UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DWIGHT WILLIAMS et al.,	:	
	:	**CIVIL ACTION**
Plaintiffs,	:	
	:	**No. 08-cv-1979**
v.	:	
	:	**CLASS ACTION**
CITY OF PHILADELPHIA et al.,	:	
	:	
Defendants.	:	
	:	

SETTLEMENT AGREEMENT

I. Introduction

At the time that the captioned lawsuit was filed, there were more than 9300 inmates in the PPS, and of these over 2500 were triple celled at Curran-Fromhold Correctional Facility ("CFCF"), House of Corrections ("HOC"), and Riverside Correctional Facility ("RCF"). In addition, it was alleged that there was serious overcrowding in the dormitory areas of the Detention Center ("DC"). Plaintiffs also asserted that inmates subjected to triple celling did not receive essential services and programs due to the overcrowded conditions and the wide use of lockdowns and restricted movements. The defendants have denied that the conditions at PPS violate the Constitution.

Following denial of motions to dismiss the Complaint, this Court certified the matter as a class action with the following definition of the class and claims:

> All persons who are or will in the future be confined in the Philadelphia Prison System, and who are or will in the future be subjected to the conditions of confinement, including triple celling, or placement in dormitories, without minimally adequate security, services or programs as set forth in plaintiffs' Complaint.

Prior to the filing of this lawsuit, the defendants and other stakeholders in the criminal justice system in Philadelphia had instituted new programs and initiatives to reduce the population at PPS. Plaintiffs informed the Court and the defendants that such efforts, if successful, could avoid the need for injunctive relief. These programs have resulted in a significant drop in the PPS population. In January, 2009, the population was at an all time high of over 9800 inmates, with close to 3000 inmates subjected to triple celling. As of January 12, 2011, the population stood at 7,613. The "in-house" population stood at 7,182. As of that date, the triple celling number was reduced to approximately 1,300 inmates. There has been no triple celling at RCF since April, 2009, and none at HOC since August, 2010. There have been renovations in the DC dormitories that have alleviated the overcrowding and lack of adequate facilities in those housing areas. Lockdowns and restricted movement have been reduced, thereby providing inmates with greater access to programs and services within PPS. And, PPS has a policy of limiting triple celling to a period of no more than 60 consecutive days for any particular inmate and PPS agrees to take all reasonable steps to comply with this policy.

The programs and procedures instituted or expanded over the past two years include:

1. The enactment and implementation of legislation requiring that inmates sentenced to a maximum term of imprisonment of two years or more be transferred to, or placed in, the custody of, the Pennsylvania Department of Corrections.

2. Expansion of the "Video Crash Court" program which accelerates the disposition of minor cases (and related probation and parole detainers), usually by guilty pleas, for persons in custody.

3. Programs that consolidate probation and parole hearings before a judge specializing in these matters to expedite resolution of detainers for persons in custody. These include AVOPP

(Accelerated Violation of Probation Program) to address technical violations of probation or parole, ARC (Advanced Review and Consolidation Program) where guilty pleas on new charges and probation or parole violations can be addressed by the same judge, and NSJ (Non Sitting Judge Program) in which detainer hearings are scheduled before a judge sitting specially in place of the detainer judge not then sitting in criminal court.

4. Special Release Hearings at which bail orders are reviewed and bail reduced as appropriate for persons held in custody.

5. A number of "diversion" programs whereby persons charged or subject to charges for minor crimes are either not arrested or, if arrested, are diverted into programs without prosecution. These include AMP (Accelerated Misdemeanor Program) where non-violent misdemeanors are listed from arraignment court into a diversionary program within days of arraignment and SAM (small amounts of marijuana) where persons arrested for such offenses are placed in an early diversionary program.

6. Specialized courts including Mental Health Court, Veteran's Court, Dawn's Court (prostitution cases), and Drug Court.

7. Video extradition hearings to expedite the release of persons held in PPS to the demanding state.

8. Increased use of house arrest and GPS monitoring.

The parties believe that the continued operation of these programs and procedures, in conjunction with other reforms in the criminal justice system in Philadelphia County, will result in further reductions in PPS population.

II. Terms of the Settlement Agreement

A. Jurisdiction and Authority of the Court

This Court has jurisdiction of this matter pursuant to 42 U.S.C. §1983, 42 U.S.C. §1997e, *et seq*. ("PLRA"), and the Eighth and Fourteenth Amendments to the United States Constitution. Under 18 U.S.C. §3626(c)(2)(A), the parties may enter into a private settlement agreement. Upon the approval of this Settlement Agreement, the captioned matter will be dismissed without prejudice. Plaintiffs reserve the right to reinstate these proceedings during the pendency of the Settlement Agreement. Barring reinstatement, this case shall be dismissed with prejudice when this Settlement Agreement expires.

B. Programs, Policies and Procedures Designed to Reduce Population at PPS

1. The defendants will continue to make reasonable efforts to implement and operate the programs, policies and procedures listed in Section I, *supra*, that are designed to reduce the population at the PPS. Where these programs are operated or implemented by others in the criminal justice system, the City agrees to make reasonable efforts to provide necessary support and services for their operation. The City is not responsible for the termination or changes in existing programs that are not within the control of the City.

2. The defendants will make reasonable efforts to continue to reduce triple celling of inmates in conjunction with others in the criminal justice system.

3. The defendants will make reasonable efforts to minimize the use of lockdowns and restricted movement. The defendants will make reasonable efforts to continue to provide inmates with medical services, mental health services, dental services, social services, legal

visits, and exercise, during restrictive movement or lockdown periods so long as the activity does not present a security risk to the inmate, other inmates or correctional staff.

4. The defendants will continue to make reasonable efforts to ensure that inmates in triple cells are provided with clean cells, adequate bedding, and access to adequate showers and toilets.

5. The defendants will continue to make reasonable efforts to eliminate triple celling at the HOC, unless there is an emergency that requires use of the HOC for emergency housing.

6. The defendants will continue to make reasonable efforts to identify inmates who are Seriously Mentally Ill ("SMI"). The defendants will make reasonable efforts to limit the use of triple celling for SMI inmates who exhibit behavior that poses a risk to themselves or others.

C. Monitoring Provisions

1. The defendants agree to provide the following information and data to plaintiffs' counsel on a monthly basis for a period of two years from the date of the Court's approval of this Settlement Agreement:

a. The PPS CORESTAR reports.

b. Daily PPS population records.

c. Consecutive days each inmate resides in a triple cell.

d. Pennsylvania Department of Correction inspection reports; mental health and medical audits.

e. Notice of new or changed programs, policies or procedures that affect triple celling.

2. Tours: At six-month intervals, plaintiffs' counsel and their designated experts may conduct inspection tours of any facilities at PPS in which there is triple celling and the dormitory areas of the Detention Center. Tours shall be permitted on two (2) week notice.

D. No Admission of Liability

Nothing contained in this Settlement Agreement shall be construed as an admission of any party or the liability of the defendants.

E. Disposition of the Action

Within five days of the execution of this Agreement, the parties shall submit a joint motion to the Court to dismiss the case without prejudice with the express understanding that this case shall be dismissed with prejudice when this Settlement Agreement expires.

III. Fees and Costs

Plaintiffs agree not to file a Motion for any attorney's fees or costs incurred prior to Court approval of this Settlement Agreement. The City agrees to reimburse plaintiffs for fees and costs in the amount of $45,000.00.

IV. Benefit and Burden

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, representatives, successors and assigns.

V. Amendments

This Agreement may not be modified, amended, or terminated except by an instrument in writing, signed by all of the parties affected thereby.

VI. Severability

If for any reason any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement shall be construed, performed or enforced as if the invalidated or unenforceable provision had not been included in the text of the Agreement.

VII. Drafting

The drafting and negotiation of this Agreement have been participated in by each of the parties, and for all purposes, this Agreement shall therefore be deemed to have been drafted jointly by each of the parties.

VIII. Entire Agreement

All Agreements, covenants, representatives and warranties, express or implied, oral or written, of the parties hereto concerning the subject matter hereof are contained herein. No other agreements, covenants or representations or warranties, express or implied, oral or written have been made by any party hereto to any other party concerning the subject matter hereof. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, covenants, representations or warranties concerning the subject matter hereof are merged herein. This is an integrated agreement.

IX. Expiration

Subject to Plaintiffs' right to reinstate the action during the pendency of the Settlement Agreement, this Agreement and all provisions herein shall expire two years from the date of the Court's approval of this Settlement Agreement, and the case shall be dismissed with prejudice. In the event Plaintiffs reinstate the action, this Settlement Agreement shall have no further force or effect.

X. Non-Waiver of Claims and Defenses

A. The plaintiffs and the defendants agree that by entering into this Agreement, the plaintiffs do not waive their rights to pursue individual claims for monetary damages under federal or state law.

B. The plaintiffs and the defendants agree that by entering into this Agreement, the defendants do not waive their right to raise any defense(s) in any case brought by the individually named plaintiffs for damages or for any further application by the class for prospective relief.

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