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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DEC 23 1987

CHARLES E. JOHNSON, et al.,)
)
 Plaintiffs,)

AT BALTIMORE
CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND
DEPUTY

v.)

Civil No. H-77-113

JON P. GALLEY, et al.,)
)
 Defendants.)

JOHN H.X. WASHINGTON, et al.,)
)
 Plaintiffs,)

v.)

Civil No. H-78-1730

JAMES P. TINNEY, et al.,)
)
 Defendants.)

SUPPLEMENTAL STIPULATED AGREEMENT

I. 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).

Johnson v. Galley



PC-MD-003-003

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DEPUTY
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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. On February 18, 1987, 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. On July 8, 1987, the parties signed a Stipulated Agreement settling a majority of the claims raised by the plaintiffs in their Amended Motion for Further Relief. It was approved by the Court on October 2, 1987.

There were four major issues not covered by the Stipulated Agreement: provision of outdoor and in-cell activity to prisoners in disciplinary segregation, sick call procedures for general population and segregation prisoners and overcrowding in the Western Program Development Center (WPDC). The parties are entering into this supplemental stipulated agreement to settle these four outstanding issues.

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 Supplemental Stipulated Agreement is designed to correct.

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

II. Compliance Monitoring

A. For a period of three years following approval of this Supplemental Stipulated Agreement by the Court, defendants shall submit monthly reports to the plaintiffs and the Court describing compliance with the terms of this Supplemental 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 are required by the October 2, 1987 Stipulated Agreement to submit to the Court for approval, implementation plans developed pursuant to the Stipulated Agreement. The parties agree that plaintiffs' experts will be included in the plan development discussions among defendants' staff or consultants prior to defendants finalizing the plan and submitting it to the Court. The plans for implementation of the provisions of this Supplemental Stipulated Agreement shall be incorporated into the plans to be submitted pursuant to the Stipulated Agreement i.e., the plans required for the provision

of health care, segregation utilization, population reduction and programming.

C. All plans approved by the Court addressing the issues in this Supplemental Stipulated Agreement shall become appendices to this agreement. Each party may request a modification to the plan so appended. No modification shall be approved which changes the underlying purpose of this Supplemental Stipulated Agreement: to provide for daily medical coverage to the segregation unit, sick call at least 5 days a week to general population prisoners, reduce idleness in disciplinary segregation and increase the living space at WPDC to at least 50 square feet per prisoner exclusive of hygiene facilities and dayroom space.

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 Supplemental 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 II A above, the Court shall hold a hearing to determine the need for continued monitoring of this Supplemental Stipulated Agreement.

III. Health Care

The defendants agree to provide a system of ready access by prisoners to nonemergency medical care. As a part of that system they agree to the following:

A. Sick call shall be held five days a week for prisoners in both general population and segregation. Prisoners shall be able to submit their sick call requests on any day and will be seen in sick call by a medical professional within twenty-four hours of making that request. Requests made on Friday and Saturday shall be scheduled for the following Monday.

B. There shall be daily rounds made in segregation by a physician's assistant. The rounds shall be made during normal waking hours. In addition to responding to any written requests for sick call during these daily rounds, the physician's assistant shall speak to each prisoner in segregation to determine whether there is a need for medical care, including mental health and dental care. This person shall provide the necessary medical treatment or make the necessary referral for such treatment. Medical rounds, in addition to medical treatment, shall be documented.

IV. Segregation

A. The defendants shall provide the prisoners assigned to disciplinary segregation for longer than sixty days with an opportunity to be involved in an in-cell education and recreational program including access to games and crafts.

B. The defendants are required by the October 2, 1987 Stipulated Agreement to develop a plan for the utilization of segregation units in the subject facilities. In addition to the specifications in the Stipulated Agreement the defendants agree to address the following issues in that plan:

1. The specific types of in-cell programming to be provided prisoners in disciplinary segregation.

2. The provision of structured exercise activity to prisoners in disciplinary segregation including access to outdoor exercise.

3. Sentencing practices for disciplinary segregation including sentence lengths, consecutive sentences and procedures for vacating sentences.

4. The reasons for assignment to the security unit and the appropriateness of assigning prisoners with a history of mental illness to that unit.

5. The reasons for assignment to the isolation units and the length of such assignment.

6. The expansion of the unit now at MCI-H for prisoners with behavioral or mental health problems who need special programming but are not ill enough to be admitted to a mental health unit.

7. The provision of mental health services to prisoners in segregation.

8. The assignment of prisoners in administrative segregation, protective custody and disciplinary segregation to the same tier.

9. The development and implementation of the levels program in segregation and its effect on sentence length.

V. Population Reduction in the Western Program Development Center

The October 2, 1987 Stipulated Agreement specifically excluded the Western Program Development Center from the population reduction requirements of the agreement. The population in the Western Program Development Center (WPDC) is currently 420 prisoners, A and B units each housing 180 prisoners and C Unit housing 60 prisoners.

The defendants shall provide the prisoners in the WPDC with a minimum of 50 square feet of living space exclusive of dayroom space and hygiene facilities by December 31, 1988. To meet this goal the defendants shall reduce the population by 80 prisoners by June 30, 1988 and by an additional 60 prisoners by December 31, 1988. The defendants shall also immediately provide prisoners housed in the WPDC six and one-half hours per day out-of-unit time exclusive of meals, one and one-half hours more than the parties agreed to in the Stipulated Agreement approved in October.

VI. Modification of 1981 Orders Concerning Transfers to the Federal System

By orders of April 27, 1981 and November 3, 1981 the court directed that the defendants house up to 50 "volunteer" Division

of Corrections' prisoners with the Federal Bureau of Prisons, the cost of said housing to be paid by the Division of Corrections. It is agreed that upon approval of this Supplemental Stipulation, the defendants may discontinue housing such "volunteer" prisoners with the Federal Bureau of Prisons. This shall be accomplished by attrition, i.e., the defendants will not replace volunteer prisoners as they are released, paroled or returned to the Division of Corrections. This shall not prevent the defendants from voluntarily contracting with Federal Bureau of Prisons to house Division of Corrections' prisoners should the defendants so choose.

VII. 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 described in II A, supra.

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Dated: December 4, 1987

December 3, 1987

ORDERED: Agreement APPROVED after hearing from counsel
 for the parties in open Court this 19th day of February,
 1988.

Alexander Hawley
 Chief United States District Judge