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SUPERIOR COURT OF CALIFORNIA
CITY AND COUNTY OF ALAMEDA

11 MARGARET FARRELL,

12 Plaintiff,

13 vs.

14 RODERICK HICKMAN,

15 Defendant.

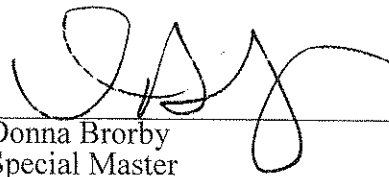
) Case No.: RGO3079344

) FIRST REPORT OF SPECIAL MASTER

) COMPLIANCE WITH INTERIM
) MEASURES PROVISIONS OF CONSENT
) DECREE AND JANUARY 31, 2005
) STIPULATION

16 Pursuant to paragraph 28 of the November 2004 Consent Decree, the Special Master
17 submits for filing the attached report. The report assesses defendant's compliance with certain
18 provisions of the Consent Decree and the January 31, 2005 Stipulation Regarding California
19 Youth Authority Remedial Efforts. In particular, the report assesses compliance with court
20 ordered requirements to prepare comprehensive remedial plans and to take certain ameliorative
21 actions with respect to particular conditions within the Division of Juvenile Justice.
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24 Dated: April 5, 2006

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Donna Brorby
Special Master

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PROOF OF SERVICE

I, Cathleen Beltz, declare that:

I am employed in the City and County of San Francisco, California. I am over eighteen years of age, and not a party to the within cause; my business address is 605 Market Street, Ninth Floor, San Francisco, California 94105-3211.

On April 5, 2006, I caused to be served the FIRST REPORT OF SPECIAL MASTER, COMPLIANCE WITH INTERIM MEASURES PROVISIONS OF CONSENT DECREE AND JANUARY 31, 2005 STIPULATION on the parties in said cause by placing in a United States Post Office mail deposit box a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, addressed as follows:

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I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on April 5, 2006 at San Francisco, California.

Date: April 5, 2006

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FIRST REPORT OF SPECIAL MASTER
COMPLIANCE WITH INTERIM MEASURES PROVISIONS
OF CONSENT DECREE AND JANUARY 31, 2005 STIPULATION

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I. INTRODUCTION

The Consent Decree, entered in November 2004, concerns most conditions and practices in what was the California Youth Authority and is now the Division of Juvenile Justice of the California Department of Corrections and Rehabilitation (“DJJ”). Under the Consent Decree, DJJ was required to develop six remedial plans in consultation with experts jointly selected by the parties (“consent decree experts”), and with the plaintiff and the Special Master. The plans were to be filed by January 31, 2005 unless the parties required more time to resolve disagreements about them.¹ Once the plans were in place, the Consent Decree experts and the Office of the Special Master would monitor DJJ’s compliance with those plans.

The parties changed the planning timetable when they agreed that DJJ could not ameliorate the deficiencies identified in reports prepared by the Consent Decree experts in 2003 and 2004 without replacing the adult prison model that had taken hold with a more appropriate rehabilitative juvenile corrections model. As a result, the parties extended the time to develop plans for such a rehabilitative model to November 30, 2005.

In addition to its provision for comprehensive remedial plans, the Consent Decree required DJJ to develop and implement “interim” plans to improve some practices and conditions for youth pending the development of the plans that would govern long-term reform. In January 2005, when the parties extended the deadline to file the plans based on a rehabilitative model, the parties agreed that DJJ had “implemented interim measures to address deficiencies identified in the expert reports” and that DJJ would take further specified interim actions pending completion of the remedial plans due by November 30, 2005.²

¹ Consent Decree, ¶¶ 8-19.

² January 31, 2005 Stipulation Regarding California Youth Authority Remedial Efforts (“January 31 stipulation”).

The Special Master files this report to document the extent of compliance with the various interim measures to which the parties agreed in the Consent Decree and in the January 31, 2005 Stipulation Regarding California Youth Authority Remedial Efforts (“January 31 stipulation”). The Consent Decree has a few provisions imposing additional requirements on DJJ independent of the remedial plans, and this report will also cover DJJ’s compliance with those provisions. In a separate report(s), the Special Master will address the audits and reports Consent Decree experts regarding DJJ’s compliance with the filed remedial plans concerning education, sex behavior treatment, disability and medical care.

The Special Master and Monitor gathered the information reported here in meetings, at facility sites, and from documents provided in response to our requests. It covers the time period from November 2004 when the Special Master was appointed through January 2006, with a few comments based on information provided by defendant after the draft of this report was submitted to the parties on February 11, 2006.

This report documents that defendant has substantially complied with some of the interim requirements and substantially failed to comply in other areas. The process of reforming DJJ is still in its beginning phases but it is moving forward. Given the myriad of systemic problems that DJJ faces, after having been in a downward spiral for decades, it is not surprising that there has been a slow start to reform.

II. DEVELOPMENT OF REMEDIAL PLANS

A. Four Of Six Remedial Plans Approved By Court Experts And Accepted By Plaintiff

Under the November 2004 Consent Decree, defendant was required to prepare remedial plans that would chart DJJ’s reform to an agency that would “provide all youth in the CYA with

adequate and effective care, treatment and rehabilitative services.”³ Defendant was required to consult with the court experts, plaintiff’s counsel and the Special Master. More specifically, defendant’s plans were required to address the deficiencies identified in the experts’ reports in each of six subject matter areas: general corrections, mental health including substance abuse treatment and programs and services for youth in restricted housing, medical care, education, sex behavior treatment and conditions and services for youth with disabilities. The plans were to be filed by January 31, 2005 unless there was an unresolved dispute between the parties concerning them.⁴

After entry of the Consent Decree in November 2004 and before execution of the January 31 stipulation, defendant prepared proposed remedial plans in all areas of the case except access/conditions for disabled youth. The proposed disability plan was delayed by the outside expert’s schedule, a matter beyond defendant’s control. The proposed remedial plans reflected consultation with the relevant experts, plaintiff’s counsel and the Special Master and considerable effort by the DJJ staff that prepared them. Nonetheless, the experts and plaintiff maintained serious objections to several of the proposed remedial plans. Plaintiff also strenuously argued that California should follow the lead of other states and replace its prison model with a rehabilitative model for juvenile corrections, which would require a radical transformation of DJJ. Toward that end, counsel for both parties and DJJ officials investigated alternative models in December 2004 and January 2005.⁵ As the January 31 stipulation reflects, defendant then committed to abandon its current prison model and to implement a rehabilitative

³ Consent Decree, ¶ 8.

⁴ *Id.*, ¶¶ 8-17.

⁵ The group visited at least one private facility in California and state facilities in Missouri, Texas, Florida, Washington, and Colorado.

model based on principles prioritizing maintenance of a safe therapeutic environment, positive reinforcement, individualized rehabilitative and treatment services and successful reintegration of youth into their communities as productive, law-abiding citizens.

The January 31 stipulation, the Medical Interim Plan and Mental Health and Rehabilitation Interim Plan together required that defendant submit “a programmatic description of the rehabilitative model chosen for the CYA” by May 2005, and its Ward Safety and Welfare and Mental Health and Rehabilitation plan by November 30, 2005. The January 31 stipulation required that DJJ submit its Medical Care Interim Plan by February 4, 2005; its Education Remedial Plan by March 1, 2005; its Mental Health Interim Remedial Plan by April 8, 2005; its Disabilities Remedial Plan and the Sex Behavior Treatment Remedial Plan by May 2, 2005 and its Medical Remedial Plan by September 1, 2005. Subsequently, defendant timely filed the following plans that the relevant experts and plaintiff’s counsel agreed were adequate: Medical Care Interim Plan, Education Remedial Plan, Mental Health Care Interim Plan, Disabilities Remedial Plan, and Sex Behavior Treatment Remedial Plan. Defendant timely completed his Medical Care Remedial Plan in September 2005 and filed it in March 2006 upon the resolution of a disputed issue concerning pay parity for DJJ and adult prison system clinical staff. Defendant filed his proposed remedial plans for Ward Safety and Welfare and Mental Health Care contemporaneously with the parties’ November 30, 2005 Stipulation Regarding Safety and Welfare Remedial Plan and Mental Health Remedial Plan (“November 30 stipulation”) providing for revision of the proposed plans by jointly selected experts.⁶

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B. Two Remedial Plans Under Revision By Agreed Nationally Recognized Experts

In May 2005, defendant timely filed a Programmatic Description of the Rehabilitative Model for DJJ that Consent Decree experts Barry Krisberg, Ph.D., and Eric Trupin, Ph.D., informed the parties and the Special Master incorporated many appropriate concepts and practices but was inadequately developed. Defendant acknowledged that the programmatic description/model was still in the early stages of development and articulation, partly because he had not marshaled sufficient resources for the effort. Defendant pointed to commitments in the programmatic description/model to concepts and programs recommended by experts Krisberg and Trupin and asked plaintiff's counsel and the experts to wait for more specificity and detail in the remedial plans. As reflected in the pleading they filed, plaintiff's counsel agreed to reserve their objections pending defendant's development of the Safety and Welfare and Mental Health and Rehabilitation Remedial plans due November 30, 2005.

In late July 2005, DJJ selected a new top administrator, Bernard Warner, as Chief Deputy Secretary, Juvenile Justice, California Department of Corrections and Rehabilitation. It also assembled a six or so member dedicated internal planning team to develop the Ward Safety and Welfare Remedial Plan.⁷ As that team started work in July, it did not have enough time to complete an adequate Safety and Welfare Remedial Plan, complete with implementation and resource details, by November 30, 2005.⁸ The team worked hard and long and under great pressure and did a lot of very good work between the end of July and November 30, reflected in

⁷ Statements of DJJ management and administrative staff, meeting with DJJ officials and staff, counsel and Consent Decree experts August 3-4, 2005.

⁸ In order to meet the deadline, defendant would have had to assemble such a dedicated team relatively soon after January 31 when he committed to produce a reform plan by November 30. There were, however, competing demands for staff time and attention.

the defendant's proposed⁹ Ward Safety and Welfare Remedial Plan that defendant filed on December 1, 2005, and in the Governor's budgetary proposals that were released in January 2006. The team reviewed suggestions made by plaintiff's counsel and Consent Decree experts Krisberg and Trupin and incorporated some of them, though the shortness of the deadline prevented full consideration of the suggestions and incorporation of more of them. As was inevitable due to the magnitude of the project and the time and resource constraints under which the team labored, the draft of the plan that defendant filed on December 1, 2005 was not fully adequate and complete, particularly in its lack of implementation and resource details. The Consent Decree experts and plaintiff refused to accept it and the parties negotiated the November 30 stipulation under which nationally recognized experts in juvenile justice were engaged to review and revise the plan.

DJJ staff assigned to the project worked diligently with Consent Decree mental health expert Trupin on the Mental Health Remedial Plan. Dr. Trupin did not approve the plan filed December 1, 2005, and plaintiff did not agree that it was a sufficient remedial plan because it lacked staffing and other resource and implementation details. DJJ asserted that it was unable to put the resource details in the plan before the Governor's proposed budget was finalized and made public. The Plan also suffered from insufficient clinical input, in large part explained by the fact that DJJ's Chief Psychiatrist position was not filled until September 2005, and its Chief Psychologist position was still unfilled as this report was completed.

⁹ The Ward Safety and Welfare and Mental Health Remedial plans defendant filed on December 1, 2005 are "proposed" plans in that they have been proposed by defendant but they have not been accepted by plaintiff or approved by the Consent Decree subject matter expert. The education, sex behavior treatment, disability and medical care remedial plans have been accepted by plaintiff and approved by the Consent Decree subject matter expert.

Both the proposed Ward Safety and Welfare and Mental Health Care remedial plans that defendant filed on December 1, 2005, provided for expert consultants to develop systems, programs and implementation plans. The Consent Decree experts Krisberg and Trupin had recommended the use of outside consultants as defendant made and implemented plans to transform DJJ, and DJJ administrators agreed that outside expertise was necessary and desirable. By the November 30 stipulation, the parties provided for the review and revision of DJJ's plans by nationally recognized experts working with the Consent Decree experts, the parties and the Special Master. The experts have provided the parties with a proposed revised Ward Safety and Welfare Plan and they will complete a revised Mental Health Plan by May 30, 2006. Defendant is required to file final remedial plans by June 30, 2006. The parties believe that they have devised a process and retained experts that will result in the final plans being sufficient and complete remedial plans.¹⁰

III. INTERIM MEASURES TO IMPROVE CONDITIONS FOR YOUTH PENDING DEVELOPMENT AND IMPLEMENTATION OF REMEDIAL PLANS

The Consent Decree required DJJ to take certain actions as "interim measures" to improve conditions for youth in its custody pending reforms under comprehensive remedial plans. It required defendant to develop and implement interim plans to (1) classify youth by their risk to others, (2) reduce violence and the need for the use of force, (3) immediately provide for the treatment and management of youth on suicide watch and those who require transfer for acute psychiatric treatment, (4) reduce length of stay in segregated confinement, and (5) revise intake criteria to exclude youth who could not "materially benefit" from DJJ's "reformatory and

¹⁰ November 30 stipulation, ¶¶ 3, 4 and 7.

education discipline.”¹¹ The January 31 stipulation clarified and supplemented the interim actions.

A. Classification Based On Security Risk

Following the strong recommendation of juvenile corrections expert Krisberg, the parties agreed in the Consent Decree that DJJ would devise and implement a system to separate youth based on their risk of harm to others:

By November 1, 2004, Defendant shall propose to counsel for Plaintiff interim measures to classify wards based on their security risks and treatment needs. Defendant shall consult with Dr. Barry Krisberg when developing this proposal. The parties shall meet and confer about the proposal by December 15, 2004. Any disputes that remain after the negotiations shall be addressed through binding arbitration at the earliest available date. Defendant shall implement the interim classification scheme using a system of phased implementation as soon thereafter as possible, but no later than 90 days after the scheme has been finalized.¹²

DJJ had developed a proposal by November 2004 that Dr. Krisberg approved and that plaintiff accepted before December 15, 2004. DJJ staff worked with Dr. Krisberg in undertaking initial steps to implement its interim proposal, and reported its failure to go beyond the initial steps to him in July 2005.¹³

By November 2004, DJJ staff had developed an initial classification tool that they and Dr. Krisberg agreed adequately differentiated youth by the risk they posed to others, though DJJ staff were going to pursue one more idea for improving the degree of differentiation. Then, in early 2005, DJJ proposed to apply the initial classification tool to its existing population and all incoming commitments to determine each youth’s risk category. In the same timeframe, it proposed to evaluate its housing stock and plan how to separate at least the highest and lowest

¹¹ Consent Decree, ¶ 7.

¹² *Id.*, ¶ 7 a.

¹³ Memorandum of Barry Krisberg (“Krisberg 2006 Memorandum”), attached hereto as Appendix A, p. 2.

risk youth. Finally, DJJ would separate the youth that posed the highest risk to others, while housing them where their treatment needs would be met. Concurrently, DJJ would develop a proposed reclassification instrument or decision rules to reclassify youth by risk to others, based on institutional behavior. The reclassification decision rules or instrument would be integrated into the system for separating out those who posed the greatest risk to others.¹⁴

The proposal was memorialized in the January 31 stipulation: “CYA staff, while implementing the open programming model, will identify the wards most at risk of committing violent acts and separate them from the wards most vulnerable to attack.”¹⁵ DJJ then failed to discharge its commitment and legal obligation to implement the proposal. As the parties stipulated on November 30, 2005:

DJJ did not implement the interim measures it proposed under the Consent Decree to classify and house wards based on their security risks (in addition to their treatment needs), and it did not implement those or alternative measures under the January 31, 2005 stipulation to identify wards most at risk of committing violent acts and separate them from wards most vulnerable to attack.¹⁶

DJJ fine-tuned the initial classification tool and applied it to all youth, and it evaluated and categorized its housing stock for lower and higher risk (to others) youth.¹⁷ But, it then failed to separate the highest from the lowest risk youth.¹⁸ It did not seek relief from the Consent Decree obligation.

¹⁴ Statements of DJJ research staff during meeting with Special Master and Consent Decree expert Krisberg, November 22, 2004. *See also*, App. A Krisberg memorandum, p. 2.

¹⁵ January 31 stipulation, ¶ 2. b.

¹⁶ November 30 stipulation, ¶ 6.

¹⁷ That evaluation reflected little differentiation within DJJ’s housing stock beyond cells and dorms, but greater differentiation could have been achieved by staffing differentials.

¹⁸ Statements of DJJ headquarters staff, July 27, 2005. *See also*, App. A Krisberg memorandum, pp. 1-2.

In the November 30 stipulation, the parties put the matter of classification by risk to others in the hands of one of the nationally respected experts they were retaining to revise the Ward Safety and Welfare Remedial Plan. Specifically, they provided:

. . . . Pending implementation of the risk needs assessment as described in the Ward Safety & Welfare Plan filed in conjunction with this stipulation, DJJ will direct Chris Baird to prepare a revenue neutral interim classification plan to increase safety for youth by separating them from each other based on security risks, consistent with mental health treatment and rehabilitation needs, as quickly as he would recommend. Unless justified by compelling reasons, DJJ will implement Chris Baird's proposed revenue neutral interim classification plan according to a timetable Mr. Baird recommends that takes into account DJJ's legal constraints. DJJ will measure the short-term impact on safety according to means that Mr. Baird suggests as meaningful. Mr. Baird will consult with DJJ, plaintiff's counsel, the Special Master and Consent Decree designated experts prior to finalizing the plan.¹⁹

This provision supercedes the Consent Decree provision on interim measures for risk classification.

B. Reduction Of Violence And Use Of Force

The Consent Decree required defendant to develop and implement an interim plan to reduce violence and the need for the use of force with a focus on policy and training to get staff to use persuasion and de-escalation techniques in place of force. Specifically, it provides:

By November 1, 2004, Defendant shall develop, and by December 15, 2004, defendant shall implement a plan to reduce violence and the need for the use of force within the CYA. This plan shall include, but is not necessarily limited to, the following components:

- (1) New policies and procedures to eliminate the unnecessary use of room extractions and chemical agents;
- (2) Training of appropriate staff on the new policies and procedures. Each session of the training shall include a correctional administrator with experience in reducing violence at correctional facilities;

¹⁹ November 30 stipulation, ¶ 6.

(3) Training of appropriate correctional and clinical staff on the use of non-violent offender management techniques;

(4) The use of de-escalation techniques to defuse planned uses of force by staff involving potentially violent confrontations with youth.²⁰

By November 2004, defendant had developed and partially implemented a plan to reduce violence and the use of force in DJJ. Defendant's plan was not fully memorialized in writing, but as verbally presented to plaintiff, the Special Master and expert Krisberg it included:

(1) Training supervisory and line-staff in communication and interaction skills to improve their skills in managing youth behavior;

(2) Increasing activities for youth and staff use of positive incentives to motivate youth to obey rules and achieve;²¹

(3) Revising the use of force policy to distinguish immediate uses of force to protect persons and prevent harm from planned/strategic uses of force (*e.g.*, cell extractions) and to require a deliberate process and additional staff members before planned force was used:

(4) Revising the use of force policy to add a centralized force review process;

(5) Retaining consultants Steve Cambra²² and Carl Larson to do an "emergency" use of force training based on the new use of force policy;

(5) Retaining consultants Cambra and Larson to assist in the training of supervisors on the new use of force policy;

²⁰ Consent Decree, ¶ 7. b.

²¹ Defendant raised the possibility of negotiating changes in employee shift schedules in order to increase hours per day for supervised activities and to provide more supervised activities on weekends ("extended program day") but no firm commitment was made.

²² Both parties respect Mr. Cambra as a correctional administrator with experience in reducing force and violence at correctional facilities (notably Pelican Bay of CDCR's adult system).

(6) Using the newly trained supervisors to conduct mandatory training for line staff on the new use of force policy;

(7) Requiring the implementation of a contemporaneous use of force reporting process by all employee participants and witnesses;

(8) Creating and maintaining a system to collect and summarize use of force data and produce monthly and annual use of force statistics and reports for management use.

The January 31 stipulation further specified that defendant would increase activities and positive incentives for youth by implementing “open programming” for “general population” youth and a “Ward Incentive Program.” Specifically:

By February 15, 2005, the CYA will develop a plan and by March 1, 2005, will begin implementation to institute an open programming model at N. A. Chaderjian Youth Facility and Heman G. Stark Youth Correctional Facility to end their lockdown model and restore safe general population programming and to ensure that wards are out of their rooms/cells daily for educational, vocational, and treatment programming as well as meals and recreation. Implementation is expected to be completed by June 1, 2005 . . .

By May 2, 2005, the CYA shall extend the open programming model to all other institutions.

By April 1, 2005, the CYA will replace the phase system with a ward incentive plan to encourage positive programming through positive reinforcement. The Plan shall be fully implemented by June 1.²³

1. Reduction Of Youth Violence And Victimization

a. Staff Training, Open Program And Ward Incentive Programs Intended To Reduce Violence

Three of defendant’s interim violence and force reduction plan provisions summarized above were intended to reduce youth violence: training staff in communication and interaction skills in youth management, increasing out-of-cell time and activities for youth (“open

²³ January 31 stipulation, ¶¶ 2.a, c and f.

program”) and staff use of positive incentives to motivate youth to obey rules and achieve (“ward incentive program”). These provisions come from the plan that defendant proposed under paragraph 7.b. of the Consent Decree, and their scope was greatly increased by the January 31 stipulation in which defendant agreed, and by which defendant is required, to “end their lockdown model” where it existed and “restore safe general population programming.”

In November 2004, defendant provided plaintiff and the Special Master with a 50-page set of Instructor Notes for a four-hour staff training course on “Effective Interaction,” as part of his plan for interim measures.²⁴ Defendant then represented that all staff would be provided the training, and subsequently has represented that DJJ staff have in fact been provided with “Effective Interaction” training, during the January 2004 “7K” training cycle.²⁵ Administrators at all facilities affirmed that their staff had participated in the communications/interaction and other training.²⁶

Staff at the Stark facility developed a special 12 hour training for all staff, supplemental to the effective interaction training mandated by headquarters, to support the open programming initiative; this supplemental training included an “effective staff/youth interaction” component.²⁷ The special training at Stark positively impressed consultant Cambra.²⁸

The Chaderjian facility staff was engaged in an intensive training campaign in spring 2005 as a part of implementing the open program initiative. In April 2005, the Special Master and monitor Cathleen Beltz observed most of one and all of a second training in effective

²⁴ This training guide is attached as Appendix B.

²⁵ CDCR Staff Counsel, email to the Special Master, February 7, 2006.

²⁶ Statements to Special Master and Monitor during site visits April 2005 – March 2006.

²⁷ Statements to Special Master and Monitor during site visit November 29, 2005.

²⁸ Statement of Steve Cambra to Special Master, March 23, 2006.

communication and leading large and small groups. Most of the instructional material for that training was from the Effective Interaction Instructor Notes that defendant had provided in November 2004.

Monitor Beltz reviewed facility training documentation indicating that the “effective interaction,” “open program,” and “ward incentive program” trainings had been provided and that most staff attended. Interviews with training officers indicated that the trainings were mandatory, make-up sessions were scheduled, and most staff attended the trainings. Unfortunately, it was not possible to determine from training records which staff or what proportion of staff failed to attend the trainings. Documentation of training is inconsistent between facilities and incomplete.²⁹

Defendant promulgated policies for open programming and the ward incentive program and directed facilities to comply with those policies. Defendant provided an initial version of the open program plan for the Chaderjian and Stark facilities to plaintiff, expert Krisberg and the Special Master on February 14, 2005. Plaintiff and expert Krisberg observed that the plan lacked implementation detail. Defendant provided a revised version of the plan to plaintiff and the Special Master on April 8, 2005.³⁰

Defendant provided plaintiff and the Special Master with a copy of an April 1, 2005 memorandum to all Superintendents and Assistant Superintendents directing them to implement the “immediate phase” of the ward incentive program (1 hour later bedtime for youth with no

²⁹ Observation of the Special Master and Monitor based on review of training records and statements of facility and headquarters staff.

³⁰ The revised version of the Open Program Model Plan is attached as Appendix C.

misconduct) by April 5.³¹ According to DJJ headquarters staff, the ward incentive program was implemented in three parts, the daily late bed line, the 15-day program credit, and the individual incentives (points that come with levels that can be spent on privileges and access to special commissary items).³² The version of the ward incentive policy that was current in January 2006 is attached as Appendix E.

According to defendant's records, 140 youth were earning 15 day/month program credits in December 2005,³³ up from 42 in September.³⁴ As this report was completed, DJJ still was in the process of replacing the old phase system with the new ward incentive program. Youth correctional counselors could not keep track of youths' levels under the new system until DJJ's database, the Ward Information Network ("WIN") was modified to permit it. They were trained on the WIN modification in late 2005 and early 2006.³⁵ The ward incentive program reflects defendant's intention and effort to increase the use of positive incentives to encourage youth compliance and achievement, and to build a positive relationship between staff and youth. It likely will be modified or superceded by integrated and comprehensive strategies under the Ward Safety and Welfare Remedial Plan due to be filed June 30, 2006.

³¹ The memorandum is attached as the second page of Appendix D.

³² Statements DJJ headquarters staff in meeting with Special Master, expert Barry Krisberg, July 27, 2005.

³³ The breakdown by institution is: Stark 21, SRCC 7, O.H. Close 17, Ventura 13, DeWitt Nelson 38, Preston 7, Paso Robles 24, Chaderjian 2, and Pine Grove 11. According to defendant, the 15-day/month-program credit is limited to a maximum of 180 days per annual parole board review appearance and cannot be carried over from one year to the next. Email, CDCR counsel to the Special Master, January 27, 2006.

³⁴ Statement Preston Superintendent, September 12, 2005.

³⁵ Special Master's staff interviews at Preston December 29, 2005 and monitor Beltz's staff interviews at Preston March 10, Stark March 13, Ventura March 14 and Close March 17, 2006 (staff felt that they were finally able to fully implement the program after recent training and conversion of the WIN database so they could use it for tracking WIP levels).

The Special Master and monitor Beltz visited all facilities, most of them more than once, during 2005 and early 2006.³⁶ On each site visit, they met with facility administrators and interviewed numerous youth and line staff from some or all areas of the facility. On the basis of their interviews, the Special Master finds: (1) by summer 2005, staff at all institutions and youth at most institutions (certainly including Chaderjian and Stark) were generally aware that programs affecting activities and privileges were being implemented and that institutional operations were changing;³⁷ (2) by summer 2005, the open program and ward incentive initiatives resulted in a late bed line, increased in out-of-cell/dorm activities and/or special privileges for many youth on several institutions which they felt was an improvement in conditions for them;³⁸ (3) throughout 2005, a significant number of youth outside of restricted programs spent 21 or 22 hours a day in their cells (e.g., parole violators pending revocation, reception status youth, high school graduates and youth with GEDs who did not have jobs, some general population housing units at Stark and Chaderjian facilities during at least parts of 2005); (4) at the end of 2005, many youth and staff still did not understand all aspects of the ward incentive program, though the level of staff understanding increased substantially in December 2005 and early 2006 as the program was implemented on WIN and staff received formal training; (5) many youth are very interested in the possibility of earning extra program credits but few understand the how the 15-day credit program works and how they might qualify for it; (6) neither staff nor youth generally perceived that the ward incentive program was a significant

³⁶ The site visit schedule is attached as Appendix F.

³⁷ Staff were aware of them as the “open program” and “ward incentive program.”

³⁸ This increase in out-of-cell activity included congregate meals for 1 or 2 meals per day for a number of wards at Chaderjian, Stark (as well as other facilities where group dining was occurring prior to “open program.”)

change from the phase system it replaced, though many staff and youth cited the increased privileges and social and recreational activities as beneficial for many youth at several facilities.

b. Data Does Not Show Systemic Reduction In Violence, But Does Indicate Reduction In Violence At Chaderjian After Population Was Reduced

The open program and ward incentive programs, with staff training in communication and youth management, were devised as strategies to reduce violence in DJJ. Consent Decree expert Krisberg had found a “stunning amount of violence” in 2003, based on disciplinary, incident and use of restraint (force) reports.³⁹ Monitor Beltz reviewed substantially equivalent documentary information for 2004 and 2005. Overall, violence does not appear to have decreased since the expert site visits in 2003 or entry of the Consent Decree in November 2004. However, defendant’s reduction of the population at Chad in 2005 seems to have resulted in a decrease in violence at that institution.

DJJ still does not have a system to measure the incidence of violence in its facilities, as Dr. Krisberg reported was true in 2003.⁴⁰ This as a problem that DJJ has committed to solve in its proposed Safety and Welfare Remedial Plan,⁴¹ but at this time it is not possible to draw many firm quantitative conclusions about the incidence of violence in DJJ. Facilities are required to make Serious Incident Reports (“SIRs”) on some types of incidents involving violence, and headquarters keeps a summary of those. The criteria for what incidents require SIRs, however, leave much room for subjective judgment.⁴² Also, the most common incidents of violence,

³⁹ Krisberg, *General Corrections Review of the California Youth Authority* (December 23, 2003), p. 23 (“Krisberg 2003 report”). The report was among the expert reports that were the basis for the Consent Decree.

⁴⁰ Krisberg 2003 report, pp. 22-23.

⁴¹ Defendant’s proposed Ward Safety and Welfare Remedial Plan, p. 101

⁴² The criteria are attached as Appendix G.

youth on youth assaults, are not reported by SIR. Finally, an inconsistent special manual count of SIRs that the Special Master has reviewed casts some question on the accuracy of the regularly kept summaries.⁴³ Monitor Beltz's analysis of the summaries indicates an increase in reportable serious incidents involving violence and staff use of force from fiscal year 2003-2004 to fiscal year 2004-2005, and a decrease in the third quarter of 2005.⁴⁴ The Special Master has not determined whether the trends in SIR data correlate with real changes in certain kinds of incidents or are a product of reporting practices.

All youth acts of violence are disciplinary violations, which raises the possibility that disciplinary rates might be a proxy for violence. On the other hand, many factors are likely to affect discipline, including staff attitudes and practices, the range of misconduct at an institution, the extent of freedom of movement versus lockdown/segregation. As Dr. Krisberg noted in 2003, there is no standard for levels of discipline for violence in juvenile facilities and no data to support cross-institutional comparisons.⁴⁵

The Monitor and Special Master reviewed substantially the same quarterly DDMS disciplinary data that Dr. Krisberg reviewed for his 2003 report.⁴⁶ Since the disciplinary system was substantially modified in 2003, the Special Master has not attempted to compare recent data with the 2002 data. The more recent data indicates that disciplinary rates generally were slightly higher in 2005 than in 2004. There are various possible explanations for this, as well as for the

⁴³ The official summaries show a total of 64 incidents for the third quarter of 2005; the manual count, which is unofficial, shows 126 incidents.

⁴⁴ The analysis is attached as Appendices H and I. As defendant's counsel has pointed out in reacting to the draft of this report, use of force by staff and violence by youth are different phenomena. Use of restraint (force) reports are helpful to the study of youth violence in DJJ because many uses of force are related to incidents of violence. The Office of the Special Master does not count uses of force as incidents of violence.

⁴⁵ Krisberg 2003 report, pp. 22-23.

⁴⁶ *Id.*, pp. 23.

comparative rates of discipline among facilities.⁴⁷ As with the 2002 data, the 2004 and 2005 data seem to be consistent with a high level of physical violence on the part of youth (0.6 violent disciplinary cases per year per ward).⁴⁸

Daily Security Operational Reports (“daily operational reports”) are a third source of information about incidents of violence (and use of force) at institutions. Monitor Beltz analyzed the daily operational reports for three institutions (Preston, O.H. Close and Chaderjian) for June of 2004 and June of 2005⁴⁹ and crosschecked the results against her analysis of Use of Restraint and Serious Incident reports for the same period. Though there are no standard criteria governing entries into the daily operational reports, this crosscheck indicates that the daily operational reports may be reasonably comprehensive catalogs of violence at institutions.⁵⁰ The Office of the Special Master and Dr. Krisberg are going to conduct a broader study of the daily operational reports for a future report in an effort to document current violence levels.

Monitor Beltz analyzed the daily operations reports for Chaderjian for the second and fourth quarters of 2005. That analysis shows many fewer violent incidents in the fourth quarter

⁴⁷ *E.g.*, for 2004 and 2005, Chaderjian has one of the lowest rates of discipline for violent offenses, yet Chaderjian is thought to be one of two most violent and dangerous DJJ facilities. Discipline may have been affected by the number of youth in segregation or otherwise locked in cells for substantial periods of time, or by staff perceptions of what misconduct merits discipline.

⁴⁸ DJJ’s DDMS summaries and a summary of them prepared by the Special Master’s office are attached as Appendices J-N.

⁴⁹ The analysis is attached as Appendix O. It indicates fewer incidents of violence at Chaderjian and Preston, but more incidents at O.H. Close for the month of June, 2005 compared to June, 2004. The analysis of two months of data is reasonably comprehensive, but not sufficient to support conclusions about violence trends.

⁵⁰ Nearly every incident of violence that resulted in use of restraint or serious incident reporting had been recorded in Daily Operational Reports. The Daily Operations Reports capture some incidents not reported in the SIRs or use of restraint reports.

of 2005 compared to the second quarter of 2005, which likely is related to the population reduction and other measures taken to reduce violence at that facility.⁵¹

c. Violence Is Pervasive And Reduction Will Require A Systemic Approach

The constant and pervasive violence in DJJ remains “stunning,” just as Dr. Krisberg found in 2003. DJJ’s administrators and all of the numerous experts who have been engaged to assist with reform planning since 2003 agree that the high level of violence undermines DJJ’s control of its facilities and impedes any rehabilitative programming. These administrators and experts also agree that the high level of violence is a consequence of systemic issues including overpopulation in housing units, inadequate staff to youth ratios, insufficient programs to occupy youth, insufficient resources to meet youths’ individual treatment and rehabilitation needs and insufficient management capacity to monitor conditions and practices at the facility level.⁵²

On every site visit, the Special Master and monitor Beltz asked most of the youth and many of the staff with whom they spoke about their observations and fears of violence. Many staff and most youth confirmed that racial and gang violence was a dominant fact of life for most youth at most of the DJJ facilities for male youth; it was less a factor in the lives of youth at DeWitt Nelson and Southern Reception Center. When the youth spoke of the “rules,” they generally meant the peer (gang) rules, not DJJ rules. Gang rules dictate when a youth is required to initiate or join in physical violence (e.g., when certain words are uttered, when members of one’s racial group are in a group fight with members of another, when one has access to an

⁵¹ The analysis is attached as Exhibit O.

⁵² Krisberg 2003 report, pp. 42-49; Special Master’s conversations with planning experts Christopher Murray, John Platt and Fred Mills (November 30 stipulation Safety and Welfare Planning experts; Special Master’s conversations with Consent Decree experts Trupin, Schwartz and O’Rourke; Special Master’s conversations with DJJ administrative staff including Chief Deputy Secretary Warner.

enemy or to someone with a “light” or a “green light” on him meaning he has been targeted by one’s gang). At the Stark facility, the Special Master asked administrators and line staff about statements of a particular youth to the effect that he had been repeatedly attacked by youth of his racial group only because he refused to join in racial melees. He lived in an isolated lock-up setting in order, he said, to avoid the beatings. All the staff members that were queried agreed that members of a youth’s own racial group would target a youth who refused to join the racial violence. The racial and gang violence seems unchanged from 2003.⁵³

At the limits of control and following the example of California’s adult prison system, DJJ has resorted to gang segregation, lock-up and quick and frequent use of chemical agents in response to violence in its facilities. At Chaderjian, for example, youth affiliated with certain gangs are scheduled for only a half-day of school, so that they are never in the education area at the same time as youth with different gang affiliations. At Stark, some “general population” youth are locked up 22 hours a day, cell-fed and allowed out of their cells only with youth of their race because of their allegiance to gang rules and gang racial enmities. Youth at Stark report *de facto* segregation at the education building, because the dominant gang/racial group has made it clear that all members of another racial group will be attacked if they attempt to attend classes in the trade vocational section of the education area. Youth and staff describe frequent fights and melees broken up by staff use of chemical agents. Most staff and youth maintain that the youth segregated in the 21 to 23 hour/day lock-up units discussed below cannot be managed any other way.⁵⁴

⁵³ Krisberg 2003 report, pp. 28-29.

⁵⁴ Statements administrative staff, other staff, youth during Special Master and Monitor site visits.

The subjective experiences and feelings regarding the racial animosity and gang violence varied among individuals. Many youth described or feared being caught up in fights or disturbances because then they would be denied parole and/or have “time added” to their periods of confinement. Almost all youth described fights and melees that they had been involved in or witnessed. A few expressed fear of pain or physical injury if they were assaulted; more admitted that they did not like and did not want to participate in the violence. Many youth had entrenched racist views and gang loyalties and willingly participated in the violence on behalf of their group. Many youth did not like gang culture and gang rules but did not perceive that they had any choice but to conform. Some youth were in safer housing units and programs that involved separation from their more violent peers and described the violence as something that was going on in other places within DJJ but not at all or not as much where they were. Some members of this latter group were engaged in meaningful rehabilitative programming; other members, however, were isolated and under-occupied, some of those locked in cells for most of the day.

Many staff expressed the belief that the youth felt and were safe, and that those who participated in fights and melees freely chose to do so. A significant number of staff reported what appeared to be real and well-based fears for their own personal safety.⁵⁵ Like many youth, many staff had come to accept the constant fighting and racial melees as inevitable and immutable. Most staff thought that violence could be dramatically reduced by reductions in the numbers of youth in housing units and more programs and supervised activities for youth.

Under the terms of the January 31 stipulation, DJJ committed to “institute an open programming model” at Chaderjian and Stark “to end their lockdown model and restore safe

⁵⁵ Statements of institution staff to Special Master and Monitor, site visits, 2005 and 2006 and Appendix T.

general population programming and to ensure that youth are out of their rooms/cells daily for educational, vocational and treatment programming as well as meals and recreation” at all institutions within a few months. The DJJ officials who made this commitment appeared to believe that they could bring facilities into compliance simply by directing facility superintendents to direct facility staff to engage more with youth and to provide more and different activities and services to youth, with the support of a few hours of extra training. They appeared to think that the policy changes and training described in subsection 1, above, could result in safe general population programming with most youth out of their cells and dorms most of the day.⁵⁶ They greatly underestimated the impact of systemic causes of violence and lockdown conditions, and systemic obstacles to change.

At the time defendant committed to implement “open programming” at the Chaderjian facility, the Chaderjian facility was particularly challenged. It lacked effective management and supervision, had fewer treatment staff than other institutions, and was failing in many respects at the end of 2004 and beginning of 2005.⁵⁷ Almost half of Chaderjian’s authorized youth correctional counselor and youth correctional officer positions were either vacant or encumbered by an employee on extended leave.⁵⁸ To fill mandatory positions, staff commonly were “inversed” (involuntarily required to work a second straight shift due to insufficient numbers of staff to fill mandatory posts).⁵⁹

⁵⁶ Observation of the Special Master from Statements of DDJ administrators during discussion that resulted in the agreements memorialized in the January 31, 2005 stipulation, January 28, 2005.

⁵⁷ Office of the Inspector General, *Management Review Audit of N. A. Chaderjian Correctional Youth Facility* (May 2005).

⁵⁸ DJJ Population and Staffing Data for May, 2005, Appendices P and Q (160 authorized YCC and YCO positions in May 2005, 28 vacant, 33 encumbered by extended leave).

⁵⁹ Statements of Chaderjian administrative staff July 8, 2005; Statement of Chaderjian Superintendent January 19, 2006 with tally attached as Appendix R.

The new DJJ administration does seem to appreciate the systemic issues and has taken some steps in the second half of 2005 to address them. For example, soon after Chief Deputy Secretary Bernard Warner assumed his position, he closed Chaderjian to new admissions due to the particularly difficult conditions at that facility. According to Chaderjian's Superintendent, the youth population at Chaderjian decreased from approximately 481 to approximately 322 since the August 2005 closure.⁶⁰ This is consistent with WIN data on population that was provided to the Special Master in May 2005 and January 2006 (586 youth assigned May 1, 2005, 325 youth assigned January 19, 2006).⁶¹ As noted above, Chaderjian's daily operational reports show a significant reduction in violent incidents from the second quarter to the fourth quarter of 2005.⁶² Youth assaults on staff were sharply reduced.⁶³

The nationally recognized experts retained under the November 30, 2005 stipulation now are grappling with revising the reform plans that will chart the steps by which DJJ may transform itself to a system that is safe for youth and staff where youth are engaged in educational, vocational, treatment and other programming that is designed to reform their perspective and enhance their skills and reduce recidivism. They are devising short-term plans to ameliorate conditions and practices related to violence, force and lockdown-model confinement that will outline implementation steps. These will supercede the Consent Decree provisions concerning interim measures to reduce violence.

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⁶⁰ Statement of the Chaderjian Superintendent to Special Master, January 19, 2005.

⁶¹ Administrative Summaries with population information for Chaderjian are attached as Appendix S.

⁶² The analysis is attached as Appendix O.

⁶³ The Chaderjian Superintendent provided the Special Master with his count of staff assaults by month from October 2004 through December 2005, which is attached as part of Appendix T.

2. Management And Reduction Of Use Of Force

Plaintiff and expert Krisberg accepted the DJJ November 2004 interim plan for the management and reduction of use of force, detailed above. All parties understood that the plan was for the short-term, pending a change institutional environment and culture as the longer-term remedial plans were implemented. The interim plan was to restrict and manage the use of force in DJJ in much the same way that California's adult prison system restricts and manages the use of force.⁶⁴ This approach made sense only because DJJ's facilities were in 2003 (and still are in March 2006) very similar to adult prisons. The Consent Decree and subsequent stipulations require defendant to transform DJJ prison-like facilities into structured rehabilitative facilities characterized by a therapeutic environment, normative culture, positive reinforcement (in addition to negative sanctions), adequate rehabilitative and treatment services for all youth so that more youth are successfully re-integrated into their communities. That transformation -- and the new culture and environment that must replace the current conflict-ridden, locked up, and punitive prison culture and environment -- will involve reducing violence and the use of force to infrequent events. In contrast, as of the date of this report, the use of force (mainly chemical agents), like violence among youth, is pervasive in DJJ,⁶⁵ in good part because fights and melees often result in uses of force to end them.

By approximately September 2004, DJJ consultants Steve Cambra and Carl Larson had completed the system-wide use of force "emergency training" for staff. The training focused on the basic principles governing and limiting use of force in prisons that were being incorporated

⁶⁴ Training in effective communication and non-violent management techniques -- a measure to reduce use of force -- is discussed *supra*, in connection with reduction of violence and "open programming."

⁶⁵ Office of the Special Master and DJJ uses of force summaries are attached as Appendices U, V and W.

into DJJ policy, including special procedures when use of force may be delayed and planned because there is no imminent risk justifying immediate force, such as cell extractions. The new policy provisions on secure area extractions were intended to increase the use of effective communication in these situations to resolve them without the use of force. In November 2004, defendant provided plaintiff, the Special Master and expert Krisberg with training sign-in sheets from the “emergency training” and DJJ staff and responded to questions about the training. Subsequently, consultant Cambra confirmed to the Special Master that he and consultant Larson conducted the training system-wide in approximately April – September 2004.⁶⁶

In early 2005, consultants Cambra and Larsen observed DJJ staff as they trained supervisors in DJJ’s revised use of force policies and procedures. Mr. Cambra reported to the Special Master that training was appropriate and well done and that by July 2005 the trainers had conducted the use of force training at all facilities.⁶⁷ DJJ headquarters staff and administrators at all facilities represented that supervisors at all facilities were trained.⁶⁸

Though staff had been trained in a revised use of force policy by November 2004, the new policy was still in the process of being finalized and promulgated. That process moved forward slowly, resulting in promulgation of a Temporary Departmental Order (TDO # 05-32) effective June 22, 2005.⁶⁹ The TDO generally incorporated the elements that the parties had agreed would be included in written policy and that consultant Cambra recommended. It incorporated distinctions between “immediate” and “controlled” use of force, required deliberate process and the presence of specific staff before controlled force was permitted to be employed,

⁶⁶ Statements of consultant Cambra to the Special Master, January 6, 2006.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*, and statements of DJJ headquarters staff to the Special Master, June 27, 2005 and February 3, 2006.

⁶⁹ The TDO is attached as Appendix X.

required supervisory staff and Institutional Force Review Committee review of all uses of force, established a central departmental review and provided for the maintenance of a use of force database. At the same time, because the TDO also instructed facilities to retain their prior version of DJJ's use of force policies for reference, it did not fully replace the previously existing policy. This may explain the confusion that Dr. Krisberg reports concerning versions of DJJ's use of force policies.⁷⁰ A more complete TDO, # 05-36, replaced TDO # 05-32, as of December 1, 2005.⁷¹ Even this most recent policy document is incomplete in that it refers to policies and regulations that are in the process of being developed.

The revised use of force policy provided for needed centralized review of uses of force at facilities, by the newly created Department Force Review Committee. However, though the Department Force Review Committee had been scheduled to meet on 2 or 3 occasions since late 2004, as of February 2006 it had not yet begun to function. In its place, headquarters staff and consultant Cambra reviewed a considerable proportion of uses of force, and in early 2006, they were the process of completing their review of all uses of force from July 2005 forward. They found that most facilities had serious compliance issues, but that the compliance issues generally related to report writing and other policy details and not the fact or nature of the force employed. Consultant Cambra and DJJ headquarters staff notified the chiefs of security at the institutions of the need for corrective actions. They identified some incidents and policy issues for review by the Department Force Review Committee, which was scheduled to meet monthly beginning March 2006. DJJ is in the process of hiring a Use of Force Coordinator (AGPA level) to take

⁷⁰ Krisberg 2006 Memorandum, App. A, p. 6.

⁷¹ The TDO is attached as Appendix Y.

over the responsibility of reviewing facility reports and referring them for review to designated headquarters staff or the Department Force Review Committee.⁷²

The performance of Institutional Force Review committees or “IFRCs” (which existed before the 2004 force policy revisions) has varied among facilities. The Chaderjian IFRC was approximately 17 months behind until defendant employed consultant Cambra to complete the required reviews.⁷³ It subsequently has been able to keep its review process up to date.⁷⁴ The Stark facility IFRC was behind in March 2006 because they were reviewing compliance issues in old incidents that consultant Cambra had referred to them for corrective action.⁷⁵ According to headquarters staff, until recently the Southern Reception Center did not have a functioning committee but the reviews by the committees at O.H. Close, Preston, DeWitt Nelson and Ventura facilities generally have been up-to-date. The IFRCs at those facilities with more uses of force (Chaderjian, Stark, Preston and Paso Robles) consistently have been unable to review all incidents; at those facilities, the facility superintendent is expected to review all incidents and screen out the most routine. This practice does not conform to DJJ’s use of force policy in that the policy requires that the IFRC review all uses of force at a facility; DJJ should address this discrepancy. The Chaderjian, Stark, Preston and Paso Robles facilities had hired or were in the process of hiring individuals at the AGPA level to improve the use of force data collection and review processes.⁷⁶

⁷² Statements to Special Master by consultant Cambra (January 6 and 31, 2006) and DJJ headquarters staff (June 27, 2005 and February 3, 2006).

⁷³ Statements of consultant Cambra, January 31, 2006 and DJJ headquarters staff, February 3, 2006.

⁷⁴ Monitor Beltz ascertained that it was current for monthly meetings and incident reviews as of her site visit March 17, 2006.

⁷⁵ Statements of facility staff to monitor Beltz during site visit March 13, 2006.

⁷⁶ Statements of consultant Cambra, January 31, 2006 and DJJ headquarters staff, February 3, 2006.

In November 2004, DJJ represented that it would maintain a use of force “database” that would “be capable of producing various statistical reports to be utilized by managers to monitor trends and patterns of force used.”⁷⁷ More specifically, DJJ headquarters staff represented that they were in the process of reviewing and improving DJJ’s system for collection and analysis of information concerning the use of force. Nonetheless, DJJ keeps monthly and annual use of force data and statistics now much as it did in 2003. It has a relatively accurate count of incidents by facility and month, and some indication as to the number of planned secure area extractions by facility by month. Its count of incidents is manual by facility watch commanders who must correlate staff reports to incidents by date and time. The incidents are supposed to be categorized by type of force used, whether the incident was a secure area extraction and whether a “mental health ward” was involved, but the manual process is not accurate for those details.⁷⁸

DJJ is not collecting and organizing all information that is necessary and useful for the purpose of managing use of force. For example, the quantity of chemical agents issued to an individual over a period of time or used in individual incidents is not recorded. Whether or not mentally ill youth are subject to use of force is not reliably tracked. DJJ does not track its review process; managers cannot easily monitor whether the IFRCs and the Department Force Review Committee review all cases they should, and whether compliance issues are addressed in the course or as a result of the reviews. DJJ also does not track use of force by staff member so managers cannot easily check for individuals who may be using unnecessary or excessive force.

⁷⁷ DJJ Interim Measures Binder, Use of Force Policy, p. 9; statements of headquarters staff at November 19, 2004 meeting of counsel, staff, expert Krisberg and the Special Master.

⁷⁸ Statements of headquarters staff July 27, 2005, in meeting with expert Krisberg and the Special Master; statements of headquarters staff to Special Master February 3, 2005.

Departmental statistics for 2003-2004 and 2004-2005 (Use of Force Overview), and the Special Master's summary of them, are attached as Appendices U-W. Defendant does not have complete data yet for July – December 2005. The force overview data does *not* indicate a systemic reduction in total incidents of use of force since 2003, though the data does indicate a reduction in secure area extractions, an issue targeted for reform by policy and training. As might be expected, the Monitor's analysis of Daily Security Operational Reports shows that a similar pattern for use of force as for incidents of violence (because youth violence commonly results in use of force): fewer incidents of force in June 2005 than in June 2004 at Chaderjian, Close and Preston, and a seemingly significant decrease in force incidents at Chaderjian from the second quarter to the fourth quarter 2005.⁷⁹ Consistent with the data, when interviewed in January and March 2006, youth and staff at Chaderjian generally reported that use of force had decreased substantially since the summer of 2005.⁸⁰

The Special Master and monitor Beltz asked most youth and some staff about their perceptions concerning use of force. Both youth and staff generally reported that the most common force was the use of chemical agents to break up fights when youth did not stop fighting on command. Some youth said that they were sprayed with chemical agents without being warned to stop fighting, or even after they had stopped and assumed a prone position.⁸¹ Some youth reported that they were sprayed with more, or more potent, chemical agents than

⁷⁹ The analysis is attached as Appendix V.

⁸⁰ Statements to monitor Beltz during site visits January 19, 2006 and March 17, 2006.

⁸¹ Policy permits use of chemical agents "to gain compliance with a lawful order" but not on youth "who are under control." *See*, Appendix N, p. 36.

they thought necessary. Some youth reported that handcuffs were applied roughly or too tightly. All of this is consistent with what youth reported to expert Krisberg in 2003.⁸²

As Dr. Krisberg observed in his 2003 report (pp. 32-33), the youth (and staff) reports evaluating use of force reflect what they have come to deem acceptable in the context of the current hostile and punitive prison environment that characterizes DJJ facilities. The parties are joined in an effort to replace the current prison environment, with its violence, use of force and isolation/segregation and lockdown, with a therapeutic, normative environment characteristic of rehabilitative facilities. In the meantime, just as Dr. Krisberg concluded in 2003 (p.33), it appears that there is not widespread or systemic use in DJJ of what in adult prisons is considered excessive or unnecessary force.

In their November 30 stipulation, the parties put the matter of tracking and reducing use of force in DJJ facilities in the hands of the nationally respected experts they retained to revise the Ward Safety and Welfare Remedial Plan. Specifically, the stipulation provides:

Defendant will retain experts agreed to by the parties to develop a plan to measure and reduce the use of force in DJJ facilities pending completion of the revised Safety and Welfare Plan, as he/they deem(s) appropriate but in a way that is revenue neutral. The plan will cover use of restraint chairs, eliminating the use of restraint chairs if the expert (s) determines that is feasible. Unless justified by compelling reasons, DJJ will implement the plan according to the schedule set forth in the plan and [it] will measure the short term impact as the expert(s) suggest(s) as meaningful. The expert(s) will consult with DJJ, plaintiff's counsel, the Special Master and Consent Decree designated experts before finalizing his/their plan.⁸³

This provision supercedes the Consent Decree provision on interim measures to manage and reduce force.

⁸² Krisberg 2003 Report, p. 32.

⁸³ November 30 stipulation, ¶ 12.

C. Mental Health Policies And Procedures

The Consent Decree required defendant to “develop policies and procedures to immediately provide for the treatment and management of wards on suicide watch and those with acute psychiatric needs” by November 1, 2004. It required that these policies and procedures “be adopted to provide interim treatment and management of these wards pending the development and implementation of the remedial plans in this area.” It required that they “be in the form of criteria that institutions must meet for these wards, including number of hours of clinical intervention per week and maximum number of in-room hours per day” and that they “be implemented by December 15, 2004.”⁸⁴

Defendant prepared written policies and procedures that were approved by the Consent Decree mental health experts by December 2004.⁸⁵ In April 2005, defendant filed its Mental Health and Rehabilitation Interim Plan, which extended the deadline for implementation of the policies and procedures to July 1, 2005.⁸⁶ As of mid-July 2005, defendant had neither implemented the policies nor sought an extension of the July 1 deadline. From mid-July through December 2005, defendant made steady if slow progress toward implementation. Headquarters staff notified facility administrators that funding was available to pay for the costs of one-on-one supervision. After necessary labor negotiations, Temporary Departmental Orders were issued in

⁸⁴ Consent Decree ¶ 7.c.

⁸⁵ This was confirmed in a meeting of counsel, DJJ staff, the Special Master and Consent Decree mental health expert Dr. Eric Trupin (attending by telephone connection) on December 9, 2004.

⁸⁶ Mental Health and Rehabilitation Interim Plan, ¶ 16.

early November 2005.⁸⁷ Mental health staff were trained on the policies and procedures in November and December 2005.⁸⁸

The principal difference between the new policies and procedures and those they replaced is the provision permitting clinicians to order one-on-one supervision for youth at-risk for self harm to enable youth to engage in normal activities while being monitored for their protection instead of being confined on suicide watch. As of December 2005, no staff interviewed by the Special Master were aware of an instance involving application of the new “one-on-one” supervision provision.

Dr. Trupin advised the parties that the new policies and procedures for handling self-destructive youth and youth who express suicidal ideations or intent requires skillful interventions by clinical staff. The parties have agreed that DJJ will implement the plan that Dr. Trupin develops for enhancing the ability of DJJ clinical staff to manage youth with self-destructive behavior, unless compelling reasons justify otherwise.⁸⁹

The Special Master has requested that the mental health experts review and report on the implementation of the policies and procedures for youth on suicide watch or with acute psychiatric needs and on the plan for enhancing staff skills with this population in the second quarter of 2006.

D. Hiring Of Medical Director

The medical experts’ 2003 report highlighted lack of management and leadership as

⁸⁷ The TDOs are attached as Appendix Z.

⁸⁸ Statements by DJJ administrative staff at meeting of staff, counsel and the Special Master October 18, 2005; statements to the Special Master by clinicians and counselors at Preston, Stark and Chaderjian facilities during December 2005 site visits. The training memorandum and post order is attached as Appendix AA.

⁸⁹ November 30 Stipulation, ¶ 13.

impediments to the provision of adequate medical care in DJJ.⁹⁰ In an apparent response to those findings, the Consent Decree required defendant to take all reasonable steps to hire a qualified Medical Director. Both parties and the Consent Decree medical experts Puisis and LaMarre were very pleased when Dr. Robert E. Morris, UCLA Professor of Pediatrics, Co-director of the Adolescent Program and Chief of Pediatrics at the Los Angeles Orthopaedic Hospital, was retained as DJJ Medical Director as of March 1, 2005. Dr. Morris' commitment to DJJ is 70% - time or 28 hours/week. He led the medical transition team that developed the Medical Care Remedial Plan, and he played a key role in recruiting a psychiatrist to fill DJJ's Chief Psychiatrist position.

DJJ has recently hired Louise Allen as its Director of Nursing. She is an important addition to the medical care management team and is playing a valuable role in the development of nursing policies.

E. Restricted Programs

1. Special Management Program

The Consent Decree required defendant to "evaluate special management programs developed in other states and develop a plan to reduce length of stay for wards in the special management programs" by November 1, 2004. The plan was to be "consistent with national standards and practice" and to "include a review of wards who remain in segregation for long periods of time because his or her case has been referred to a district attorney for prosecution."⁹¹ Special management program ("SMP") housing units in DJJ were and are housing units where youth considered dangerous or particularly disruptive are confined in their cells most of the day.

⁹⁰ Puisis and LaMarre, *Review of Health Care Services in the California Youth Authority* (August 22, 2003), p. 6.

⁹¹ Consent Decree ¶ 7.e.

Before the Consent Decree was entered, SMP youth generally were confined to their cells for 23 hours/day, with one hour of “recreation” in small fenced areas devoid of equipment.⁹² Youth stayed in SMPs for approximately 50 to approximately 70 days on average.⁹³ These average lengths of stay were a substantial improvement compared to the lengths of stay documented by the Office of the Inspector General in 2000 (approximately 9 months).⁹⁴ DJJ had achieved the reductions in lengths of stay by developing and implementing detailed special management program policies under the close oversight of headquarters administrators.⁹⁵

In November 2004, defendant provided the Special Master, Consent Decree expert Krisberg and plaintiff’s counsel with a report of the DJJ survey of seven other state systems and an interim plan for reducing length of stay and introducing services/programs in SMP units. The report reflected defendant’s view that the restricted SMP units are necessary in order to separate violent youth who pose a danger to others from other youth. Defendant found that all of the seven surveyed states had restricted programs in order to separate violent youth from others. Defendants report noted that lengths of stay in the SMPs had been reduced as documented by the Consent Decree expert Krisberg’s 2003 Report, and that DJJ anticipated that it would achieve further reduction in lengths of stay. The report set a goal of eight hours/day of structured program for all youth in SMP units, including four hours of education, two hours of recreation and two hours of treatment services. It did not include any indication of how that goal might be achieved.

⁹² Krisberg 2003 Report, p. 58, 65.

⁹³ *Id.*, p. 55.

⁹⁴ *Ibid.*

⁹⁵ *Id.*, p. 55-56.

In January 2005, DJJ agreed to “implement clear policies and procedures to ensure that wards on the SMPs are provided access to educational, treatment, and other services outside their cells on a daily basis” by February 15, 2005.⁹⁶ Before February 15, 2005, DJJ provided the Special Master, Dr. Krisberg and plaintiff with its revisions of the “Delivery of Mandated Services Procedures” intended to enable DJJ to meet its commitment.⁹⁷ Though the draft did not set a minimum for daily out-of-cell or structured program time, defendant represented that the minimum was three hours. The “mandated services” intended to provide three or more hours out-of-cell program time included education, large muscle exercise, counseling, telephone calls, visits and religious services. All the programs and services were to be provided out of cell and in small groups unless precluded by security concerns. Large muscle exercise was generally supposed to be provided outdoors.

Defendant centrally monitors facility performance against the three-hour daily out-of-cell activity requirement for youth in SMPs and other restricted programs. Facilities are supposed to log out-of-cell programs and activity in the WIN system, and the WIN data is monitored centrally. The WIN data indicates that most youth in SMP and other restricted program categories were and are not offered three hours of structured or out-of-cell activity on any given day.⁹⁸ During site visits, monitor Beltz determined that SMP youth tended to have more time out of their cells than is recorded in WIN.⁹⁹ Still, youth and staff interviewed by the Special Master and monitor through January 2006 nearly uniformly reported that most youth in SMP and other

⁹⁶ January 31 stipulation, ¶ 2.e.

⁹⁷ The policy is attached as Appendix BB.

⁹⁸ Some of the WIN data is attached as Appendix CC.

⁹⁹ Facilities generally track recreation time in WIN but often they fail to track other out-of-cell activity such as education, religious services, mental health and medical care. At most facilities, an accurate count of out-of-cell time requires calculating service minutes from several different sources.

restricted programs were not offered as much as three hours of structured or out-of-cell activity daily. This has changed recently at the Chaderjian facility. With the reduction in its youth population and in incidents of violence, the Chaderjian facility was providing at least 3 hours of out-of-cell program time in its SMP in March 2006.¹⁰⁰

DJJ's difficulty in providing even 3 hours out-of-cell time to youth in SMP and other restricted programs is the result of its systemic problems. For example, in November 2005, the SMP youth at the Stark facility shared K and L housing unit with a group of youth associated with a northern gang who had been transferred from the Chaderjian facility as part of DJJ's strategy to reduce violence at that facility. Because of gang-related safety concerns in what has been a largely gang-segregated system, none of the youth transferred from Chaderjian were deemed able to be housed in the general population at the Stark facility and they were instead placed on the SMP unit on "general population status." As the Stark K and L treatment team supervisor noted, the SMP must "run three programs at once" and out-of-cell time that can be provided must be divided among special management, temporary detention and the "general population" transferees.¹⁰¹

DJJ retained a group led by consultant Cambra to monitor its attempt to eliminate "23-and-1 confinement." His May 24, 2005 report documents increases in out-of-cell time and programming in SMPs and other restricted programs, but it also shows that some youth were still being locked in their cells approximately 23 hours/day. In addition, the report documents the

¹⁰⁰ Statements of staff and youth to monitor Beltz during her March 17, 2006 site visit; review of WIN and manually kept documentation during site visit.

¹⁰¹ Statement to Monitor, November 29, 2005.

paucity of the program provided in SMPs and other serious problems including dirty and decrepit plant conditions.¹⁰²

Consent decree expert Krisberg, the Special Master and Monitor questioned youth and staff during site visits about the restricted programs, and they have inspected activity logbooks and activity areas. Staff and youth generally understand that youth in SMP should have at least 3 hours out of their cells, the same amount of education as other youth (minimum time prescribed by state law), and access to other “mandated services.” Classrooms have been or are being added for the use of youth on restricted programs at all facilities with SMPs, teachers have been detailed to teach small classes in those classrooms, and some youth have one or a few classes per week in a classroom.¹⁰³ Youth who were able to compare SMPs in the second half of 2005 with SMPs in 2004 or before generally reported that SMP conditions had become more tolerable due to the small increases in activity and services. Many youth reported having the opportunity to leave their cells for two or three hours a day, most often to go to the small outdoor cage-like structures, where they generally stand around.

Defendant has monitored lengths of stay and numbers of youth in restricted programs. The data indicates that there has been no sustained change since the end of 2003 in the lengths of stay in restricted programs or in the proportion of the population in restricted programs.¹⁰⁴

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¹⁰² The report -- Cambra, Larsen and Haynes, *Elimination of 23-and-1 Confinement* (May 24, 2005) -- is attached as Appendix DD.

¹⁰³ The Consent Decree education experts have monitored the provision of education services to all youth, including youth in SMPs. Their report may show more detail on the amount of education provided to youth in SMPs.

¹⁰⁴ A sampling of the data and a summary of it are attached as Appendices EE and FF (length of stay) and GG and HH (proportion in restricted programs).

2. Temporary Detention

Under the January 31 stipulation, defendant undertook the obligation to “eliminate the use of temporary detention as punishment” by April 1, 2005.¹⁰⁵ The Special Master construes this provision to require DJJ to enforce policies and procedures setting criteria (1) for temporary detention placement that limit its use to legitimate short-term custody purposes and (2) for conditions and practices to prevent temporary detention from being more punitive than necessary to achieve its custodial purpose. Defendant has made diligent efforts in this area and has achieved partial compliance with the requirement thus construed. Defendant has clearly and repeatedly informed facility administrators that temporary detention may never be used as a disciplinary sanction; youth are no longer being assigned to temporary detention as a formal disciplinary sanction at any facility.

Defendant’s diligent efforts in this area began before December 2003 and were documented by expert Krisberg.¹⁰⁶ As discussed above, appropriate management supervision had circumscribed use of restricted programs including temporary detention.¹⁰⁷ DJJ promulgated policy that limited the justifications for placement in temporary detention to “danger to others,” “danger to self,” “endangered” and “likely to escape.”¹⁰⁸ During fiscal years 2001-02 and 2002-03, length of stay in temporary detention was limited to an average of four days, with

¹⁰⁵ January 31 Stipulation, ¶ 2.g.

¹⁰⁶ Krisberg 2003 report, pp. 53-55.

¹⁰⁷ *Ibid.*

¹⁰⁸ February 17, 2005 Memorandum to Superintendents, Assistant Superintendents and Program Managers from Yvette Marc-Aurele, Deputy Director Institutions and Camps Branch and excerpts from Institutions and Camps Manual, attached as Appendix II.

headquarters staff regularly reviewing placements and retentions.¹⁰⁹ The average length of stay fell to three days for the period April 1, 2004 – March 31, 2005, and to two days for the second quarter of 2005.¹¹⁰ Headquarters staff has continued to review all temporary detention placements throughout 2005.¹¹¹

Although management supervision seems to have limited the number of youth in temporary detention and reduced their lengths of stay, as of the end of 2005, it had not succeeded in enforcing the departmental policy limiting temporary detention to youth who pose a danger to themselves or others or who require protection. Nor had it succeeded in eliminating punitive practices and conditions found in temporary detention housing units. The group led by DJJ consultant Cambra that monitored restricted programs reported apparently unjustified commitments to temporary detention as well as punitive conditions and practices in May 2005.¹¹² Those unjustified commitments and punitive conditions persisted through the end of 2005. For example, there were many unjustified commitments to temporary detention in the Inyo cellblock-housing unit at the O.H. Close facility, throughout 2005.¹¹³ The group led by consultant Cambra described it as “simply unacceptable”¹¹⁴ and recommended its closure pending repairs. Consent Decree expert Barry Krisberg agreed that the Inyo unit was so physically decrepit that its use was punitive. The consultants and experts agreed that O. H. Close could use cells attached to

¹⁰⁹ Krisberg 2003 report, p. 54; “Average Length of Stay on Temporary Detention by Quarter” (attached as Appendix JJ) and statements of DJJ headquarters staff in meeting July 27, 2005.

¹¹⁰ Appendix JJ and statements of DJJ headquarters staff in meeting July 27, 2005.

¹¹¹ Statements of headquarters staff in meeting July 27, 2005, and blank form letter attached as Appendix KK; report of Monica Anderson of conversation with DJJ headquarters staff February 1, 2006.

¹¹² Cambra, Larson and Haynes, *Elimination of 23-and-1 Confinement* (May 24, 2005), attached as App. DD.

¹¹³ *Ibid.*, and Memoranda Barry Krisberg to Donna Brorby dated September 14 and October 25, 2005, attached as Appendices LL and MM.

¹¹⁴ *Id.*, p 4.

dormitory housing units for TD status youth. Dr. Krisberg found that most youth confined in temporary detention at Inyo did not meet the criteria for such confinement. As late as November 2005, plaintiff's counsel found youth on TD status at Inyo being deprived of trousers and shoes in their cells and uncomfortably cold in their boxer shorts and t-shirts. Immediately upon being informed of the punitive practice, Chief Deputy Secretary Warner took action to ensure that youth in TD throughout DJJ would keep their regular clothing except for youth considered at risk for suicide.¹¹⁵

3. Lockdown

The parties agreed in their January 31 stipulation that: "By March 1, 2005, the CYA will modify its lockdown protocol to minimize the use of lockdowns through direct intervention by staff."¹¹⁶ Defendant provided plaintiff, the Special Master and expert Krisberg with a draft administrative lockdown and program change protocol in mid-February, and a final version in early March 2005. The transmission memorandum covering the final version reflects that it was promulgated to all facilities on March 1, and that training was contemplated within 30 days.¹¹⁷ DJJ's counsel reported to the Special Master that the training was completed. The policy included forms and is relatively straightforward. Plaintiff and expert Krisberg accepted the protocol as compliant with defendant's obligation under the stipulation. It requires facility staff to devise and implement an "action plan" to bring to an end any lockdown or limited program regimen that it initiates. Further, it provides for the DJJ's top management to monitor and supervise facility practice.

¹¹⁵ Youth considered to pose a danger to themselves can be deprived of clothing and property for their protection under the DJJ's high risk observation and suicide watch policies discussed above.

¹¹⁶ January 31 Stipulation ¶ 2.d.

¹¹⁷ The transmittal memorandum and lockdown protocol are attached as Appendix NN.

Defendant tracks administrative lockdowns, and his summary of them for the last half of 2005 is attached as Appendix OO. As indicated above, the Chaderjian facility was in crisis for the first three quarters of 2005. One of the responses, consistent with DJJ's adult prison model and crowded living units and high youth to staff ratios, was prolonged lockdown for youth that staff considered incorrigibly violent and gang-entrenched.

4. DJJ To Implement Plan Devised By Experts For Restricted Programs And Lockdowns

In their November 30 stipulation, the parties agreed that consultant Cambra and one of the experts retained to review and revise defendant's proposed Ward Safety and Welfare Remedial Plan would "consider and revise DJJ's policies on restricted housing SMP and TD and develop an implementation plan as they deem appropriate but in a way that is revenue neutral, pending completion of the revised Safety and Welfare Plan." DJJ is required to "implement the plan on the timetable prescribed by the consultants" and to measure short term impact" as they prescribe, unless "compelling reasons" justify otherwise.¹¹⁸ The parties further agreed that DJJ would retain consultant Cambra and one of the Safety and Welfare planning experts to recommend a strategy for the Inyo temporary detention unit and that DJJ would implement the recommendations unless there were compelling reasons to the contrary.¹¹⁹

Finally, the November 30, 2005 stipulation provides that Steve Cambra and one of the nationally respected Safety and Welfare planning experts would:

measure and analyze DJJ's use of lockdowns and revise DJJ's lockdown policy, pending completion of the revised Safety and Welfare Plan, as they deem appropriate, but in a way that is revenue neutral and consistent with state law to minimize the number and

¹¹⁸ November 30 stipulation, ¶ 11.

¹¹⁹ *Id.*, ¶ 9.

duration of lockdowns in DJJ while ensuring the safe and secure operation of the facilities.¹²⁰

Defendant is required to implement the new policy “immediately,” according to a “realistic” timetable prescribed by the experts, “with Mr. Cambra’s help” “unless justified by compelling reasons.”

The provisions of the November 30, 2005 stipulation concerning restricted programs and lockdown supercede the provisions in those areas of the Consent Decree and the January 31 stipulation. Mr. Cambra and the Safety and Welfare planning experts completed a plan to limit the use of the Inyo temporary detention unit, and to clean and maintain any portions used. They are monitoring DJJ’s compliance with their plan. Some of the Safety and Welfare planning experts have worked with Mr. Cambra to prepare drafts of plans on restricted program and lockdown policy. Those drafts will be revised after discussions with the parties.

F. Revised Intake Criteria

The Consent Decree required defendant to “develop formal criteria for accepting wards into the CYA pursuant to Welfare and Institutions Code Section 736” by November 2004. It prohibits defendant from accepting “more wards than can be materially benefited by the CYA’s reformatory and educational discipline” and “wards for whom the CYA does not have adequate facilities.”¹²¹

Defendant provided a draft of a proposed new policy on intake criteria to plaintiff, the Special Master and the Consent Decree experts in November 2004. The draft criteria focused on health issues and disabilities for which DJJ could not provide appropriate care and that would

¹²⁰ *Id.*, ¶ 10.

¹²¹ Consent Decree, ¶ 7.f.

preclude a youth from meaningful participation in treatment and rehabilitative programs that DJJ offers or might offer. Medical Director Dr. Morris reported to the Special Master, plaintiff and expert Trupin that he has applied the criteria to resist commitments in a few cases.

Pursuant to his proposed Ward Safety and Welfare Plan, defendant is working with county officials and other “stakeholders” to define appropriate intake criteria for DJJ in the context of California’s entire juvenile justice system.¹²² The November 30 stipulation experts will address intake criteria and population control measures in their revision of defendant’s November 30 proposed Ward Safety and Welfare Plan. Therefore, the Special Master will defer consideration of this issue until the experts have addressed it in plan revisions or recommendations.

IV. PROJECT MANAGEMENT, QUARTERLY REPORTING, AND EXPERT CONSULTANT

A. Expert Consultant

The Consent Decree provides: “After consultation with Plaintiff’s counsel, Defendant shall retain a consultant with expertise in operating juvenile correctional systems to provide advice concerning the management and operation of the CYA.”¹²³ The January 31 stipulation reiterates: “Defendant is in the process of interviewing and shall hire by March 1, 2005, a consultant with expertise in the custodial treatment of juvenile offenders, to be approved by plaintiff’s counsel.”¹²⁴

The parties together selected and interviewed possible consultants who had experience as successful managers of juvenile facilities and who could help defendant develop strategies to

¹²² Defendant’s proposed Ward Safety and Welfare Plan, p. 5.

¹²³ Consent Decree, ¶ 32.

¹²⁴ January 31 stipulation ¶ 3.

progress towards compliance with the Consent Decree. Defendant informed the Special Master and plaintiff that he was willing to retain any of the candidates interviewed. Plaintiff informed defendant that she would not approve any of the candidates because she had not confidence that they would be helpful to defendant. Plaintiff released defendant from the commitment to retain an expert consultant. Since that time, the juvenile justice expertise within DJJ has been increased with Chief Deputy Secretary Warner taking its top administrative position. Further, under the November 30 stipulation, several nationally recognized experts have been retained to bring their expertise to reviewing and revising DJJ's Ward Safety and Welfare and Mental Health Remedial plans.

B. Project Management And Quarterly Reporting

The Consent Decree required defendant to "hire a project manager to manage the remedial plans resulting from this Decree." The project manager is required to "be at the CEA I level, or equivalent Exempt level, with support as necessary to successfully manage the development and implementation of the remedial plans."¹²⁵ The Consent Decree further required defendant to "provide plaintiff's counsel and the Special Master with quarterly reports regarding progress made, compliance with deadlines and actions taken in implementing this Decree."¹²⁶

Defendant has had an acting project manager at a lower civil service level than CEA I. Defendant's acting project manager had neither sufficient resources to track DJJ's obligations and its progress towards meeting them, nor the authority to compel responses to questions and requests for information or to recommend or take action improve DJJ's compliance status. Within the limits of her power and her role, she has done a very fine job.

¹²⁵ Consent Decree, ¶ 32.

¹²⁶ *Id.*, ¶ 25.

Plaintiff and the Special Master accepted the situation with the acting project manager until the fall of 2005 when it became obvious that DJJ was unable to track and organize the effort to meet its obligations under plans and the Consent Decree, prepare the required quarterly reports and adequately respond to requests for information and documentation.

Defendant has appointed a new project manager to track DJJ's obligations under the Consent Decree, other orders and the remedial plans in the this case and DJJ's progress toward meeting those obligations. The new project manager has the required civil service rank. Defendant has represented that the project manager will have the necessary support resources.¹²⁷ Beginning April 2006, Defendant will begin filing quarterly compliance reports within 30 days of the end of each quarter.

Defendant has previously represented that there would be a new project manager and sufficient support for the project management function, in November 2005. Then the project manager and compliance team did not materialize. DJJ remained unable to plan or produce quarterly reports. It remained unable to respond efficiently and completely to experts' and the Special Master's needs for information and documentation.¹²⁸

It is imperative that defendant have a project manager and support team that are focused on facts and activities in DJJ and compliance in this case from this point forward. Beyond ordinary project management during litigation with which the California Department of Corrections and Rehabilitation ("CDCR") is very familiar, DJJ needs to manage a systemic transformation over the course of a few years. Defendant's proposed Ward Safety and Welfare

¹²⁷ Statement of defense counsel Monica Anderson to the Special Master, January 31, 2006, and statements of top DJJ administrators in a meeting with the Special Master on February 14, 2006.

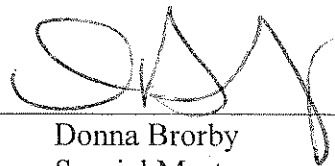
¹²⁸ DJJ's counsel and headquarters staff have been very responsive to the Special Master's requests for information in connection with this report since January 2006 and they have provided much information very quickly.

Plan describes the scope of that transformation. Transformation does not just happen, it must be made to happen and it must be managed. CDCR must ensure that DJJ has the resources to manage the project of its reform.

CONCLUSION

DJJ is beset by urgent systemic problems. Those problems cannot be denied or wished away; they must be directly addressed. The progress over the past year has been disappointing, but not negligible. Strong candidates have filled key leadership positions. Remedial plans in are in place covering education, sex behavior treatment, disabilities issues and medical care. A talented and hardworking team has developed a promising overall reform plan. Nationally recognized juvenile corrections experts are now working with DJJ, plaintiff and others to refine the reform plan and develop detailed plans for its implementation. In the meantime, many skilled and caring DJJ facility staff serve youth well and make a positive difference in their lives, despite all obstacles. They are eager for the implementation of reform because they see the destructive impact of the uncontrolled violence in DJJ and the limits of the habilitative activities and treatment programs that DJJ offers.

Dated: March 31, 2006



Donna Brorby
Special Master