



PC-MA-009-002

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT

NO. J-74-88 CR (Protective
Custody Cases)

STEPHEN F. BLANEY, JR., et al.,

Class Plaintiffs,

v.

COMMISSIONER OF CORRECTION, et al.,

Defendants.

[This is the proposed Final Settlement Agreement,
originally filed as Docket Item No. 415, now re-
vised (by the addition of new par. 16) through
June , 1980.]

FINAL AMENDED AGREEMENT FOR JUDGMENT

1. The amended judgment dated January 3, 1979 is hereby amended to read as stated in this final consent agreement and judgment, and is made applicable to all the defendants including the Commissioner of Correction; the Superintendent of Massachusetts Correctional Institution Walpole; the Superintendent of Massachusetts Correctional Institution Norfolk; the Superintendent of Massachusetts Correctional Institution Bridgewater; the Superintendent of Massachusetts Correctional Institution Framingham; the Superintendent of Massachusetts Correctional Institution Concord; the Superintendent of Southeastern Correctional Center; and the state institutions which they severally control or supervise. (Hereinafter the term Massachusetts Correctional Institution shall be designated "MCI".) This agreement for final judgment in this action applies to all correctional institutions of the Commonwealth. It is agreed that protective custody inmates

are entitled to the standard of treatment they should receive if in general population in the classification to which normally they would be assigned, modified, however, to the extent made necessary by considerations of safety and security inherent to protective custody status. Nothing in this agreement shall operate to expand the privileges of protective custody inmates beyond those applicable to general population inmates of the same classification level within the same institution.

2. Isolated instances of deviation from this judgment shall not be deemed to violate the agreement and judgment, provided that over a 90 day period, the general minimum standards applicable to each inmate are met. Where it is provided in this agreement that certain rules set forth in this agreement shall "normally" be the practice, such variations from the norm shall be avoided except in emergencies or unusual circumstances and it is contemplated that compensatory adjustments shall be afforded to inmates so as to maintain over a period of time an average standard close to the stated norm. In all instances, application of stated ??? shall be undertaken with due consideration for the safety of the particular inmate concerned.

3. Residents of each protective custody housing unit shall be provided with the opportunity to engage in meaningful activities in such unit, not less than five hours in each day. "Meaningful activity" shall be defined as activity calculated to provide inmates with the opportunity to participate in educational, work/vocational, or recreational pursuits. It is something more than free time spent in idleness. Meaningful activity is not necessarily out-of-cell activity.

Although daily scheduling need not include provisions for opportunity in each security area (job or work opportunities, recreation, and education), the weekly schedule shall provide for activity in each area and shall do so in a manner

consistent with the terms of this agreement. Meals, visits, showers, attorney consultations, and attendance at administrative hearings shall not be considered meaningful activity within this definition. A schedule of weekly activities shall be prepared and posted within each protective custody housing unit. The schedule shall indicate activity periods.

4. Daily activities normally shall include not less than one hour of exercise--out of doors when weather permits - which activities shall take place in an area large enough to permit and encourage small group athletic activities (such as basketball). In inclement weather, each protective custody inmate (with due consideration for his personal safety) normally shall exercise indoors not less than one hour with simple gymnasium equipment available, in an area large enough to permit small group activity.

5. Inmates shall, within each daily activities period, have the opportunity to work at a designated job or assignment or to participate in educational programs. The Commissioner shall provide a reasonable number of designated jobs for protective custody inmates and shall make all reasonable efforts to expand safe work opportunities for such protective custody inmates, so that their opportunities for work assignments shall be essentially equal to those of prisoners in general population within the same classification level within the same institution. Such jobs shall be consistent with the safety and security considerations applicable to protective custody inmates. Protective custody inmates who would be eligible to apply for jobs if they were housed in the general population shall be eligible to apply for jobs designated for protective custody inmates. The compensation for such jobs and the benefits that such jobs may provide to inmates, such as earned good time credits, shall be subject to any provision of the General Laws applicable to inmates confined to correctional institutions of the Commonwealth. It is

contemplated that the Department of Correction will be able to give full effect to this paragraph five (5) not later than July 30, 1980.

6. Each protective custody inmate normally shall be permitted out of his or her cell not less than three hours in each day, exclusive of meals, showers, visits, attorney consultations and attendance at administrative hearings and (with due considerations of his/her personal safety), at such times, normally shall have reasonable opportunity to associate with other protective custody inmates not constituting a threat to him/her or he/she to them.

7. Individual counseling by a member of the institution's social work staff normally shall be provided for each protective custody inmate who requests it. Such counselling normally shall be available not less than one hour in each week. It is contemplated that the Department of Correction will be able to give full effect to the provisions of the paragraph by September 30, 1980. The DOC will apply for positions in each fiscal year appropriation to provide for such counseling services described in this paragraph seven.

8. Protective custody inmates shall be permitted not less than two hours weekly access to law libraries in institutions where they are housed, provided, however, that this obligation may be discharged in alternate form where it is determined by the Superintendent of an institution that to provide protective custody inmates access to the institution's law library facility would pose a substantial threat to inmate safety or institutional security. Where such a determination is made, a procedure shall be established whereby individual protective custody inmates may request in writing the assistance of a law librarian who shall assist and advise the inmate with regard to materials needed and shall provide the inmate with such reasonable amounts thereof or copies of the same within seven days of receipt of the initial request for assistance. An inmate, if he

or she chooses, may elect to request in writing specific legal materials without the advice of the law librarian as to what materials are needed, in which event the law librarian shall provide the inmate with reasonable amounts of such materials or copies thereof within seven days of receipt of such request. General library access will, where feasible, also be provided on a weekly basis to protective custody inmates. Where general library access is deemed unsafe, a book cart or its equivalent will visit weekly at the protective custody unit. Library rules not inconsistent with this paragraph shall be fully applicable to protective custody inmates.

9. Individual requests for attendance of clergy will be considered in the same manner as requests by general population inmates of the same classification level within the same institution.

10. Visitation privileges for protective custody inmates will be equal (including the opportunity for visits between 6 PM and 9 PM) to those provided to general population inmates of the same classification level in the same institution. Visits shall take place in a safe and suitable setting.

11. Protective custody inmates shall receive a classification review at intervals not exceeding six months. A protective custody inmate on request shall be granted such a review as frequently as once every 120 days. Subject to considerations of safety and security, the classification board will endeavor to recommend placement of a protective custody inmate in the general population of a suitable facility (within the corrections systems of the Commonwealth, the counties, or states nearby). In determining each inmate's institutional placement, the classification board shall give primary weight to the effect of such placement on the personal safety of the inmate. Where a placement in the general population of an institution is not deemed feasible or appropriate, the reasons for such a

finding shall be stated affirmatively in the record of the proceedings. The department shall maintain in the inmate's permanent institution file a record of the efforts made to find a suitable placement for him/her which will not result in retaining the inmate in protective custody.

12. A protective custody inmate may be held under conditions which do not conform to the provisions of this judgement in the following circumstances:

a) An inmate recommended by a classification board for Department Segregation Unit Status, which recommendation has been approved by the Commissioner, may be held in Block B-10 at MCI Walpole or at such other place as may be designated by the Commissioner under the conditions and procedures, including the review of status every ninety days, applicable to the Department Segregation Unit.

b) Following serious violent behavior by a protective custody inmate, or serious disciplinary charges involving the risk of violence or an important threat to the good order of the institution, a protective custody inmate may be held in Block B-10 of MCI Walpole or its equivalent at another correctional institution in awaiting action status pending completion of any department investigation or disciplinary or classification process, provided, however, that the total amount of time in awaiting action status shall not exceed 45 days, unless the Commissioner shall personally approve a further period or periods of not more than 15 days. In no event, shall the total amount of time in awaiting action status exceed ninety (90) days.

c) No protective custody inmate shall be housed in Block B-10 at MCI Walpole, except as provided in this paragraph twelve. To the extent appropriate to each inmate, the defendant shall house protective custody inmates separately from all other inmates in the departmental segregation unit.

13. When an inmate involved in administrative procedures which may result in his or her transfer to another institution requests or requires protective custody, he or she may be held in separate confinement or awaiting action status under conditions which do not conform to the requirements of this judgment for not more than fourteen days. Such an inmate who is transferred to another institution may be held in the receiving institution for not more than fourteen additional days under conditions which do not conform to the requirements of this judgment.

14. The Commissioner shall appoint within each institution in which there is a protective custody housing unit a member of the administrative staff who shall be designated as the protective custody administrator responsible for management and administration of all matters pertaining to protective custody inmates. He or she shall be given such power, status, and authority as will enable him/her to carry out his/her responsibilities. The protective custody administrator shall have the authority to report directly to the Superintendent of the institution and to the Commissioner of Correction.

15. As a condition precedent to court action, any allegation of non-compliance with this judgment or any claim by a protective custody inmate regarding matters encompassed by this agreement normally shall be made in writing to the administrator responsible for protective custody matters. The administrator shall investigate such complaints or allegations of non-compliance and shall respond in writing to the inmate within ten days of receipt. Legal actions, causes, or claims, or questions of interpretation arising under this agreement may be brought, by some suitable proceeding (which shall include the Declaratory Judgment Act, General Laws, Chapter 231A) in the Superior Court, Department of the Trial Court. Such actions may be brought in any Superior Court Department having jurisdiction in the matter.

16. (a) The parties further agree that during the period in which this judgment shall be in the process of being carried out fully that there will be a special master and commissioner (hereinafter referred to as the "Monitor"), charged with overseeing questions relating to achieving the standards contemplated by this agreement and ascertaining compliance. The Monitor shall make reports to the Superior Court Department Associate Justice assigned, on not less than a quarterly (3-month) basis and at such other occasions as the Judge, the Monitor, or the parties deem appropriate. At a time not earlier than the occasion of the third quarterly report, upon a showing of a substantially complete level of compliance by the defendants with the Final Amended Judgment, the Superior Court Department Associate Justice shall consider a motion to terminate the appointment of the Monitor.

(b) The Monitor shall review only such complaints or grievances or matters of noncompliance as are related to the provisions of the Final Amended Judgment. Matters outside the scope of the Final Amended Judgment, shall not be within the purview of the monitor.

(c) The Monitor shall review all complaints, or matters of non-compliance coming to his attention, grievances, and attempt to resolve the same in an informal way. In the event that a dispute or grievance remains unresolved the Monitor shall file a written

report in the Superior Court to the Associate Justice assigned indicating his tentative findings and probable conclusions. When deemed appropriate by the Monitor he/she may make written reports to the Commissioner of Correction concerning carrying out the agreement. The Monitor shall not have the power to order the Commissioner or any official of the Department of Correction to take any action in any matter.

(d) The Monitor shall conduct whatever investigations to assist in the resolution of complaints, grievances, disputes, and matters of compliance with the Final Amended Judgment that he/she deems necessary. In conducting investigations the Monitor shall be granted access to whatever areas, individuals, or materials that he/she deems necessary to conduct the investigation. The Department shall cooperate with the Monitor in facilitating his/her investigations, and in good faith shall facilitate the same.

(e) The Monitor shall have access to any institutions at all reasonable times, and may communicate with the superintendent or appropriate administrative official of any D.O.C. institution that he intends to visit. The Monitor shall inform the appropriate administrative officials in D.O.C. as to his needs in conducting any investigation and confer directly with the Commissioner as he deems necessary in fulfilling his responsibilities.

(f) In fulfilling the express purpose of resolving

inmate complaints, and obtaining, within a reasonable time, compliance with this agreement, it is the parties' mutual expectation that the Monitor will perform a conciliation function, for the cooperative settlement or resolution of such matters without resort to judicial review. Also in this regard, it is expected that the Monitor will cooperate with the Protective Custody Administrators to assist their development of similar investigatory and conciliation skills. Should the Monitor find that the Department is unable to reach or maintain substantial compliance with the Final Amended Judgment, despite reasonable efforts at conciliation and cooperative resolution, the Monitor shall file a report of such non-compliance with the Superior Court Department Associate Justice and the parties, including a statement of the facts concerning his efforts at conciliation and a proposed resolution of the difficulties.

(g) Copies of the Final Amended Judgment, including the Monitor provision, shall be distributed to all members of the plaintiff-class and be posted or available for examination in all P.C. units under the Court's jurisdiction.

17. The Commissioner, or in his/her absence, the Superintendent of the institution may, without prior notice, temporarily suspend the operation of this judgment or any part thereof, as to an institution,

whenever in his or her judgment emergency conditions so require and shall make a substantially contemporaneous written record of the finding which justifies such action. Upon termination of the emergency conditions, this agreement shall be restored to full operation and effect

[The original settlement agreement filed on March 15, 1980, as Docket Item No. 415 was filed by the counsel indicated. A new paragraph 16 has been added and old paragraph 16 has become 17.]

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