

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX
ATTORNEY GENERAL

P.O. Box 30217
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September 29, 2004

Sandra Girard
Prison Legal Services of Michigan, Inc.
PO Box 828
Jackson, Michigan 49204

Re: *Cain, et al v MDOC*
Long Term Segregation Working Group's recommendation regarding the ICF
Level VI program and status

Dear Ms. Girard:

Attached is a copy of the January 24, 2004 recommendation from Long Term Segregation Working Group Chairman James W. MacMeekin to MDOC Director Patricia L. Caruso. This was the recommendation which was approved in concept by the entire Long Term Segregation Working Group.

Also enclosed is the February 24, 2004 memorandum from Director Caruso to Chairman MacMeekin indicating her approval of the recommendation to change ICF from a Level VI to a Level V facility. This memorandum, however, recommended that the transfer of detention prisoners at ICF who have served more than 30 days of detention as a means of addressing the meaningful in-cell activity issue was not accepted. This issue was returned to the Long Term Segregation Working Group. As you know, all but approximately 15-20 of the long term detention prisoners at ICF were transferred to other Level V facilities by the end of June 2004. Under separate cover I will provide you the information I received from ICF on the programming available to those long term detention prisoners still at ICF.

Sincerely,

A. Peter Govorchin
Assistant Attorney General
Corrections Division
(517) 335-7021

APG:lmf

Enclosures

c: Lisa Shedlock
James MacMeekin
Kenneth MacEachern

Perit 2/24/04

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MICHIGAN DEPARTMENT OF CORRECTIONS

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MEMORANDUM

DATE: February 24, 2004

TO: James W. MacMeekin, Chairman
Long Term Segregation Working Group

FROM: Patricia L. Caruso, Director

SUBJECT: CAIN v MDOC Settlement Agreement

This is in response to your January 24, 2004 memorandum regarding the continuance of Level VI security and meaningful in-cell activity for detention prisoners.

In regard to the continuance of Level VI security, I accept your recommendation to convert the Level VI population at the Ionia Maximum Correctional Facility to Level V.

However, the recommendation to transfer detention prisoners at the Ionia Maximum Correctional Facility who have served more than 30 days of detention as a means of addressing the meaningful in-cell activity issue indicated in the Settlement Agreement is not an acceptable solution and must be revisited by the Committee. Therefore, I recommend that the Long Term Segregation Working Group continue researching, reviewing and establishing a workable resolution in regard to meaningful in-cell activity.

PLC:JB/amd

MICHIGAN DEPARTMENT OF CORRECTIONS

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MEMORANDUM

DATE: January 24, 2004

TO: Patricia L. Caruso, Director

FROM: James W. MacMeekin, Chairman
Long Term Segregation Working Group

SUBJECT: CAIN v MDOC Settlement Agreement - "Whether the MDOC should continue the Level VI security level" and "Meaningful in - cell activity for Level VI"

DISCUSSION

With the appointment of the Long Term Segregation Working Group on October 31, 2003, you assigned a number of issues to be considered by the Working Group. Three of those expressly concerned the Level VI program at ICF. Those issues are:

1. Whether there should be changes or additions to the in-cell activity provided at ICF?
2. Whether prisoners should receive an explanation for placement in Level VI?
3. Whether the purpose of Level VI should be redefined and criteria for placement in Level VI should be developed?

You appointed another Working Group; the Classification Working Group chaired by Classification Director Joe Barrett and asked it to consider "Whether the MDOC should continue the Level VI Security Level?"

The Classification Working Group has met once and after establishing its' schedule, held discussion about the desirability of continuing the Level VI programming. The Long Term Segregation Working Group (LTSWG) has met twice and discussed the issues related to the Level VI program each time. At the second LTSWG meeting, the results of the Level VI program were presented for discussion and consideration.

By policy PD 05.01.143, Level VI is a general population status. The goal of the program was to encourage long term administrative segregation prisoners to change their behavior enough and on a consistent basis so that upon leaving ICF they could be placed in a Level V general population setting instead of a Level V administrative segregation unit.

The Level VI program consists of three interim levels of privileges that, it was hoped, prisoners cleared to participate in the program would progress through by demonstrating prolonged good behavior. The good behavior was judged by the absence of major misconduct tickets and a demonstration of a positive attitude as noted in the monthly reviews prepared by housing unit staff. By policy, the Level VI program was expected to take about 2 years to complete. A prisoner would arrive at ICF and be placed in Administrative Segregation (although when the program was first implemented in 2001 the initial participants were sometimes waived directly into one of the 3 stages of the program). They were reviewed for admission into the Level VI program and if so admitted were re-classified to general population and placed in Administrative Maximum (ad-max).

The prisoners were expected to stay a year in ad-max ticket free. Then, the movement to Intermediate Pre-transfer (IPT), the second stage, was still not automatic. This move required an affirmative recommendation by housing unit staff and approvals of the Assistant Deputy Warden, Deputy Warden and the Warden before the prisoner could make the progress to the IPT stage.

After six months ticket free in IPT, the prisoner could move to the pre-transfer (PT) stage with the similar approvals described above. If the prisoner served six months ticket free in the PT stage they could be transferred to a Level V general population setting.

During the 2- 2 ½ years the program has operated, and including the seeding of the Level VI initial population with pretty good candidates selected from the Level V administrative segregation population when the program started in the Fall of 2001, there have only been 35 successful graduates of the program. Most of those 35 graduates are a definite success having remained largely administrative segregation free over the last 1-18 months, and some of the graduates have worked their way down to Level IV custody. Two of the graduates have progressed to Level II custody.

However, there have been more prisoners who have failed the program than have successfully graduated and left ICF for Level V status. A significant problem with the Level VI program is the requirement that a long term segregation prisoner accept an even more restrictive level of custody to enter the Level VI program in order to have the hope of getting back to general population status more than two years in the future. This is because the Level VI prisoners have even less access to their personal property than do administrative segregation prisoners in a Level

V facility do. For example, ad-seg prisoners in a Level V facilities may have a personal TV and radio in their cells. Level VI prisoners may have none of these items.

Movement for Level VI prisoners, including to showers and out of cell exercise is no different between the administrative segregation and administrative maximum prisoners. However, after the Level VI prisoner makes it to the IPT stage there is the possibility of education or religious activities in small groups and IPT prisoners are allowed one telephone call per month. The final stage, PT, does provide the Level VI prisoner with movement advantages over the Level V ad-seg prisoner as they are able to eat in small groups in a dining area, go unshackled to showers, have out of cell exercise in small groups and can have a work assignment.

While the Level VI prisoners are not allowed personal TVs, the facility loans a monitor to prisoners on which they can watch a closed circuit tape of educational, entertainment and religious programming but not receive commercial TV broadcasts. The length of time during the week that this tape programming runs lengthens from about 8 hours, 5 days/week for ad-max to about 14 hours 5 days/week for PT. The programming is turned off on the weekends.

It is the opinion of the LTSWG that the Level VI program is not providing the kind of success that was hoped for in breaking a cycle of long term segregation and getting prisoners back into general population. Some of the design features that work against the success of the program are the necessity of Level V ad-seg prisoners giving up the limited privileges they have regarding personal property in exchange for a fairly distant hope of getting back to general population. Also, the standard of good behavior is significantly higher than the MDOC expects from its' Level I prisoners who can quite reasonably expect that picking up a bondable ticket every 6 months or so would not be sufficient to get them moved to a Level II security level or to ad-seg, but for a Level VI prisoner, that same behavior would perpetually re-start their cycle in the program or, after a few of these types of tickets, move them back to administrative segregation. When compared to the perception of how the Level V administrative segregation transition units have moved prisoners from ad-seg to Level V general population, it appears to the LTSWG that the Level V transition units have had the greater success at less cost.

The LTSWG acknowledges that it has not had a data based comparison of the "success" of the Level V transition units with the graduation results of the Level VI program. Also, as the Level VI program has only operated for 2 1/4 years, its first group of full program graduates has just recently become eligible for transfer to Level V. However, the number of prisoners placed in the Level VI PT and IPT stages is currently very small, indicating that the transition from ad-max (which could be described as a no personal property ad-seg status for a year in the hope that you can be approved to do another year without your personal property so that after that year you MAY be cleared for transfer to Level V), is the bottle neck that severely limits the prisoners who can obtain even the limited advantages of IPT and PT status.

RECOMMENDATION

1. The Level VI program including the general population status of Level VI should be abandoned. ICF should be converted into a Level V facility with both Administrative Segregation and general population prisoners.
2. The long term detention prisoners at ICF, ie those serving more than 30 days of detention, should be transferred to other Level V facilities such as Baraga Maximum Correctional Facility, Marquette Branch Prison and Alger Maximum Correctional Facility. The basis for this recommendation is the requirement in the CAIN Settlement that the LTSWG consider additional "meaningful in-cell activity" for Level VI prisoners. If Recommendation #1 is adopted, then this issue is mooted as to the Level V general population prisoners and the ad-seg prisoners because the out of cell activity available to the Level V GP prisoners eliminates the need for in-cell activity. For the Level V ad-seg prisoners, their access to their own TV and radio resolves the need for additional meaningful in-cell activity as required by the Settlement Agreement in Cain v MDOC.

However, the conversion to Level V does not resolve the issue for meaningful in-cell activity for those prisoners serving detention for more than 30 days. Even in the Level V facilities, prisoners on detention are not allowed their personal property. The Settlement Agreement requires that the Working Group(s) make recommendations regarding meaningful in-cell activity at ICF. The LTSWG feels that it is important to complete the transformation of ICF from the Level VI facility it has been to a Level V facility and that the transformation will be encouraged by the transfer out of ICF of any prisoners serving more than 30 days on detention status. This recommendation does not apply to those prisoners on long term administrative segregation status as those prisoners will, except for special restrictions required by the particular prisoner's actions, be able to have the personal property allowed Level V ad-seg prisoners. Since the focus was on ICF and its' Level VI program in the Cain Settlement Agreement, the Cain orders preceding the Settlement Agreement and the assignment of issues to the Working Groups, the removal of the long term detention prisoners to other Level V facilities resolves the ICF related issues and allows the MDOC more consistency in its use of geography to emphasize the need for improved behavior within a particular security level or status.

3. The other issues regarding Level VI at ICF are also mooted by the elimination of the Level VI program. If eliminated, there is no need to address the issue of whether prisoners should be provided more information about being placed into the Level VI program, or whether the criteria should be amended or clarified for entry into the Level VI program.

cc: Dennis M. Straub, CFA Deputy Director