants have or have not done the things they agreed to do in the Consent Decree. The Mediator can go into CMF without notice if he or she wants, and can see all parts of the prison, any documents, and talk to any people he or she needs to. The Mediator can also hire experts, for example doctors or psychiatrists, to advise him or her on how the Consent Decree is working.

In a state of genuine emergency, the Director or Warden may temporarily suspend compliance with all or any part of this Consent Decree. If such a state of emergency occurs, defendants must promptly notify the Mediator and plaintiffs' counsel in writing.

In extraordinary circumstances, plaintiffs may apply directly to the Court for emergency relief on the grounds that compliance with the mediation process would lead to irreparable harm to prisoners. They must inform the Mediator and defendants in writing.

If inmates object to what defendants are doing under the Consent Decree, the inmates' attorneys can tell defendants and the Mediator. The Mediator will work with both sides to try to resolve the problem. If both sides cannot agree on how to resolve the problem, the Mediator will say in a report whether he or she thinks defendants are doing what they agreed to, what is required by applicable law, and what should be done. Either side who disagrees with what the Mediator decided can appeal to the Court for help.

WHEN THE SETTLEMENT ENDS  
(See Part X of Consent Decree, pages 41-42)

It is the goal of the parties that the provisions of the Consent Decree be implemented within two years. When the Mediator determines that defendants have fully implemented the provisions of the Consent Decree and have been in compliance for at least one year, defendants may move to dissolve the Consent Decree. However, defendants cannot file such a motion prior to three years from the date this Consent Decree is signed by the Court. If plaintiffs do not believe the lawsuit should be ended at that point, the Court will decide whether it should be ended.

There has been no agreement as to fees for plaintiffs' attorneys, which under the Consent Decree and applicable law will be the subject of Court proceedings after the Court has passed on the fairness of the Consent Decree.

You may write plaintiffs' attorneys with any questions you have about the settlement:

MEDICAL CARE AND DISABILITY ISSUES      GENERAL CONDITIONS ISSUES

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THIS NOTICE IS GIVEN BY ORDER OF THE UNITED STATES DISTRICT  
COURT FOR THE EASTERN DISTRICT OF CALIFORNIA.