



JI-CA-011-002

SETTLEMENT AGREEMENT

1
2 This Agreement settles and resolves the issues in
3 Steven L. et al. v. Kern County et al., Civ. No. CV-F-83-189
4 EDP, ("the lawsuit") a civil rights lawsuit filed May 5,
5 1983, in the United States District Court, Eastern District
6 of California challenging the legality of certain conditions
7 of confinement at the Kern County Juvenile Hall ("Juvenile
8 Hall") and Kern County Youth Facility ("KYF"). The
9 Agreement is entered into by counsel for the plaintiffs in
10 the lawsuit on behalf of the named plaintiffs and all
11 juveniles who are now, or who in the future may be confined
12 in Juvenile Hall or KYF ("Plaintiffs") and by Kern County,
13 California, by and through its duly elected Board of
14 Supervisors; Bill G. Williamson, in his capacity as Chief
15 Probation Officer of Kern County, California; Gary
16 Boleschka, in his capacity as the Director of Juvenile Hall;
17 and James R. Webb, in his capacity as Director of KYF
18 ("Defendants").

19 The lawsuit alleges, among other things, that
20 Defendants' practices and policies regarding access to
21 attorneys, mail censorship, use of isolation and other
22 disciplinary practices violates the rights of juveniles
23 confined at Juvenile Hall and at KYF as guaranteed to them
24 by the Fourteenth Amendment to the United States
25 Constitution and Section 1983 of Title 42 of the United
26 States Code. On January 31, 1986 the United States District

1 Court abstained from exercising jurisdiction in the lawsuit,
2 pending a definitive state adjudication of the issues
3 presented. The plaintiffs appealed the United States
4 District Court's decision to abstain to the United States
5 Court of Appeals for the Ninth Circuit (U.S.C.A. 86-1753)
6 and that appeal remains pending at this time.

7 The parties to the lawsuit have reached mutual
8 agreement that the terms of the Agreement described herein
9 are an appropriate and acceptable final resolution of the
10 merits of this litigation. Nothing in this agreement shall
11 be construed as any admission of prior wrongdoing or
12 liability on the part of any defendants.

13 In consideration for the Plaintiffs' voluntarily
14 dismissal of the pending appeal, and the waiver of further
15 hearings, trial findings, conclusions and rights of appeal
16 on all issues in controversy, the Defendants agree to be
17 bound by the terms of this agreement. The Defendants
18 further agree that this Agreement shall bind their
19 successors, officers, agents, servants, employees and all
20 other persons acting in concert or participation with any of
21 them, as of the date of this Agreement.

22 The parties hereby agree that, simultaneous with the
23 signing of this Agreement, they shall move for the voluntary
24 dismissal of the appeal currently pending. The parties
25 hereby agree that the Defendants and their successors in
26 interest shall by written policy adopt and implement within



1 30 days of the signing of this Agreement (to the extent not
2 already adopted or implemented), and thereafter assure
3 compliance with each and all of the obligations, practices,
4 protocols and procedures referred to in this Agreement, and
5 any additional practices, protocols or procedures necessary
6 to the performance of the same.

7
8 I. ATTORNEY ACCESS

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10 A. Attorneys will be allowed to visit minors detained
11 at KYF or Juvenile Hall without prior court approval.

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13 B. At the time of the attorney's visit, he/she will
14 be required to: present a valid State Bar of California
15 card, a valid California driver's license or another form of
16 identification, and to fill out and sign an attorney
17 visitation request form indicating that he or she has
18 received permission from the minor's parents to visit the
19 minor or that he/she has not contacted the parents because
20 to do so would violate the ethical obligations to protect
21 the client's confidences. The attorney will also indicate
22 on the form either that he/she is the attorney of record,
23 that the minor has no attorney of record or that he/she has
24 informed the attorney of record about the visit.

25
26 C. When the attorney completes the attorney visit



1 request form, a staff member will call the minor. The minor
2 will then be asked to sign the attorney visit request form
3 agreeing to the visit. If the minor signs this form, the
4 visit will take place.

5
6 D. No further written or oral consent to visitation
7 will be required.

8
9 E. Attorneys who have a written release from either
10 the minor's parent or the minor will be permitted to review
11 the minor's records, including disciplinary and medical
12 records, in Juvenile Hall and Kern Youth Facility. The
13 facilities may refuse to permit review of confidential
14 psychological and/or psychiatric records or reports or any
15 other records or reports the facilities are specifically
16 required by statute to keep confidential from a minor or
17 minor's parent, except for any such records or reports which
18 attorneys for a minor or minor's parent have a right to
19 inspect under Welfare and Institutions Code § 827.

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21 II. MAIL POLICY

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23 A. Minors may send and receive an unlimited amount of
24 mail subject to the provisions of this policy. Postage for
25 all privileged mail (as defined below) shall be paid by the
26 Probation Department. With respect to all mail other than

1 privileged mail, a limit of one (1) letter per day may be
2 sent at county expense.

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4 B. It is the general policy of the facility not to
5 read a minor's incoming or outgoing mail. All mail, except
6 privileged mail, may be routinely inspected to determine if
7 it contains physical contraband. All inspection of mail
8 shall be done by supervisory staff and shall be conducted in
9 the minor's presence. Inspection of mail shall not result
10 in the withholding of mail to or from a minor for a period
11 in excess of 24 hours (excepting legal holidays and
12 weekends).

13
14 C. Incoming and outgoing mail, other than privileged
15 mail, shall not be read or censored unless there is
16 reasonable cause to believe that one or more of the
17 following conditions exist:

18 1. The mail contains plans in the direct
19 furtherance of a specific criminal act, including specific
20 acts of violence or physical harm to a person or persons or
21 illegal gang activity.

22 2. The mail contains plans for escape.

23 3. The mail contains obscene material.

24
25 D. Privileged mail is defined as letters to and from
26 a federal, state or local court, an attorney, or public



1 officials. Privileged mail shall not be read under any
2 circumstances. Privileged mail shall not be opened unless
3 there is reasonable cause to believe that it contains
4 contraband.

5
6 E. The facility may withhold or refuse to forward
7 incoming or outgoing mail in the following circumstances:

8 1. The facility may refuse to send a minor's
9 outgoing mail if the intended recipient has made a written
10 request that mail not be sent from the minor.

11 2. The facility may disapprove, on an individual
12 basis, mail to or from another correctional facility.

13 3. The minor's parent or guardian has requested
14 in writing that the minor not send mail to, or receive mail
15 from, a particular individual. This exception shall not
16 apply to privileged mail.

17 Whenever mail is withheld or not sent pursuant to
18 subsection E of the policy, the mail shall not be read.

19
20 F. Incoming mail may be temporarily withheld but not
21 read, for a period not to exceed 24 hours (in addition to
22 the time period in section B of this policy), whenever it is
23 suspected that the contents of the mail may be disruptive to
24 the treatment and guidance objectives of the facility. It
25 is the intent of this provision to allow the facility
26 sufficient time to arrange for special counselling or other



1 services which may be of benefit to the minor.

2
3 G. Whenever incoming or outgoing mail is read or
4 withheld pursuant to this policy, a record shall be kept of
5 the action taken and the reason for it. The minor and/or
6 the correspondent shall also be notified of the action taken
7 and the reason for it. If the minor or other correspondent
8 wishes to appeal the application of this policy, they may
9 use the facility's existing grievance procedure.

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11 H. The minor shall be advised of this mail policy
12 upon intake.

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14 III. ISOLATION

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16 A. Definition. Involuntary removal of a juvenile
17 from contact with other juveniles by confinement in a room,
18 other than the juvenile's own room, when the room is locked
19 or the juvenile is otherwise restrained from leaving.
20 Confinement in the juvenile's own room is referred to as
21 "room restriction" and is not included in the term
22 "isolation."

23
24 B. Procedure. The use of isolation is a very serious
25 measure to be used only under the following circumstances
26 and conditions:

1 1. Isolation shall not be used as treatment or
2 punishment. Isolation is not a method or technique of
3 treatment or punishment. It shall be used only in cases in
4 which the juvenile presents a serious and immediate physical
5 threat to him/ herself, other detainees or staff members,
6 where prescribed by a psychiatrist, or at the request of the
7 minor. Isolation shall only be used after all other less
8 restrictive methods of control have been considered and
9 rejected or have been tried and failed.

10 2. Isolation period. The period of isolation
11 shall be structured so that the juvenile can be placed in,
12 or returned to, a group setting as soon as the objective of
13 the isolation has been accomplished. When a juvenile is
14 placed in isolation, the facility will immediately notify an
15 on-duty staff mental health professional or nurse who will
16 examine the juvenile as soon as possible. At the current
17 time, the facility has on staff a qualified mental health
18 professional eight hours a day for five days each week, and
19 a trained nurse 12 hours a day for seven days each week. In
20 the event that a staff mental health professional or nurse
21 is not on duty and the facility determines that a child
22 should not be released from isolation after three hours,
23 then the facility shall be required to consult with a
24 psychiatrist, psychologist, psychiatric aide, or other
25 mental health professional and appropriate treatment begun.

26

1 3. Place of confinement--environmental needs.

2 Any place of isolation within the institution shall be so
3 designated by the Director or his/her assignees. The place
4 of isolation shall be adequately lighted, heated, and
5 ventilated.

6 4. Use of mechanical restraints. Juveniles in

7 isolation shall not be placed in mechanical restraints
8 except that mechanical restraints may be used for purposes
9 of transporting the juvenile to or from isolation when the
10 juvenile is out of control or as a temporary emergency
11 measure when the minor is physically out of control. All
12 restraints shall be removed immediately upon the minor
13 regaining self-control. Except in transportation
14 situations, restraints shall be used solely for the
15 protection of the minor. Restraints shall never be used for
16 punishment, discipline or treatment. If restraints must be
17 used, the facility shall use only soft restraints, except in
18 extraordinary situations where the child's symptoms dictate
19 that some other form of restraint is necessary to protect
20 the child from self-injury. Only staff that has been
21 appropriately trained on the use of restraints shall be
22 permitted to place a child in restraints. The use of
23 restraints shall be limited to as short a time-period as
24 possible. If, in unusual circumstances, it is necessary to
25 keep a child in restraints more than 45 minutes, the
26 facility shall consult with an appropriate mental health



1 care professional. The facility shall keep a record of each
2 use of restraints and its duration.

3 5. Authorization of isolation. Isolation may be
4 authorized only by the Administrator of the Facility, the
5 Acting Administrator, or the officer in charge.

6 Authorization shall be immediately obtained upon placement
7 in isolation. When a determination is made to place a
8 juvenile in isolation, the Administrator, Acting
9 Administrator, or officer in charge, whichever the case may
10 be, shall immediately record in writing the time, date, and
11 reason for such determination.

12 6. Monitoring of detainees in isolation.
13 Juveniles in isolation shall be checked by a staff member
14 every fifteen minutes. A record of their condition shall be
15 entered in the log maintained at the facility. Special
16 attention shall be given to hygienic and physical or mental
17 health needs of the juveniles. Trained staff shall be
18 available to counsel juveniles throughout the period of
19 isolation.

20
21 IV. ROOM RESTRICTION

22
23 A. Definition.

24 1. Room restriction refers to separation of a
25 juvenile from the other juveniles in his/her unit by
26 confining the juvenile in his/her own room.

1 2. Juveniles confined to their rooms shall be
2 checked by staff and a record of their condition entered
3 into the log maintained at the facility every 20 minutes.
4 Trained staff shall be available to counsel juveniles
5 throughout the period of room confinement.

6 3. For the purposes of computing time on room
7 restriction, regularly scheduled sleeping hours shall be
8 excluded therefrom.

9
10 B. Limitations on sanctions.

11 1. In no instance shall room restriction involve
12 the denial or reduction of the following basic rights: A
13 place to sleep, e.g., a bed, a pillow, blankets and sheets;
14 full meals; adequate and appropriate clean clothes; reading
15 materials; health care services; personal hygiene items,
16 e.g., toothpaste, soap, tooth-brush, comb, etc., and
17 opportunities for personal hygiene including showers; at
18 least an hour of large muscle exercise per day; education;
19 sending or receiving mail; attending religious services;
20 telephone contacts and visits with parents and attorneys.
21 This provision does not prohibit the temporary denial of an
22 activity or the removal of an object when it constitutes a
23 danger to the safety of the minor or staff when the minor
24 has persisted in destroying or attempting to destroy the
25 object(s) or similar objects.

26 2. The period of room restriction shall be



1 structured so that the juvenile can be placed in, or
2 returned to, a group setting as soon as the objective of the
3 room restriction has been accomplished. While on room
4 restriction, a juvenile shall be allowed out of his/her room
5 as much as possible during the period of room restriction,
6 and every juvenile shall be allowed out of his/her room for
7 a minimum of one hour during the period 8:00 a.m. to 8:00
8 p.m., except in those extraordinary circumstances where
9 releasing the minor from his or her room would pose a danger
10 to the minor or other persons. In general, no juvenile
11 shall be placed on room restriction in excess of 48 hours,
12 excluding sleeping hours. If, however, it appears that a
13 juvenile will not be able to safely return to regular
14 programming within this time period, the facility will
15 contact an appropriate mental health professional as soon as
16 this determination is made and, in no event, later than the
17 expiration of the 48-hour time period (excluding sleeping
18 hours). As soon thereafter as possible, the mental health
19 professional and the facility staff will develop an
20 appropriate written individualized treatment plan designed
21 to reintegrate the juvenile into the regular program. A
22 written record of this plan and the minor's performance
23 pursuant to this plan will be maintained by the institution.

24 3. Juveniles shall not be placed on room
25 restriction or otherwise disciplined for behaviors that are
26 beyond their control.

1 V. DISCIPLINE AND DISCIPLINARY PROCEDURES

2
3 A. Development of Rules and Policies. The facility
4 shall maintain and follow a comprehensive set of rules of
5 conduct and policies, violation or application of which may
6 result in the imposition of one or more program sanctions.
7 These sanctions shall be clearly and specifically set out in
8 these rules.

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11 B. Notice of Rules and Polices. At the time of
12 admission to the facility, each juvenile shall be provided
13 with an individual written copy of all rules of conduct and
14 policies of the facility, violations or applications of
15 which may result in one or more program sanctions.
16 Juveniles who cannot read or who have difficulty reading
17 shall be provided with an oral explanation of these rules
18 and policies.

19 Copies of written rules and procedures shall be
20 prominently posted throughout the facility in locations
21 reasonably accessible to viewing by all juveniles.

22 In addition to the above provisions, staff of the
23 facility shall respond to any request by a juvenile for
24 information concerning these rules and procedures.

25
26 C. Any juvenile who is subject to punishment which

1 affects the length of time that the juvenile will spend in
2 either the juvenile detention facility or in KYF shall be
3 entitled to the following procedural rights.

4 1. A written notice of the charges against the
5 juvenile.

6 2. A hearing before a neutral fact-finder. The
7 neutral fact-finder shall not be a staff member who imposed
8 the punishment or that staff member's direct supervisor. At
9 this hearing, the juvenile shall be entitled to present
10 his/her explanation of events and to call witnesses in
11 support of his position. This hearing shall take place
12 before the penalty is imposed and within 72 hours of the
13 incident which gives rise to the penalty.

14 3. The juvenile shall have the opportunity to
15 appeal the decision of the neutral fact-finder to the
16 administrator of the facility.

17
18 VI. MONITORING

19 For a period of one year following the entry of this
20 agreement, the defendants agree to provide plaintiffs
21 counsel with information regarding compliance with this
22 agreement. Particularly, defendants agree to provide
23 quarterly summaries regarding:

24 1. The numbers of juvenile placed in isolation
25 and the duration of the isolation;

26 2. The numbers of juveniles in isolation placed



1 in mechanical restraints and the duration of the use of
2 restraints;

3 3. The numbers of juveniles kept on room
4 restriction in excess of 48 hours (excluding sleep time).

5 Plaintiffs' counsel agree to promptly notify
6 defendants' counsel if, in the judgment of plaintiffs'
7 counsel, information contained in these summaries or other
8 information indicates that defendants' practices or policies
9 may be inconsistent with the terms of this agreement. Upon
10 a satisfactory showing from plaintiffs, defendants agree to
11 provided appropriate additional documentation to demonstrate
12 that defendants are in compliance with the terms of this
13 agreement.

14
15 VII. COMPLIANCE AND ENFORCEMENT

16 Should any dispute arise as to the interpretation or
17 application of, or any party's compliance with, this
18 Agreement, the parties shall first attempt to resolve the
19 dispute among themselves. In the event that they are
20 unsuccessful, counsel for the plaintiffs or any juvenile
21 aggrieved by a violation of this Agreement, may enforce this
22 Agreement in the state courts of California. For purposes
23 of initiating or participating in any action seeking
24 enforcement or interpretation of this Agreement, a juvenile
25 confined at Juvenile Hall or KYF is authorized to proceed as
26 a third party beneficiary. The parties agree that this



1 Agreement imposes mandatory duties on the part of the
2 Defendants which may be enforced by a writ of mandate under
3 California Civil Code Sections 1084 et seq. If a court
4 finds the Defendants to be in violation of this Agreement,
5 the court may enter an order mandating compliance with its
6 terms.

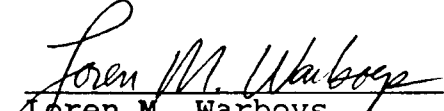
7 In the event that any individuals, other than the
8 Defendants, prevail in litigation regarding the enforcement
9 or interpretation of this Agreement, they shall be awarded a
10 reasonable amount for attorneys' fees and expenses. This
11 provision shall not preclude defendants from obtaining
12 attorneys' fees and costs if a court determines that an
13 action brought against them was frivolous or in bad faith.
14 Any attorneys' fees awards shall be determined by the court
15 in which such litigation is pending in accord with the same
16 standards and principles governing the award of fees and
17 expenses under 42 U.S.C. Section 1988.

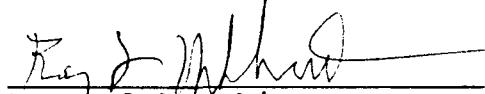
18 This Agreement resolves all of the outstanding issues
19 before the Court in Steven L. v. Kern County and contains
20 the entire agreement between the parties with the exception
21 of an outstanding claim for payment of attorneys fees and
22 expenses for the work of plaintiffs' counsel on the lawsuit.
23 This Agreement does not constitute a waiver of this claim.
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NOW THEREFORE, in mutual consideration of all of the foregoing terms and conditions the parties enter into this Agreement.

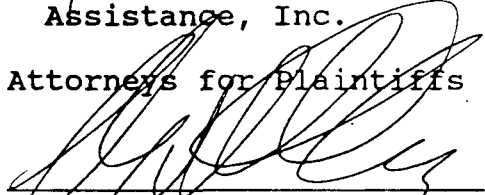
Dated: March 7, 1991


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