

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA PROTECTION AND ADVOCACY)
SERVICES COMMISSION, *et al.*,)
)
Plaintiffs,)
)
v.)
)
COMMISSIONER, INDIANA DEPARTMENT)
OF CORRECTION,)
)
Defendant.)

No. 1:08-cv-01317 TWP-MJD

First Joint Status Report Following Effective Date of Private Settlement Agreement

The parties, by their counsel, as agreed to in paragraph 61(g) of their Private Settlement Agreement (“PSA”), file their status report.

1. Consistent with the PSA the Indiana Department of Correction (“DOC”) has instituted the policy and practice that prisoners identified as seriously mentally ill, as defined by the PSA, are not housed in restrictive housing for more than 30 consecutive days unless: 1) as allowed by paragraph 32 of the PSA, the DOC concludes that there are present “exceptional circumstances” where removing the prisoner from restrictive housing would pose an unacceptable risk to safety or security, or 2) as noted by paragraph 33 of the PSA, the prisoner refuses to leave restrictive housing and the DOC determines that it would cause more harm than benefit to the prisoner to force his or her removal.
2. The DOC produced a document listing the seriously mentally ill prisoners meeting the above exceptions, effective September 1, 2016. The document shows that as of that date there were:

12 seriously mentally ill prisoners in segregation-like housing because their removal from such housing was believed to pose an unacceptable risk of danger to themselves or to others;

4 seriously mentally ill prisoners in segregation-like housing who had consented in writing to such housing;

21 seriously mentally ill prisoners who were scheduled to remain in segregation-like housing for 30 or fewer days. Prisoners in this group would be removed from segregation-like housing on or before the 31st day unless either they consented in writing to remain there or their removal was believed at that time to pose an unacceptable risk of danger to themselves or to others.

3. The mental health placements identified in the PSA for seriously mentally ill prisoners, the New Castle Psychiatric Facility, the Special Needs Unit at Wabash Valley Correctional Facility, and the Pendleton Treatment Unit at the Pendleton Correctional Facility are all fully operational for male prisoners as described in paragraph 23 of the PSA.

4. In all of the above treatment units the prisoners are offered at least 10 hours a week of therapeutic programming out of cell, not including the time out of cell for recreation, showers, or other purposes permitted generally to prisoners.

5. After concerns were raised by prisoners concerning both the programming and housing at the Pendleton Treatment Unit, plaintiffs' counsel were allowed to tour the Unit on August 24, 2016. At that time the Unit had a population of 161 prisoners.

6. Plaintiffs' counsel received information from the DOC showing that the ten-hour weekly therapeutic programming standard is generally being met.

7. Complaints had been raised by prisoners that the therapeutic programming in the Pendleton Treatment Unit, which primarily features group meetings, was repetitive and did not adequately address mental health needs. During the tour staff explained the nature of the groups and discussed planned expansion of the types of therapy offered.

8. Complaints had been raised that prisoners in the Treatment Unit may, for disciplinary reasons, be placed into a disciplinary area within the Treatment Unit where they will not receive the 10 hours of programming. However, counsel did tour this area, in C-Building, and were informed that the prisoners are released from their cells and have the opportunity to meet and work with a clinician, in a small group, for at least 12 hours a week, although the prisoners may be cuffed during the sessions.

9. Prisoners in the Treatment Unit had also complained that the non-therapeutic time out of their cells had been greatly reduced since the Unit opened. The DOC has indicated that unstructured out-of-cell time has posed a security concern in the past and this has led to a reduction in out-of-cell free time. The DOC has determined that the best approach, consistent with safety and security, is to increase out-of-cell time for the Treatment Unit prisoners as they progress through the levels of the program. The prisoners progress from being allowed out for 2 hours a day, not including recreation and therapy, in A-Building to prisoners in E-Building, the final level, being allowed out of their cells from 6:30 a.m. to 10 p.m., except during count time or emergencies. The prisoners in C-Building who are on some sort of disciplinary hold are allowed out for daily recreation in separate enclosures and also allowed out twice a day, for 15 minutes, to access a kiosk where they can send and receive e-messages or have an electronic visit. Defendant observes there is no minimum non-therapeutic time out of cell required under the PSA.

10. Plaintiffs' counsel have not, post-PSA implementation, toured the other mental health units, New Castle Psychiatric Unit and the Special Needs Unit at Wabash Valley Correctional Facility, but the DOC's attorneys have indicated that the 10-hour minimum weekly therapeutic standard is being met in those areas as well, with rare but occasional exceptions.

11. The DOC is implementing a new program, entitled SNAP (Special Need Acclimation Program), in many of its institutions. This is not specifically a mental health program but is for general population prisoners who need additional support. However, it is serving as a step-down program for some prisoners leaving the mental health units. The defendant observes that this program is not required under the PSA and will not involve prisoners housed in the New Castle Psychiatric Facility, the Special Needs Unit at Wabash Valley Correctional Facility, the Pendleton Treatment Unit at the Pendleton Correctional Facility or female prisoners in restrictive status housing.

12. The above programs are for male prisoners. Consistent with paragraph 42 of the PSA, female seriously mentally ill prisoners remain housed in the restrictive housing unit at the Indiana Women's Prison, but are released from their cells for at least 10 hours of therapeutic programming each week.

13. Plaintiffs' counsel, as well as the Court, continue to receive correspondence from prisoners complaining of numerous matters relating specifically to the PSA and more generally to the treatment of mentally ill prisoners within the DOC. When appropriate, counsel will contact attorneys for the DOC to attempt to resolve issues that arise and the parties continue to communicate often.

14. Upon request the DOC has continued to allow plaintiffs' counsel to review medical records and has responded to inquiries from counsel when inquiries are prompted by the records.

15. The parties believe that both sides are continuing to work to ensure that the terms of the PSA are met.

WHEREFORE, the parties file their Joint Status report.

For the plaintiffs:

s/ Kenneth J. Falk

Kenneth J. Falk
No. 6777-49
Gavin M. Rose
No. 26565-53
Jan P. Mensz
No. 33798-49
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202
317/635-4059
fax: 317/635-4105
kfalk@aclu-in.org
grose@aclu-in.org
jmensz@aclu-in.org

s/ Melissa L. Keyes (w/ permission)

Melissa L. Keyes
No. 30152-49
Thomas E. Crishon
No. 28513-49
Indiana Disability Rights
4701 N. Keystone Ave. - Suite 222
Indianapolis, IN 46205
317/722-5555
Fax: 317/722-5564
mkeyes@indianadisabilityrights.gov
terishon@indianadisabilityrights.gov

For the defendant:

s/ David A. Arthur (w/ permission)

David A. Arthur
No. 2461-48
Thomas D. Quigley
No. 5883-49
Deputy Attorneys General

IGCS-5th Floor
302 W. Washington St.
Indianapolis, IN 46204
317/232-6286 (Arthur)
317/233-3645 (Quigley)
David.Arthur[atg.in.gov]
Tquigley[idoc.in.gov]