



PC-MD-003-002

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CHARLES E. JOHNSON, et al.,

Plaintiffs,

v.

JON P. GALLEY, et al.,

Defendants.

Civil No. H-77-113

JOHN H. X. WASHINGTON, et al.,

Plaintiffs,

v.

JAMES P. TINNEY, et al.,

Defendants.

Civil No. H-78-1730

Stipulated Agreement

Introduction

On February 18, 1983 a Stipulation in this action was entered into by the parties and approved on June 3, 1983 by this Court. This 1983 Stipulation was entered into to provide defendants with interim mechanisms for addressing overcrowding at the Maryland House of Correction in Jessup, Maryland (hereinafter MHC), and the Maryland Correctional Institution in Hagerstown, Maryland (hereinafter MCI-H) without the pressure of strict limits on the population numbers and types of housing facilities imposed by the Court in 450 F. Supp. 648 (D. Md. 1978) and 479 F. Supp. 569 (D. Md. 1979).

FILED ENTERED
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OCT 5 1987

AT BALTIMORE
CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND
BY *s/w* DEPUTY

The 1983 Stipulation requires defendants to ensure that the institutions meet certain specified criteria while utilizing interim mechanisms for housing prisoners at MCI-H and MHC. The present conditions in these institutions and defendants' population requirements since the 1983 Stipulation was entered into, however, evidence a need to modify the 1983 Stipulation.

After evaluating the nature of plaintiffs' confinement since 1983, plaintiffs' counsel filed an Amended Motion for Further Relief and Modification of the June 3, 1983 Stipulation. The plaintiffs and defendants desire to resolve the issues addressed by plaintiffs in their Amended Motion without the time, expense and uncertainty of contested litigation.

The defendants by entering into this agreement, however, do not admit that any acts complained of in Plaintiffs' Amended Motion for Further Relief and Modification of the June 3, 1983 Stipulation constitute violations of that Stipulation or the United States Constitution. Likewise, by entering into this Agreement, members of the plaintiff class are not waiving any rights to pursue individual claims for monetary relief arising out of the conditions this Stipulated Agreement is designed to correct.

Plaintiffs and defendants, therefore, have voluntarily agreed to the provisions of this Stipulated Agreement, which replaces the June 3, 1983 Stipulation. This Stipulated Agreement shall become effective on the date it is approved by the Court.

The parties do hereby stipulate and agree that the defendants shall operate these facilities in conformity with the standards

developed by the Department of Public Safety and Correctional Services' Commission on Correctional Standards. The parties do further stipulate and agree as follows:

I. Compliance Monitoring

A. For a period of three years following approval of this Stipulated Agreement by the Court, defendants shall submit monthly reports to the plaintiffs and the Court describing compliance with the terms of this Stipulated Agreement. The format of the report shall be developed by the plaintiffs and defendants and a copy shall be attached as an appendix to this agreement.

B. The defendants shall submit to the Court for approval, implementation plans developed pursuant to this Stipulated Agreement on or before, the date indicated in the text of the agreement. Where no date is indicated, the plan is due on or before November 1, 1987. The plaintiffs shall have thirty days from the date indicated in the text to review these plans and submit any objections to the Court. Either party may request a hearing on any objection to any portion of the plan. Such request for hearing must be made no later than fifteen days after the date plaintiffs' objections are due to the Court.

C. All plans approved by the Court shall become appendices to this Stipulated Agreement. Either party may request a modification to the plan so appended. No modification shall be approved which changes the

underlying purpose of this Stipulated Agreement, to eliminate doublecelling and doublebunking and provide plaintiffs with constitutional living conditions at MCI-H and MHC.

D. Counsel for plaintiffs shall, upon request to the defendants, receive any documents, not otherwise privileged by the Federal Rules of Evidence, which may demonstrate compliance or lack of compliance with the terms of this Stipulated Agreement. Counsel for plaintiffs shall have access to members of the plaintiff class at reasonable times and under reasonable circumstances. Plaintiffs' counsel, including any experts selected by them, upon reasonable notice to defendants' counsel, shall have access to MCI-H and MHC for the purpose of making observations concerning compliance.

E. After the expiration of the three years described in IA above, the Court shall hold a hearing to determine the need for continued monitoring of this Stipulated Agreement.

II. Population

To meet the population requirements of this section, defendants shall submit a plan to the Court by July 1, 1987, for reduction of the populations in MCI-H and MHC.

A. MCI-H

1. Defendants shall not doublecell in the main institution or doublebunk prisoners anywhere in MCI-H, with the exception of of the Western Program Development Center (WPDC)¹ or house them in areas not designed for living space. The defendants shall discontinue doublebunking, with the exception of WPDC, and doublecelling within 180 days after the Eastern Correctional Institution, ECI, is open for reception of prisoners, but in any event, no later than March 1, 1988. The defendants shall discontinue housing prisoners in areas not designed for living space, at this time eight (8) basement annexes, within 120 days after ECI is open for reception of prisoners, but in any event, no later than January 1, 1988.

2. Defendants shall provide the population of the the North Dormitory with 55 square feet per prisoner of living space, exclusive of dayroom space and bathroom facilities by January 1, 1988.

3. If the defendants are not in compliance with §III. A., B. 1, 3, 7-11; V. A. 1-3 by September 1, 1987, they shall discontinue doublebunking and doublecelling on or before September 30, 1987.

¹ The plaintiffs and defendants are unable to agree on the discontinuation of doublebunking at WPDC. The terms of this agreement do not preclude plaintiffs from taking any legal action they deem necessary to attempt to eliminate doublebunking in WPDC.

B. MHC

1. Defendants shall discontinue doublebunking and reduce the population in the dormitories within 180 days after ECI is open for reception of prisoners, but in any event, no later than March 1, 1988, to house no more than the numbers housed at the time of the Court's 1978 decision, 450 F. Supp. 648, specifically, C Dorm - 86, D Dorm - 88, H, I and J Dorms - 106 each.

2. Defendants shall provide prisoners in dormitories with at least 55 square feet of living space, exclusive of dayroom space and toilet facilities, by January 1, 1988.

3. Defendants shall discontinue the use of all areas not designed for living space, specifically O-Dorm, within 90 days of the opening of ECI, or, in any event, no later than November 1, 1988.

4. If the defendants are not in compliance with the §III. A, B. 1, 3, 7-11; V. A. 1-3 by September 1, 1987, they shall discontinue use of O-Dorm and doublebunking in all dormitories on or before September 30, 1987.

C. MCI-H and MHC

If the defendants desire to use any areas not designed for living space to house prisoners on or after January 1, 1988, those areas must be renovated and secured in conformity with a plan approved by the Court. Such plan shall provide each prisoner with 55

square feet of living space exclusive of dayroom space and bathroom facilities. No prisoners shall be housed in these areas, at this time the basement annexes at MCI-H and O-Dorm at MHC, after January 1, 1988, until all renovations are completed.

D. In the event of a major catastrophe, such as, but not limited to, a fire or major disturbance, destroying a significant portion of the institutions, thus making some, if not all of the living areas unusable, the defendants may temporarily doublecell or doublebunk prisoners or house prisoners classified to lower custody in these institutions. They must, however, give notice to plaintiffs' counsel of the need to temporarily doublecell, doublebunk or house lower custody prisoners in these institutions. This notice shall be given within 24 hours of the catastrophe or major disturbance if it occurs during the week or after 10:00 a.m. on a Sunday and 48 hours if it occurs on Saturday and before 10:00 a.m. on a Sunday.

III. Environmental Conditions

A. The defendants shall immediately develop and implement a preventive maintenance plan at MCI-H and MHC. This plan shall include at least bi-weekly inspections by defendants or their designee of all areas of the institution documented in writing, at least bi-annual inspections by the State Health Department and

the State Fire Marshal followed by the immediate correction of all violations noted; a regular cleaning schedule of all areas of the institution; and, an effective insect and rodent control program to include, but not limited to, the prevention of the entry of birds and other flying animals, implemented by persons trained in the use of pesticides.

B. The defendants shall immediately correct and maintain in good condition all environmental deficiencies at MCI-H and MHC. These include:

1. The repair or replacement of all broken windows.

2. The repair of all inoperable plumbing, including toilets and showers.

3. The repair of all roof leaks and exposed electrical wiring.

4. The elimination of all cross-connections.

5. The maintenance of a clean, properly painted and plastered environment. The defendants shall, specifically, plaster and paint the walls in the kitchen, dining areas and basement storage areas of MHC, as well as repair the floors in these areas.

6. The utilization of properly maintained and operated equipment.

7. The correction of all fire safety deficiencies outlined by the State Fire Marshal. The defendants shall comply with the requirements of the NFPA Code for

correctional institutions adopted by the Maryland Department of Public Safety and Correctional Service.

8. The proper insulation of all pipes to prevent, among other things, the pipes from leaking or sweating and to eliminate the possibility that a prisoner will be burned.

9. The provision of 20 foot candles of lighting in all living, work, academic and library areas. If lightbulbs are used to increase the footcandles, soft white bulbs will be used to decrease the heat created by the lightbulbs.

10. The provision of at least 10 cubic feet of outside or recirculated air per minute per human occupant in all areas at MCI-H and at MHC between May 1, and October 15 by utilizing, among other things, the exhaust smoke fan in the roof. The defendants shall investigate other methods for increasing the air movement to at least 10 cubic feet of outside or recirculated air per minute per human occupant in all areas at MHC, such as the utilization of window exhaust fans, between October 15 and May 1 and submit a plan to the Court by September 1, 1987.

11. The defendants shall use their best efforts to maintain noise levels at a rate no greater than 70 decibels in the daytime and 45 decibels at night in all living areas. The plaintiffs understand that to achieve these levels they may be required to acquire and use ear

plugs on all audio or video equipment. The defendants shall not prohibit the use of audio and video equipment, however, to comply with this section of the agreement.

12. The correction of all public health, sanitation and fire safety violations in the punitive isolation units. These corrections shall include at MHC cleaning, pest control, making toilets operable, plastering and painting the walls, water-proofing the area, providing light and ventilation in conformity with ¶B 9 and 10 above. Logs shall be maintained for the use of these units. No prisoners shall be housed in these units until such corrections have been made except under the following circumstances: after cleaning, which includes removal of all standing water, pest control, the provision of operable toilets and adequate lighting, a prisoner may be placed in these units for no longer than 12 hours unless certified in writing by a licensed psychologist or psychiatrist that the prisoner continues to be a danger to himself or others and needs such seclusion. Such certification must be renewed every 12 hours and a prisoner shall be transferred within 36 hours after placement if it is determined he is in need of continued isolation. Any prisoner so placed shall be reviewed within one hour of placement by a medical professional and a determination made that such isolation is necessary and appropriate to protect the prisoner from himself or others. If this determination

is made by a medical professional other than a physician, physician's assistant or licensed, Ph.D. psychologist, one of these professionals must observe the prisoner, review the reasons for assignment and determine that there is a continuing need for such assignment within 8 hours of the initial determination. While so isolated, the prisoner shall be monitored hourly by correctional staff and every 6 hours by a psychologist or, if after normal working hours, a medical professional. If all corrections mandated by this paragraph are not completed by August 15, 1987, the defendants shall discontinue use of this area until they are made.

13. The provision of adequate laundry facilities at MCI-H for prisoner clothing.

IV. Food Service

The defendants shall provide all plaintiffs with a nutritionally adequate diet. Plaintiffs with specific health needs shall be provided special diets as prescribed by the physician responsible for his treatment while incarcerated. Plaintiffs with dietary requirements imposed by their religion shall receive diets to conform to their religious requirements, if their religion is generally recognized.

V. Security

A. The defendants shall provide adequate security staff for the observation and supervision of prisoners. This staff shall include the following:

1. The assignment and deployment of at least two security staff to each dormitory. At least one of these security staff shall be stationed inside the dormitory.

2. The assignment and deployment of at least one correctional officer at each of the non-dormitory housing units per shift.

3. The deployment of sufficient staff on the segregation units to provide for implementation of the exercise program during normal ~~working~~ ^{waking} hours.

AH ^{II}
B. Staff shall be trained in the supervision of prisoners and participate in annual in-service training programs designed to increase their skills in supervising prisoners, including special management of prisoners. The training program in existence shall be reviewed by the defendants and modified as necessary to achieve the goals of this and other sections of the Stipulated Agreement.

C. The defendants shall review the classification process for assigning prisoners to MCI-H and MHC and develop and implement an objective classification system to assure that (1) persons for whom less restrictive custody is appropriate are not assigned to these institutions and (2) until multiperson living units are

no longer utilized, persons are appropriately assigned to multi-person housing units and beds within those units by correctional staff. In conjunction with (2), defendants shall develop and implement written, objective criteria to be utilized in the assignment of prisoners to doublecells, doublebunks, dormitories and areas not designed for living space until such time as the defendants discontinue the use of any of these housing assignments pursuant to this Stipulated Agreement. These criteria shall be incorporated into the objective classification system. Prisoners shall not be assigned to multiperson housing units on the basis of race.

D. The defendants shall use their best efforts to increase the number of Black custodial staff at MCI-H.

E. The defendants shall include a regular, ongoing race relations component for all staff in their training programs.

F. The utilization of all segregation units including the assignments to these units and the programs in them, shall be evaluated by the defendants and a plan for the efficient utilization of these units, including the use of closed front cells, developed which is consistent with the requirements of this Stipulated Agreement. The defendants shall develop and implement a system for quarterly written review of the utilization of punitive and administration segregation.

VI. Health Care

Defendants shall provide health care to all prisoners in conformity with professional standards. Defendants shall develop a plan, pursuant to §I of the Stipulated Agreement, to provide for the delivery of health care, inclusive of dental, mental health and medical care to all prisoners at MCI-H and MHC. Specifically, the plan shall require defendants to:

A. Have a sufficient number of medical, dental and mental health treatment staff at each facility such that:

(1) Referrals to specialty clinics, including dentistry and mental health, are treated expeditiously based on a medical determination. These referrals shall be reviewed weekly by the facility medical director, priorities for treatment established by that physician (the facility medical director) and no serious needs go unmet. In the case of mental health, a licensed psychologist (Ph.D.) may be substituted for the physician for purposes of complying with the terms of this paragraph.

(2) Sick call requests shall go directly to the medical staff, rather than correctional staff or prisoners and sick call lists shall be compiled by the medical staff. In the case of an emergency or other circumstance which prevent the prisoner from making known his need for sick call directly to medical staff, the correctional staff shall not

cancel any such request, but rather immediately make any request for health care made known to the health care staff on duty. A log shall be kept of all such requests by the correctional staff. Sick call passes may be issued by correctional staff from the sick call lists compiled by the medical staff. The correctional staff shall not have the discretion to delete any prisoner from the sick call list. The sick call lists, sick call passes and logs shall be maintained for the duration of the monitoring of this agreement. Sick call passes shall not be distributed by prisoners.

(3) A determination of whether a prisoner is in need of medical treatment is made not on the basis of what he says on the sick call slip but on a face to face assessment by a health care professional.

(4) Prisoners complaining of painful dental conditions are evaluated within twenty-four (24) hours of their complaint by a health care professional.

B. Have a formalized and written quality assurance program which reviews all medical treatment. Defendants shall also establish a medical review committee to review all deaths which occur of prisoners assigned to these facilities. One member of this review committee shall not be associated with the Department.

C. Devise and implement a plan for following prisoners with diagnosed illnesses to assure that their condition is adequately monitored and treated.

D. Devise and implement a plan for renewals of special diets such that a prisoner in need of a special diet is not denied this diet because of a lapse in the prescription of the diet.

E. Have one officer in each housing area per shift trained in cardiopulmonary resuscitation (CPR) and first aid.

VII. Programs

A. Upon approval of this Stipulated Agreement, defendants shall provide all general population prisoners with at least five hours per day out-of-cell time, exclusive of meal times.

B. In order to allow prisoners to constructively utilize this time and meet their needs as identified in the objective classification process, defendants shall evaluate their work, educational, vocational and recreational programs and submit a plan to the Court for approval by January 1, 1988 for provision of programs, including library services, to this population. In formulating this plan the defendants shall utilize the information developed through the classification process. The objective classification process utilized by the Division of Correction is for the purpose of

determining the custody and security levels of prisoners. The needs discussed in this paragraph with regard to work, educational, vocational and recreational programs will be determined by and those services provided to prisoners through the Division of Correction's multi-disciplinary counseling program (known as the Case Management Program).

C. Defendants shall provide at least one hour per day out-of-cell activity to all prisoners in administrative and disciplinary segregation.² This out-of-cell activity shall be outdoors at least one day per week except in inclement weather for prisoners in administrative segregation.

D. Prisoners in protective custody shall be allowed at least three hours out-of-cell time five days per week, exclusive of meals and one hour per day exclusive of time for meals the remaining two days. Out of cell activity shall be outdoors one hour per day, one day per week except in inclement weather.

E. Prisoners in administrative segregation and protective custody for longer than thirty (30) days shall have access to educational and recreational

² The parties are unable to agree on provision of outdoor and structured in-cell activity to prisoners in disciplinary segregation. The terms of this agreement do not preclude plaintiffs from taking any legal action they deem necessary to attempt to obtain outdoor and structured in-cell activity for prisoners in disciplinary segregation.

programs. Prisoners in administrative segregation and protective custody shall be provided with the opportunity for at least three (3) hours per day structured in-cell activity which can include, e.g., educational programming, vocational programming, and arts and crafts.

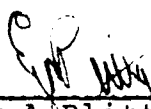
VIII. Access to Courts

The defendants agree to review the legal services currently provided by the Prisoner Assistance Project and develop and implement a plan to eliminate any delays in receiving the necessary legal assistance which persists for longer than one week.

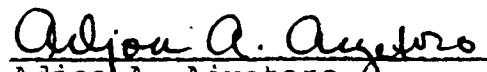
IX. The Court's Continuing Jurisdiction

The Court shall retain jurisdiction of the above-captioned cases and shall retain discretionary authority, subject to all applicable provisions of law concerning modification where not otherwise modified by this Stipulation, to modify, either prospectively or retrospectively, any provisions hereof. Either party may at any time apply to this Court for modification of any and all provisions of this Stipulation, upon appropriate notice. Either party may seek enforcement of the provisions of this agreement by appropriate motion. No modification shall be granted which changes the underlying purpose of this Stipulated Agreement, to eliminate doublecelling and doublebunking and provide plaintiffs with constitutional living conditions at MCI-H and MHC.


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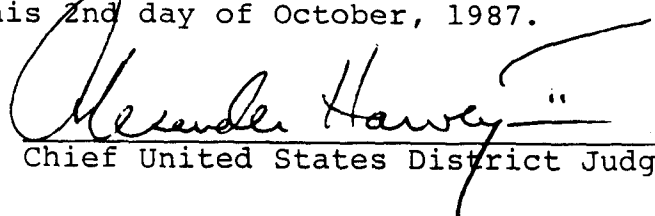

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On Behalf of Plaintiffs

Dated: July 8, 1987

Agreement APPROVED after hearing from counsel for the parties in open Court this 2nd day of October, 1987.


Chief United States District Judge