

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION

BRIAN MAST, *et al.*, )  
 )  
 Plaintiffs, )  
 )  
 v. ) No. 2:05-cv-00037 LJM/WGH  
 )  
 J. DAVID DONAHUE, *et al.*, )  
 )  
 Defendants. )

**Private Settlement Agreement Between Defendants and Plaintiffs**

Come now the parties, by their counsel, and enter into this Private Settlement Agreement pursuant to the Prison Litigation Reform Act, 18 U.S.C. § 3626(c). The parties state as follows:

**Introduction**

1. This action has been brought by prisoners confined to the Secured Housing Unit (“SHU”) at the Wabash Valley Correctional Facility who claim that it violates the United States Constitution to confine certain mentally ill prisoners there. The Court has certified, pursuant to Fed.R.Civ.P. 23(b)(2), a plaintiff class comprising “all prisoners currently, and in the future, confined within the Secured Housing Unit at the Wabash Valley Correctional Facility who are mentally ill.”
2. The Prison Litigation Reform Act limits prospective relief that can be entered in any case involving prison conditions. 18 U.S.C. § 3626(a). However, the Prison Litigation Reform Act also provides that the parties may enter into a private settlement agreement not subject to the limitations of the Act if the terms of the private settlement agreement are not subject to court enforcement other than the reinstatement of the civil proceeding that the agreement settled. 18

U.S.C. § 3626(c)(2)(A). The Prison Litigation Reform Act further provides that nothing in the Act shall preclude any party claiming that a private settlement agreement has been breached from seeking in state court any remedy available under state law. 18 U.S.C. § 3626(c)(2)(B).

3. It is the parties' intention that this agreement be recognized as a private settlement agreement pursuant to the Prison Litigation Reform Act.

4. The defendants deny any and all allegations made by the plaintiffs in this cause, but believe it is in the best interests of the citizens of the State of Indiana to enter into this Private Settlement Agreement.

### **Consideration**

5. The parties recognize and acknowledge that this Private Settlement Agreement is intended to be a valid contract under the laws of the State of Indiana, enforceable in the courts of the State of Indiana.

6. The parties acknowledge that there is good and valuable consideration supporting this Agreement.

### **Specific Terms of the Private Settlement Agreement**

#### *Introduction*

7. The parties agree that it is inappropriate to place seriously mentally ill prisoners into the SHU or into any correctional setting that features isolation and solitary confinement.

8. The parties agree that it is incumbent upon the Indiana Department of Correction ("DOC") to provide appropriate mental health treatment for seriously mentally ill prisoners and that this must take place in settings other than the SHU.

9. The defendants therefore agree that the following steps will be taken to insure that seriously mentally ill prisoners are not placed into the SHU and that those who are currently

there, who may inadvertently be placed there in the future, or who will become seriously mentally ill after placement in the SHU, are promptly removed.

*Definition of "seriously mentally ill"*

10. The parties agree that for purposes of this agreement, the term "seriously mentally ill" is defined as:

-prisoners who have a current diagnosis, or evidence, of any Diagnostic and Statistical Manual IV (DSM-IV) Axis I diagnosis or who are receiving treatment for such a diagnosis, or,

-prisoners who have been diagnosed with a mental disorder that is worsened by confinement in the SHU.

*Seriously mentally ill prisoners will no longer be placed into the SHU*

11. The defendants agree that effective immediately, seriously mentally ill prisoners will not be housed in the SHU.

12. Instead, the DOC will maintain a continuum of services available for seriously mentally ill prisoners including, but not limited to, placement at the New Castle Psychiatric Facility for prisoners in need of intensive psychiatric treatment, one or more step down units for those in need of less intensive psychiatric services, as well as placement in general population for those in need of even less intensive services. Prisoners identified by qualified mental health staff as needing acute care shall be placed at the New Castle Psychiatric Facility. Those needing other levels of mental health care shall not be placed in facilities that, in the estimation of qualified mental health staff, (1) will exacerbate their serious mental illness, or (2) where their mental health needs cannot be met. Determination of mental health needs shall be made by qualified mental health staff. However, there may be prisoners who, although not acutely mentally ill and therefore not appropriate for placement at the New Castle Psychiatric Facility, will have their serious mental illness exacerbated by any incarceration, regardless of the particular placement.

In such a situation the prisoner will be placed where his mental health needs may be most appropriately met as determined by qualified mental health staff. A written record will be made and maintained as to the decision of the mental health staff and the reasons for that decision.

13. If a prisoner receives sufficient discipline time that would otherwise qualify him to be sent to the SHU, he will not be sent to the SHU if he is seriously mentally ill.

14. All prisoners sent to the SHU will receive a face-to-face screening by a licensed mental health professional, who shall also review their mental health records, within two business days of arrival, and if it is determined that they are seriously mentally ill they will be removed from the SHU and sent to an appropriate placement where their mental health needs may be appropriately addressed, as set forth in paragraph 12 above, at the earliest opportunity, but no later than within seventy-two (72) hours of this determination, unless a psychiatrist determines after a face-to-face evaluation that the prisoner cannot safely be moved for mental health reasons, in which case the prisoner will be moved to the appropriate placement as soon as the psychiatrist determines that it is medically safe to do so.

15. Upon transfer of a seriously mentally ill prisoner out of the SHU, the Commissioner or a designee, with input from qualified mental health staff, shall determine if the prisoner's accumulated segregation time should be executed, suspended or modified because of the prisoner's serious mental illness. A written record shall be made and maintained as to the decision and the reasons for that decision. This paragraph shall apply to all seriously mentally ill prisoners removed from the SHU on, or after, April 1, 2006.

*Continuing mental health evaluations in the SHU*

16. All prisoners in the SHU will receive a mental health evaluation at least weekly by mental health professionals. These evaluations will take place in a setting where accurate

evaluation of the prisoner's mental health status can occur. At least every ninety (90) days, all prisoners in the SHU will receive an evaluation by a licensed doctoral-level mental health clinician in a setting that provides audio privacy from other prisoners and staff.

17. In the event that mental health staff determine that the prisoner is seriously mentally ill, he will be transported, in no more than seventy-two (72) hours, to an appropriate placement where he can receive appropriate mental health services, as set out in paragraph 12, above, unless a psychiatrist determines after a face-to-face evaluation that the prisoner cannot safely be moved for mental health reasons, in which case the prisoner will be moved to the appropriate placement as soon as the psychiatrist determines that it is medically safe to do so.

*New Castle Psychiatric Facility*

18. The term "New Castle Psychiatric Facility" refers to programming that is currently available at the New Castle Psychiatric Facility in New Castle, Indiana. This programming features various therapies as directed by a psychiatrist and other qualified mental health staff.

*Determinations will be made by mental health staff*

19. This Agreement requires that, at various opportunities, a determination be made whether a prisoner is seriously mentally ill and requires that such a prisoner be excluded from the SHU. This determination shall be made solely by qualified, doctoral-level, mental health professionals.

*New policies and procedures*

20. In order to implement the policy of exclusion of seriously mentally ill prisoners from the SHU, the Indiana Department of Correction has created and implemented the attached policies. These policies are part of this Agreement and for a period of one year from the effective date of this Agreement will not be altered without prior written notice to plaintiffs' counsel in this case, at least thirty (30) days prior to the planned effective date of the alteration. The effective date of

this Agreement shall be the date on which the Court finally deems the Agreement to be a fair and appropriate settlement pursuant to Fed.R.Civ.P. 23(e).

*Continued monitoring*

21. For a period of two years following the effective date of this agreement the defendants will provide to plaintiffs' counsel the following information on a monthly basis so that compliance with the agreement may be monitored:

- a. The names of all prisoners at the SHU currently (specifying the date) prescribed psychotropic medications, and for each such prisoner, each medication's name and dosage.
- b. The names of all current SHU prisoners with an Axis I diagnosis and the specific Axis I diagnosis or diagnoses.
- c. The names of each prisoner since the last report (or, for the first report, since the effective date of this Agreement):

1. Who was admitted to the SHU after having been, at any time, confined at the New Castle Psychiatric Facility. For purposes of this paragraph only, the term "New Castle Psychiatric Facility" includes the HSBAR unit, which is no longer in existence. For each such prisoner, the following information will be provided:

- the date of the prisoner's admission to the SHU.
- the prisoner's mental health diagnosis as of the date of his admission to the SHU.
- the dates of the prisoner's confinement(s) at the New Castle Psychiatric Facility.
- the prisoner's mental health diagnosis as of the date(s) of his admission(s) to the New Castle Psychiatric Facility.

2. Who was removed from the SHU because he was found to be seriously mentally ill. For each such prisoner, the following information will be provided:

- the date of the prisoner's admission to the SHU.
- the date the prisoner was determined to be seriously mentally ill, and his mental health diagnosis as of that date.
- the date the prisoner was removed from the SHU.
- the facility to which the prisoner was transferred upon his removal from the SHU.

- d. Upon request, defendants will provide to plaintiffs' counsel the underlying documentation containing the information noted above.
- e. Upon request, defendants will provide to plaintiffs' counsel treatment plans or other similar documents that demonstrate that the decision as to where seriously mentally ill prisoners will be placed has been made in accordance with paragraph 12, above.

22. In addition to the provision of the above information, class members at the SHU and prisoners at other DOC facilities may be interviewed by plaintiffs' counsel and persons designated by plaintiffs, at all reasonable times. Plaintiffs' counsel and their experts may review the health and other records of class members at the SHU upon reasonable notice to defendants.

*Attorneys' fees and costs*

23. The defendants agree to pay to plaintiffs the sum of \$150,109.60 in full satisfaction of any claim for attorneys' fees and costs that could be claimed by plaintiffs for any work done in this case to date. For purposes of this paragraph, "to date" means up to and including the date on which this Agreement is signed by counsel.

24. The parties further agree that the plaintiffs shall receive reasonable attorneys' fees and costs for the necessary monitoring of defendants' compliance with the terms of this Agreement. However, plaintiffs agree that they will not assess fees for the routine review of the periodic reports required by paragraph 21.

*Notice to the class*

25. The parties acknowledge that Rule 23(e) of the Federal Rules of Civil Procedure requires that before this Agreement can be deemed to be approved by the plaintiffs notice to the class must be given. This notice will be accomplished by:

-delivering written notice to each prisoner in the SHU no later than ten (10) days following the Court's approval of the form and manner of notice, and delivering a copy to each prisoner newly admitted to the SHU for thirty (30) days thereafter.

-posting written notice in a location where it will be seen by prisoners in the New Castle Psychiatric Facility, Indiana State Prison, Wabash Valley Correctional Facility, Pendleton Correctional Facility, Westville Correctional Facility, Westville Control Unit, Putnamville Correctional Facility, and Plainfield Correctional Facility.

26. The notice will be posted for at least thirty (30) days. Following this thirty (30) day period, counsel for plaintiffs will report to the Court and to the defendants as to the comments received by class members and will then indicate if, in counsel's estimation, this Court should find that this Agreement is a fair and equitable settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

#### *Further Proceedings*

27. This Agreement may be modified only upon the written consent of counsel for all parties.

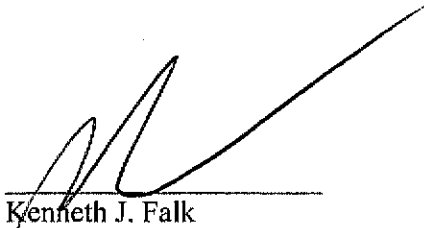
28. If at any time plaintiffs believe that defendants are in breach of this Agreement, they may seek (1) reinstatement of this action in this Court, and/or (2) enforcement of this Agreement in the state courts of Indiana. However, absent an emergency, as defined below, plaintiffs will communicate in writing with defendants' counsel at least thirty (30) days prior to seeking any judicial enforcement of this Agreement or prior to seeking that this case be placed back before the Court. An emergency is defined as any condition in the SHU which, if proven, poses an immediate risk to life or which poses a serious health or safety risk. If the plaintiffs deem an emergency to exist, they will explicitly note this, and will specifically set out the emergency in their filing in court.

29. It is the parties' intention that if this Court determines that this Private Settlement Agreement is a fair compromise in this matter pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, this matter shall be stayed for a period of two years from the effective date of



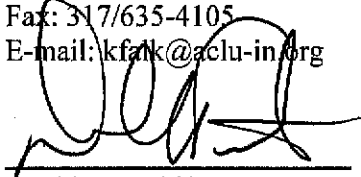
this Agreement, and thereafter dismissed without prejudice to being reinstated by plaintiffs or class members pursuant to the terms of paragraph 28.

For the plaintiffs:



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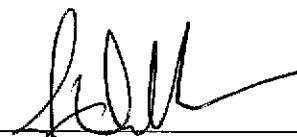
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Mitchell E. Daniels, Jr.  
Governor

J. David Donahue  
Commissioner

**EXECUTIVE DIRECTIVE: # 06 - \_\_\_**

This Executive Directive presents new criteria and procedures to be followed when adult male offenders are found guilty of a disciplinary code violation and sanctioned with long-term disciplinary segregation or are determined to be appropriate for consideration for placement in a Department-wide administrative segregation unit. This Executive Directive is applicable to all Department facilities that house adult male offenders. This Executive Directive and the attached criteria and procedures are to be considered effective immediately.

The Department of Correction recognizes that some offenders commit inappropriate behavior due to being seriously mentally ill (i.e., having a current diagnosis, or evidence, of any Diagnostic and Statistical Manual IV [DSM-IV] AXIS I mental disorder or who is receiving treatment for such a diagnosis or who has been diagnosed with a mental disorder that is worsened by confinement in a Secure Confinement Unit [SCU]). In these cases, it is in the best interests of the Department to attempt to obtain mental health treatment for these offenders rather than simply placing them in a long-term disciplinary segregation or Department-wide administrative segregation unit, such as the Secure Confinement Unit at the Wabash Valley Correctional Facility. In order to minimize the negative effects of long-term segregation on offenders, the attached criteria and procedures are to be implemented. These procedures include provisions for all facilities as well as provisions directed to the Secure Confinement Unit at the Wabash Valley Correctional Facility.

Please ensure that all appropriate staff is made aware of this Executive Directive and the attached procedures. Also, please ensure that a copy of this Executive Directive is posted in all housing units in facilities housing adult male offenders.

If you have any questions regarding this Executive Directive or the attached procedures, please contact Dr. Elton Amos, Medical Director, at (317) 233-5735.

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J. David Donahue  
Commissioner

**CRITERIA/PROCEDURE FOR ASSIGNMENT TO THE WABASH VALLEY AND WESTVILLE CONTROL - LONG TERM DISCIPLINARY SEGREGATION UNITS**

**CRITERIA**

The following criteria are to be applied when considering an individual for, or continuing assignment to, the Wabash Valley and Westville Control Long Term Disciplinary Units. The offender shall:

1. Have six (6) months or more of accumulated disciplinary segregation time to serve; and
2. Have a Medical Code of A, F, G, H, I, or K, and a Disability Code of A or D.  
Any exceptions to these criteria shall be made on a case-by-case basis.
3. Not have a current diagnosis or evidence of any Diagnostic and Statistical Manual IV (DSM-IV) AXIS I mental disorder, be receiving treatment for such a diagnosis or have been diagnosed with a mental disorder that is worsened by confinement in a Secure Confinement Unit (SCU). Offenders who meet any of these criteria shall be referred to as "seriously mentally ill."
4. Safekeepers may not be assigned to Long Term Disciplinary Segregation without the approval of the Deputy Commissioner of Operations.

**PROCEDURE**

The following procedure is to be used for referral of an offender for assignment to, or reassignment from, the Wabash Valley and Westville Control Long Term Disciplinary Units.

1. Upon determining that an offender meets the criteria for consideration for assignment to the Long Term Disciplinary Units, a qualified mental health professional (i.e., licensed psychologist or psychiatrist) shall evaluate the offender prior to the offender being referred to the Superintendent.
  - a. During this evaluation, the qualified mental health professional shall determine whether the offender has a current AXIS I diagnosis or is otherwise seriously mentally ill as indicated in Criterion # 3.
  - b. The qualified mental health professional shall determine whether there are any other mental health conditions that may be negatively impacted by the offender's assignment to long-term disciplinary segregation.
  - c. The qualified mental health professional shall prepare a written evaluation of the offender and, if the offender is approved for transfer to a SCU, shall send a copy to the receiving segregation unit.
2. If the results of the evaluation indicate that the offender is seriously mentally ill, consideration shall be given to transferring the offender to the Psychiatric Unit at the New Castle Correctional Facility or another suitable facility where the offender can receive needed mental health treatment; the offender shall not be transferred to a SCU. If the results of the evaluation indicate that the offender is acutely mentally ill, the offender shall be transferred to the Psychiatric Unit at the New Castle Correctional Facility.

3. Offenders identified by qualified mental health professionals as needing other levels of mental health treatment shall not be placed in facilities that:
  - a. Will exacerbate their serious mental illness; or,
  - b. Cannot meet their mental health needs.

**Determination of mental health needs shall be made by qualified mental health staff. However, there may be offenders who, although not acutely mentally ill and therefore not appropriate for placement at the New Castle Psychiatric Facility, will have their serious mental illnesses exacerbated by any incarceration, regardless of the particular placement. In such a situation the offender will be placed where qualified mental health staff can meet his mental health needs appropriately. A written record will be made and maintained as to the decision of the mental health staff and the reasons for that decision.**

4. If the qualified mental health professional determines that the offender is NOT seriously mentally ill,
  - a. The qualified mental health professional will submit a written evaluation to the Facility Head and advise that the offender may be considered for transfer to a SCU.
  - b. The Facility Head shall prepare a written request and submit it to the appropriate Regional Director. The written request will include the following:
    - (1) A new Classification Designation Instrument, State Form 7263 (R/10-05). (A transfer to the Long Term Disciplinary Units does not require an offender to be classified Level Three [3].)
    - (2) An Inter-Facility Transfer Report, State Form 44355 (R/6-94) to include a summary of the offender's behavior which initiated the transfer request.
    - (3) A Classification Hearing Report, State Form 3412 (R2/3-92) completed in accordance with the Adult Classification Policy.
    - (4) A copy of the evaluation prepared by the qualified mental health professional indicating that the offender is not seriously mentally ill.
5. Upon receipt of the referral material, the Regional Director will review the material and either approve or deny the assignment on the submitted Inter-Facility Transfer Report. The Regional Director will then forward the decision and accompanying paperwork to the Director of Classification.
  - a. If approved, the referring facility will be notified in writing. The Director of Classification shall cause the issuance of a Transfer Authority. The Classification Division and Offender Movement Section will coordinate a transfer date. The offender may appeal this decision to the Deputy Commissioner of Operations using the Classification Appeal Form, State Form (R/3-92).
  - b. If denied, the referring facility will be notified in writing, the referring material will be returned to the facility and the offender will remain in his assigned facility.

6. Upon arrival, the following procedures shall be implemented:
  - a. Within two (2) working days of arrival at a SCU, the offender shall receive a face-to-face screening by a licensed mental health professional who shall also review the offender's mental health records and make a written record as to the results of the screening.
  - b. If it is determined by this screening that the offender is seriously mentally ill, the offender shall be transferred within 72 hours of this determination to an appropriate facility that can provide the needed mental health treatment unless a psychiatrist determines after a face-to-face evaluation that the offender cannot be moved safely for mental health reasons. The offender shall remain at the facility until the psychiatrist determines that it is medically safe to move the offender to a facility that can provide the needed mental health treatment.
7. All offenders assigned to the SCU at WVCF shall receive a mental health evaluation at least weekly by a mental health professional (e.g., psychologist, behavioral clinician, etc.) which shall take place in a setting where an accurate evaluation of the offender's mental health status can occur.
8. At least every 90 days, each offender in the SCU at WVCF shall receive an evaluation by a licensed doctoral-level mental health professional in a setting that provides audio privacy from other offenders and staff.
9. If, as a result of the above evaluation, mental health staff determines that the offender is seriously mentally ill the offender shall be transferred within 72 hours of the determination to an appropriate facility where he can obtain needed mental health treatment, unless a psychiatrist determines after a face-to-face evaluation that the offender cannot be safely moved for mental health reasons. In such a case, the offender shall be moved to the appropriate facility as soon as the psychiatrist determines that it is medically safe to move the offender.
10. In addition to the weekly and every 90 days evaluations, if staff believes that the offender's mental health is deteriorating staff may request additional evaluations on an as needed basis and shall report all observations to the mental health staff.
11. Upon transfer of a seriously mentally ill offender out of a SCU, the appropriate Regional Director/Operations, with input from qualified mental health staff, shall determine whether the offender's accumulated segregation time should be executed, suspended or modified due to the offender's serious mental illness.
  - a. The Unit Management Team at the SCU at WVCF shall report the transfer to the Regional Director and provide documentation of the mental health diagnosis and status of the offender as of the time of transfer, together with any other information that the Team believes to be relevant to a determination under this part of this Executive Directive.
  - b. The Regional Director shall make a written record of the decision and the reason(s) for the decision and shall ensure that a copy of this written record is filed in the offender's facility and Central Office packets.

- c. The Regional Director shall ensure that a copy of this decision is provided to the Superintendent of the facility housing the offender and that the Superintendent advises appropriate staff of the decision.
  - d. Unit staff shall ensure that the offender is notified of the decision and shall explain the consequences of the decision to the offender.
12. Upon completion of the offender's disciplinary segregation time, classification staff at the Long Term Disciplinary Segregation Units shall forward a request for reassignment to the appropriate Classification Analyst using materials outlined in Step 2 of this procedure. The Classification Analyst shall forward the request to the Director of Classification, who in consultation with the appropriate Regional Director shall determine the facility placement.
13. Any release from this unit other than a scheduled release or transfer due to the offender being diagnosed as seriously mentally ill requires the review of the Regional Director and approval of the Deputy Commissioner of Operations. The Superintendent shall support the request in writing noting the reasons for requesting an early release from the Secure Confinement Unit. The request along with a Transfer Report shall be forwarded to the Regional Director by facility classification. Upon approval of an unscheduled reassignment from the Long Term Disciplinary Units, the Regional Director shall consult with the Deputy Commissioner of Operations and Director of Classification for the issuance of a Transfer Authority.



**CRITERIA/PROCEDURE FOR PLACEMENT IN DEPARTMENT-WIDE  
ADMINISTRATIVE SEGREGATION**

**CRITERIA**

Offenders who present a special safety or security management concern may be recommended for placement in a department-wide administrative segregation unit. The Department-wide Administrative Segregation Units shall be at the SCUs at the Wabash Valley Correctional Facility and the Westville Correctional Facility.

Offenders considered for such a placement must meet the following criteria:

1. The criteria for placement in a facility administrative segregation unit.
  - a. History of assaultive behavior;
  - b. Active member of a Security Threat Group who poses a threat to the safe and orderly operation of the facility;
  - c. A high escape risk;
  - d. The facility's need to contain, prevent or end a disturbance or other threat to the orderly operation of the facility;
  - e. Pending an investigation, disciplinary hearing or criminal trial;
  - f. A documented history of behavior that causes staff to believe that the offender's continued presence in the offender general population would be detrimental to the security of the facility or the offender; or,
  - g. The offender is the subject of an on-going investigation and the segregation has been approved in accordance with the administrative procedures for Policy 02-04-101, "The Disciplinary Code for Adult Offenders."
2. Offenders selected for a department-wide administrative segregation unit must have exhibited extraordinary security concerns, such as seriously injuring staff or offenders, participating in a hostage situation, identified security threat group leader, heavily involved in trafficking or having a lengthy history of serious (Class A and/or B) conduct violations.
3. Standards for the placement of offenders in an administrative segregation unit shall be in accordance with Policy 01-04-1-1, "Adult Offender Classification."
4. Have a Medical Code of A, F, G, H, I, or K and a Disability Code of A or D. Any exceptions to these criteria shall be made on a case-by-case basis.
5. Not have a current diagnosis or evidence of any Diagnostic and Statistical Manual IV (DSM-IV) AXIS I mental disorder, be receiving treatment for such a diagnosis or have been diagnosed with a mental disorder that is worsened by confinement in a Secure Confinement Unit (SCU). Offenders who meet any of these criteria shall be referred to as "seriously mentally ill."

**PROCEDURE**

The following procedure is to be used for referral of an offender for assignment to a department-wide administrative segregation unit:

1. Offenders shall be provided a classification hearing to determine the apparent appropriateness of placement in a department-wide administrative segregation unit.
2. If the offender appears appropriate for transfer to a department-wide administrative segregation unit, a qualified mental health professional (i.e., licensed psychologist or psychiatrist) shall evaluate the offender prior to advising the Superintendent of the recommendation.
  - a. During this evaluation, the qualified mental health professional shall determine whether the offender has a current AXIS I diagnosis or is otherwise seriously mentally ill as indicated in Criterion # 5.
  - b. The qualified mental health professional shall determine whether there are any other mental health conditions that may be negatively impacted by the offender's assignment to department-wide administrative segregation.
  - c. The qualified mental health professional shall prepare a written evaluation of the offender and, if the offender is approved for transfer to a SCU, shall send a copy to the receiving segregation unit.
3. If the results of the evaluation indicate that the offender is seriously mentally ill, consideration shall be given to transferring the offender to the Psychiatric Unit at the New Castle Correctional Facility or another suitable facility where the offender can receive needed mental health treatment; the offender shall not be transferred to a SCU. If the results of the evaluation indicate that the offender is acutely mentally ill, the offender shall be transferred to the Psychiatric Unit at the New Castle Correctional Facility.
4. Offenders identified by qualified mental health professionals as needing other levels of mental health treatment shall not be placed in facilities that:
  - a. Will exacerbate their serious mental illness; or,
  - b. Cannot meet their mental health needs.

**Determination of mental health needs shall be made by qualified mental health staff. However, there may be offenders who, although not acutely mentally ill and therefore not appropriate for placement at the New Castle Psychiatric Facility, will have their serious mental illnesses exacerbated by any incarceration, regardless of the particular placement. In such a situation the offender will be placed where qualified mental health staff can meet his mental health needs appropriately. A written record will be made and maintained as to the decision of the mental health staff and the reasons for that decision.**

5. If the qualified mental health professional determines that the offender is NOT seriously mentally ill,
  - a. The qualified mental health professional will submit a written evaluation to the Supervisor of Classification who shall present a recommendation, along with the evaluation report, to the Superintendent indicating that the offender may be considered for transfer to a SCU.
  - b. If the Facility Head approves the recommendation, the Superintendent shall prepare a written request and submit it to the appropriate Regional Director. The written request will include the following:

- (1) A new Classification Designation Instrument, State Form 7263 (R/10-05).
  - (2) An Inter-Facility Transfer Report, State Form 44355 (R/6-94) to include a summary of the offender's behavior which initiated the transfer request.
  - (3) A Classification Hearing Report, State Form 3412 (R2/3-92) completed in accordance with the Adult Classification Policy.
  - (4) A copy of the evaluation prepared by the qualified mental health professional indicating that the offender is not seriously mentally ill.
6. Following review of the information submitted by the Superintendent, the Regional Directors shall consult with the Deputy Commissioner of Operations and the Director of Classification in order to make a decision and to determine what department-wide unit would be most appropriate.
  7. The Regional Director shall advise the Superintendent of the decision. If the decision is to place the offender in a department-wide administrative segregation unit, the Regional Director shall work with the Director of Classification to ensure that the transfer is processed in a timely manner.
  8. The offender may appeal the decision to assign him/her to a department-wide administrative segregation unit in accordance with Policy 01-04-101.
  9. Upon transfer to a department-wide administrative segregation unit, the offender shall be provided the same reviews as indicated for offenders admitted to a facility administrative segregation unit. Copies of all reviews shall be forwarded to the Regional Director for review and approval.
  10. In addition to the other reviews provided to the offenders, upon arrival the following procedures shall be implemented:
    - a. Within two (2) working days of arrival at a SCU, the offender shall receive a face-to-face screening by a licensed mental health professional who shall review the offender's mental health records and make a written record as to the results of the screening.
    - b. If it is determined by this screening that the offender is seriously mentally ill, the offender shall be transferred within 72 hours of this determination to an appropriate facility that can provide the needed mental health treatment unless a psychiatrist determines after a face-to-face evaluation that the offender cannot be moved safely for mental health reasons. The offender shall remain at the facility until the psychiatrist determines that it is medically safe to move the offender to a facility that can provide the needed mental health treatment.
  11. All offenders assigned to the SCU at WVCF shall receive a mental health evaluation at least weekly by a mental health professional (e.g., psychologist, behavioral clinician, etc.) which shall take place in a setting where an accurate evaluation of the offender's mental health status can occur.
  12. At least every 90 days, each offender in the SCU at WVCF shall receive an evaluation by a licensed doctoral-level mental health professional in a setting that provides audio privacy from other offenders and staff.

13. If, as a result of the above evaluation, mental health staff determines that the offender is seriously mentally ill the offender shall be transferred within 72 hours of the determination to an appropriate facility where he can obtain needed mental health treatment, unless a psychiatrist determines after a face-to-face evaluation that the offender cannot be safely moved for mental health reasons. In such a case, the offender shall be moved to the appropriate facility as soon as the psychiatrist determines that it is medically safe to move the offender.
14. In addition to the weekly and every 90 days evaluations, if staff believes that the offender's mental health is deteriorating staff may request additional evaluations on an as needed basis and shall report all observations to the mental health staff.
15. Upon transfer of a seriously mentally ill offender out of a SCU, the appropriate Regional Director/Operations, with input from qualified mental health staff, shall determine whether the offender's administrative segregation status should be suspended or modified due to the offender's serious mental illness.
  - a. The Unit Management Team at the SCU at WVCF shall report the transfer to the Regional Director and provide documentation of the mental health diagnosis and status of the offender as of the time of transfer, together with any other information that the Team believes to be relevant to a determination under this part of this Executive Directive.
  - b. The Regional Director shall make a written record of the decision and the reason(s) for the decision and shall ensure that a copy of this written record is filed in the offender's facility and Central Office packets.
  - c. The Regional Director shall ensure that a copy of this decision is provided to the Superintendent of the facility housing the offender and that the Superintendent advises appropriate staff of the decision.
  - d. Unit staff shall ensure that the offender is notified of the decision and shall explain the consequences of the decision to the offender.
16. An offender who has been assigned to a department-wide administrative segregation unit shall be released upon review of the respective Regional Director and the approval of the Deputy Commissioner of Operations or if the offender has been diagnosed as seriously mentally ill. If staff at the department-wide administrative segregation unit believes that an offender is ready for release other than due to the offender being diagnosed as seriously mentally ill, staff shall:
  - a. Prepare a written recommendation for the offender's release and forward it to the Superintendent for review.
  - b. If the Superintendent agrees with the recommendation, the Superintendent shall forward the recommendation, along with a Transfer Report, to the Regional Director for review. The Regional Director shall then forward the recommendation to the Deputy Commissioner for approval.
  - c. The Regional Directors shall consult with the Deputy Commissioner of Operations and the Director of Classification to determine to which facility administrative segregation unit the offender will be transferred.