



PC-MO-001-001

IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION



SAMUEL L. MCDONALD, et al.,)
)
 Plaintiffs,)
)
 v.)
)
BILL ARMONTROUT, et al.,)
)
 Defendants.)

Case No. 85-4422-CV-C-5

CONSENT DECREE

This cause originated with the filing of a complaint on August 19, 1985. Plaintiffs requested that they be permitted to proceed as a class pursuant to Federal Rules of Civil Procedure 23(a), and 23(b)(1) and (2). On January 15, 1986, the Court (the Honorable Scott O. Wright) granted plaintiffs' motion for class action status and certified a class comprised of (i) all inmates presently confined under sentence of death at the Missouri State Penitentiary (MSP), and (ii) all inmates who may in the future be confined under sentence of death by the Missouri Department of Corrections and Human Resources (MDCHR), either at MSP or elsewhere.

Plaintiffs alleged in their complaint that they and all other inmates confined under sentence of death at MSP have suffered and are suffering violations of their rights under the First, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States. Defendants denied that any violations of plaintiffs' constitutional rights have occurred.

Desiring an amicable settlement of this matter, the parties herein have agreed to the entry of this decree without trial, the taking of any evidence, adjudication, or the admission of liability by any party with respect to any claim or allegation made in this action. Although no findings of fact or conclusions of law are made by the Court, this decree contemplates and is intended to eliminate any conditions of confinement which may deny the inmates sentenced to death the rights, privileges, and immunities secured to them by the Constitution and the laws of the United States.

Certain provisions of this agreement may depend upon future appropriations by the Missouri General Assembly for implementation. Defendants agree that they shall, in good faith, request with the utmost speed such additional appropriations as may be necessary to put into effect all components of this decree, by requesting such appropriations in the supplemental appropriations request to be presented to the next session of the Missouri General Assembly, which convenes no later than January of 1987. Defendants will in good faith make their best efforts to secure such appropriations from the Missouri General Assembly. If sufficient funds are not appropriated in the next legislative session, defendants shall make an ongoing effort to seek necessary funds. If, however, provisions of this decree are not put into effect due to the Missouri General Assembly's failure to appropriate the necessary funds, despite defendants' best efforts to secure such funds, defendants shall not be found in contempt. In that event, defendants shall, to the extent

possible within the current resource levels and within future appropriation levels, implement the provisions of this decree.

WHEREFORE, upon the consent of the parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I.

This Court has jurisdiction over the subject matter of this action and of all parties hereto.

II.

A. Plaintiffs

The plaintiff class consists of (i) all inmates presently confined under sentence of death at MSP and (ii) all inmates who may in the future be confined under sentence of death by the MDCHR, either at MSP or elsewhere.

B. Defendants

Defendants are the Governor of the State of Missouri, the Director of MDCHR, the Director of the Missouri Division of Adult Institutions within MDCHR, and the Warden of MSP.

Pursuant to Rule 25(d), F.R.Civ.P., the successors in office of the above-named defendants will automatically be substituted as parties in this suit and in this decree.

III.

Terms

1. Mutuality

a. The responsibilities imposed by this decree are mutual.

b. Damage to or abuse of programs, facilities or equipment by inmates will be a defense in any judicial

proceedings on their behalf to cure defects in such programs, facilities or equipment occasioned by that abuse.

c. In the event of continued or consistent abuse or misuse, the nature of which renders such programs, facilities or equipment a risk to the safety and security of inmates, staff or the institution, those programs, facilities or equipment may be substantially modified, suspended, or discontinued to the extent necessary to restore said safety and security. Defendants shall give notice to plaintiffs' counsel and file a request with the Court for modifying, suspending, or discontinuing programs, facilities, or equipment required by this decree. It is contemplated by the parties to this decree that damage, abuse, or misuse by a single individual will normally be handled by appropriate action as to that individual.

2. Legal Mail and Materials

a. Legal mail which is readily identifiable as such will not purposefully be opened in the mail room. Legal mail shall only be opened in the presence of the inmate as required by regulation 218.010 (not in CSR). [As used in this decree, the term "not in CSR" refers to regulations of MDCHR which are not published in the Missouri Code of State Regulations (CSR).]

b. Legal materials which an inmate has in his cell will not be read during searches or shakedowns. Legal materials will, however, be searched for contraband during cell searches and shakedowns. Reasonable care shall be taken to avoid damage or scattering of legal materials.

c. Inmates who believe their legal or personal mail has been improperly handled by prison staff shall notify the prison officials in writing either by letter or by grievance.

3. Religious Services

a. A privacy room will be provided for each side of death row. This room will be used for religious services, religious counseling, psychological and psychiatric counseling, interviews and evaluations, medical examinations, and haircuts.

b. Up to two inmates at a time will be allowed to participate in religious services in the privacy rooms until such time as the indoor recreation area in Housing Unit 2 is completed (see paragraph 10, infra). Defendants shall reevaluate the possibility of increasing the number of inmates allowed to participate at that time.

4. Telephone Access

a. As of September 1, 1986, there will be a telephone jack between every two cells on each of the walks of death row, and at least one telephone for each walk. Inmates shall have access to telephones on each walk from 8:00 a.m. to 10:30 a.m. and 12:00 p.m. to 3:00 p.m., seven days a week, and shall be allowed to make collect telephone calls.

b. Calls other than those to attorneys shall be allowed to last at least twenty minutes. After twenty minutes, telephone calls shall be terminated only if necessary to accommodate other inmates who wish to place telephone calls the same day.

c. Telephone calls to attorneys shall be of unlimited duration.

5. Medical Services

a. Physical examinations shall be given to all consenting inmates unless the inmate had a physical examination during the month of April 1986. These physical examinations shall be completed by August 1, 1986.

b. Doctor's sick call shall take place in the privacy rooms each week, absent a medical or custody emergency which prevents the medical doctor from coming to death row. In the event of such an emergency, doctor's sick call will be rescheduled as soon as possible. Sick call conducted by Medical Assistants shall continue to take place Monday through Friday.

c. Until such time as the privacy rooms on each side of death row are completed, doctor's sick call shall occur behind a privacy screen in the Lieutenant's office (which is located in the lobby area of death row).

d. All medical and psychological records for death sentenced inmates shall be stored in a locked fire-safe file on death row. Neither custody officers nor inmate workers shall have access to these files, except that custody officers shall be permitted to carry these files when escorting an inmate to the hospital at MSP or elsewhere.

e. A Medical Assistant shall pass out the evening medications rather than a custody officer. The medication shall be handed directly to the inmates. Defendants will make a good faith effort to obtain appropriations from the Missouri General

Assembly (see pp. 2-3, supra) for an additional Medical Assistant.

f. During sick call, inmates may obtain forms from the Medical Assistant to attend the dental or eye clinic. These request forms may also be obtained from the death row case-workers or custody staff. After obtaining and filling out the request form, the inmate shall send the request to the hospital. Within eight days of receipt of the request, the inmate shall be escorted to the appropriate clinic.

g. Medication prescribed for an inmate shall be dispensed within 24 hours, or sooner if required by the prescription, and after that shall be dispensed at the intervals required on the prescription.

6. Mental Health Care

a. A mental health care provider who has at least a Master's Degree in psychology and at least one year of professional experience or its equivalent shall be assigned to death row to provide the services set forth below.

b. All inmates shall be psychologically evaluated by August 1, 1986, excepting those who have been evaluated since January 1, 1986, and those who decline to participate. All newly admitted inmates shall be evaluated within two weeks as a part of the reception process. Defendants reserve the right to seek a court order in state court to provide treatment to an inmate who declines such care if defendants believe such care is medically advisable.

c. The psychologist shall make referrals to an MSP psychiatrist whenever the evaluations or classification team meetings (see paragraphs 6(e) and 7, infra) indicate that psychiatric care is advisable.

d. The psychiatrist shall make referrals to the Fulton State Mental Hospital as appropriate.

e. The death row psychologist shall sit on the death row classification committee (see paragraph 7, infra).

f. The death row psychologist shall write and implement treatment programs when appropriate after evaluating each inmate. In the event that medication is a part of the treatment program, a referral shall be made to the psychiatrist who shall evaluate the inmate prior to prescribing medication.

g. All prescriptions for psychotropic, antipsychotic or hypnotic medication will be reviewed on a regular basis by an MSP psychiatrist.

h. The caseworkers who are assigned to death row shall be given mental health care training concerning the detection of mental health problems, and death and dying.

i. All inmates not under treatment shall be reevaluated by the death row psychologist once every year and, if necessary, shall be provided treatment as described above.

j. All medical and psychological records shall be confidential as provided in §§ 217.075 and 217.205, RSMo (Cum. Supp. 1984).

7. Classification

a. On March 25, 1986, a classification system was established to separate death-sentenced inmates into three different categories. The system was intended to give certain inmates greater privileges commensurate with good behavior. This system envisions three levels of inmates designated as Regular Custody, Close Custody, and No-Contact Custody (which may include some or all of the Regular Custody privileges).

b. Defendants will amend the classification system [designated as Regulation 212.030 (not CSR)] forthwith to reflect the terms of this decree. A draft of the amended classification system will be provided to counsel for the plaintiff class, who will be given an opportunity to comment. The parties will endeavor in good faith to resolve any and all disputes concerning the terms of the amended classification system prior to its filing with the Court.

c. Any future modifications to the classification system proposed by defendants shall be furnished immediately to counsel for plaintiff class, and counsel shall be afforded an opportunity to comment before any such modifications are adopted.

d. Defendants shall seek prior approval of the Court for any modifications of the classification system which are inconsistent with the terms and intent of this decree. If defendants believe that any such modification is immediately necessary to preserve the security and safety of the inmates or staff, such modification may be implemented on an emergency

basis without prior approval of the Court, provided that approval is sought promptly thereafter. After appropriate review, the Court may delete or alter the modifications to conform to the terms and intent of this decree.

e. The classification system, and any subsequent modifications of the classification system, shall be printed and distributed by defendants to every member of the plaintiff class.

8. Staffing

a. Eleven additional officers shall be assigned to death row effective July 1, 1986. An additional seven officers shall be assigned to death row on September 1, 1986.

b. Custody staff for death row shall receive administrative segregation training within three months of being assigned to death row. Administrative segregation training shall include instruction as to the special needs of death row inmates, the appellate and post-conviction process in death cases, and the requirements of this decree. The custody staff presently assigned to death row will be rotated as necessary to enable them to receive such training.

9. Recreation

a. As of July 1, 1986, Regular Custody death-sentenced inmates will be given the opportunity for eight hours of outdoor recreation per week and eight hours of indoor recreation per week. In the absence of a pattern of security-threatening incidents, Regular Custody death-sentenced inmates will be given the opportunity for twelve hours of outdoor

recreation per week and twelve hours of indoor recreation per week as of April 1, 1987. In the absence of a pattern of security-threatening incidents, Regular Custody inmates will be given the opportunity for sixteen hours of outdoor recreation per week and sixteen hours of indoor recreation per week as of January 1, 1988.

b. As of July 1, 1986, Close Custody death-sentenced inmates will be given the opportunity for four hours of outdoor recreation per week and four hours of indoor recreation per week. In the absence of a pattern of security-threatening incidents, Close Custody death-sentenced inmates will be given the opportunity for six hours of outdoor recreation per week and six hours of indoor recreation per week as of April 1, 1987. In the absence of a pattern of security threatening incidents, Close Custody death-sentenced inmates will be given the opportunity for eight hours of outdoor recreation per week and eight hours of indoor recreation per week as of January 1, 1988.

c. After January 1, 1988, defendants will continue to review the feasibility of expanding recreation time consistent with security and the well being of the inmates.

d. Defendants will modify the outdoor recreation area between Housing Unit 2 and Housing Unit 3 to grade the land and to provide three yards for Regular Custody and Close Custody inmates. Two of the yards will contain at least a paved basketball area and also a grassy area. The third yard will contain at least a weight machine and a grassy area. Inmates will be provided with basketballs, footballs, softballs and gloves for

use in these three yards. Defendants will provide six individual recreation yards for No-Contact Custody inmates only, each measuring 9 feet by 20 feet. Three of these individual yards will be paved and contain a basketball goal, and No-Contact Custody inmates will be provided with basketballs for use in these yards.

e. During the period when the outdoor recreation area is being modified, defendants will make a good faith effort not to disrupt the inmates' recreation any more than is necessary for the safety and security of the inmates, staff and civilian workers.

f. At present inmates are recreated in groups of two. In September of 1986 defendants shall review this recreational program for the purpose of determining whether four inmates may recreate together. This review shall be based upon a study of any security-threatening incidents which may have occurred. In the absence of a pattern of such incidents, defendants shall provide both indoor and outdoor recreation in groups of at least four no later than September 1, 1986. After September 1, 1986, defendants shall continue to review the security of the recreation program to determine whether recreation in groups larger than four is feasible.

10. Facility For Indoor Recreation

a. At present each walk on death row has an indoor weight room equipped with a weight machine. Defendants shall install exhaust fans in the weight rooms which have windows. Defendants agree to make good faith efforts to obtain

appropriations from the Missouri General Assembly (see pp. 2-3 supra) to provide inmates with expanded indoor recreation facilities by converting a space in Housing Unit 2 into an indoor recreation area of approximately 60 feet by 40 feet for use by the inmates. This facility shall contain a variety of recreational equipment such as basketball and goal, ping-pong table, weight machines, exercycle, punching bag, television, card tables with chairs, and table games.

11. Plumbing

a. No later than September 1, 1986, defendants shall complete their present program of installing single traps and pipe chases in the toilets in all cells on death row, replacing the present system whereby four toilets empty into one trap. Defendants agree to make a good faith effort to obtain appropriations from the Missouri General Assembly (see pp. 2-3, supra) for funds to replace completely the toilets, sinks, and plumbing system on death row.

b. Defendants will use good faith efforts to maintain all plumbing in operational condition.

12. Renovation

Defendants will continue their program of renovating all four walks of death row. The renovating includes (a) repainting the entire area, (b) installation of fluorescent lights on the walks, (c) new electric light switches in the cells, (d) exhaust fans, (e) shelves in the cells, (f) replacement of all beds and mattresses, (g) telephone jacks between every two cells, and

(h) clear window panes in all windows. These renovations will be completed no later than October 1, 1986.

13. Shower Renovation

The showers located in death row shall be renovated. This renovation will include the installation of a ventilation system for the individual showers. Old paint will be removed and the walls, floors and ceilings will be treated with an epoxy waterproof paint. Further, plumbing and fixtures shall be replaced to assure adequate water pressure. The renovation of the showers is scheduled to begin in September 1986.

14. Food Service Ramp

Defendants will construct a food service ramp and door to permit the entry of a steam cart into the death row unit, to be completed by September 1, 1986.

15. Fire Safety

a. A fire safety evaluation of death row will be conducted jointly by defendants' consultant, Mr. Donald Bussel, and by plaintiffs' consultant, Mr. Ward Duel. Defendants will pay Mr. Duel's reasonable fees and expenses for his work on the evaluation and subsequent inspections. The consultants will prepare a report by July 1, 1986, recommending necessary fire safety measures which (i) must be implemented immediately, (ii) must be implemented in the near future, and (iii) are to be achieved by capital improvements. Defendants will implement all fire safety measures recommended by the consultants, and will make a good faith effort to obtain appropriations from the

Missouri General Assembly (see pp. 2-3, supra) for all such measures which require capital improvements.

b. If the two consultants disagree as to whether any particular fire safety measure is necessary, the disagreement shall be submitted to the Court for resolution. Following adoption of a final fire safety plan, the two consultants shall inspect MSP on a quarterly basis for at least one year or until such later date as the parties are jointly satisfied that all necessary fire safety measures have been implemented.

16. Visiting

a. Defendants will make every effort to make a contact visit available to attorneys who wish to visit a death sentenced inmate and have notified defendants 48 hours in advance. If the attorney visiting rooms in the control center area are in use, the parole hearing room or the privacy rooms on death row will be used instead if at all possible. All attorney visits for inmates with execution dates will be contact visits.

b. Inmates classified as Regular Custody or Regular Custody No-Contact shall receive at least 6 contact visits per year. To insure contact visits lasting 3 hours per visit, defendants shall schedule these visits. The death row caseworkers will consult with the inmates to facilitate the scheduling of these visits.

c. Contact visits are to be apportioned throughout the year with no more than one contact visit per month except in the discretion of the Warden of MSP.

d. Close Custody inmates or inmates serving punitive segregation time for disciplinary infractions may have contact visitation only in the discretion of the Warden of MSP.

e. Defendants will install a new screen in the non-contact visiting area to promote greater visibility.

17. Education

Defendants will provide inmates with an education television channel to include programs for G.E.D., Positive Mental Attitude (P.M.A.) and religious broadcasting.

18. Lighting

a. Defendants will supply inmates with light bulbs in wattages of their choice up to 200 watts. If an inmate's desired wattage is not available, defendants shall make a good faith attempt to obtain it.

b. Defendants shall reevaluate the number of security fluorescent lights needed on the outer walk areas of the renovated walks of death row. Any such lights that are not necessary for the security of those walks shall be turned off between the hours of 11:00 p.m. and 7:00 a.m.

19. Sanitation

a. An environmental and sanitation evaluation of death row and all other areas where food for death row inmates is prepared or stored will be conducted jointly by defendants' consultant, Mr. David Stull (or in his absence another representative of the Missouri Department of Health), and by plaintiffs' consultant, Mr. Ward Duel. Defendants will pay Mr. Duel's reasonable fees and expenses for his work on the evaluation and

subsequent inspections. The consultants will prepare a report by July 1, 1986, delineating all environmental and sanitary measures which are necessary to protect the health and safety of death row inmates. The report will recommend measures which (i) must be implemented immediately, (ii) must be implemented in the near future and (iii) are to be achieved by capital improvements. The parties will be given an opportunity to comment on the consultants' recommendations prior to the consultants' recommendations becoming finalized. Defendants will implement all environmental and sanitary measures recommended by the consultants, and will make good faith efforts to obtain appropriations from the Missouri General Assembly (see pp.2-3, supra) for all such measures which require capital improvements.

b. If the two consultants disagree as to whether any particular environmental or sanitary measure is necessary, the disagreement shall be submitted to the Court for resolution. Following adoption of a final environmental and sanitation plan, the two consultants shall inspect MSP on a quarterly basis for at least one year or until such later date as the parties are jointly satisfied that all necessary environmental and sanitary measures have been implemented.

20. Window Screening

Defendants will undertake an immediate evaluation of the three layers of screening over the death row windows, and will remove all screening which is not essential to security. It is contemplated that this review will result in the removal as soon

as practicable of at least the expanded metal layer of screening on the C-North, C-South, and B-North walks. The windows will be washed from the outside with a high-power hose at least once each year.

21. Feeding

Defendants will make good faith efforts to provide death row inmates with meals on the same schedule that applies to feeding of general population inmates. Until such time as this schedule is achieved, defendants will continue to provide death-sentenced inmates with an evening snack. The snack will be served in a sanitary manner.

22. Equal Access

All inmates on death row shall have equal access to all rights and privileges conferred upon persons within their classification status by this decree, and to all other programs and facilities according to their classification and security status.

23. Inspections

Until such time as the Court determines that full compliance has been achieved with all provisions of this decree, the attorneys for the plaintiff class shall be allowed access to the death row walks and recreation areas upon 24 hour advance notice to the attorneys for defendants.

24. Reports

For at least two years from the date of final approval of this decree, defendants shall submit a quarterly report to the

Court, with a copy to the attorneys for the plaintiff class, detailing the state of their compliance with each and every provision of this decree. The parties will thereafter jointly decide on the need for and frequency of compliance reports.

25. New Facilities

If defendants at some future date determine that it is necessary to expand death row housing beyond its present location (Housing Unit 3, section 3C, walks B-North, B-South, C-North, C-South), or move death row to a new location, defendants shall file with the Court and serve upon counsel for the plaintiff class a plan for implementation of all rights and privileges conferred by this decree at the new or additional location(s). Defendants may begin housing death-sentenced inmates in such new or additional location(s) upon approval of the plan by the Court.

26. Implementation

a. All provisions of this decree which are not accompanied by an implementation date shall be implemented as soon as practicable and no later than September 1, 1986.

b. Counsel for the plaintiff class will bring any complaints of non-compliance to the attention of defendants' counsel prior to initiating any court action. The parties will attempt in good faith to resolve all such disputes between themselves in the first instance.

c. Defendants' counsel will notify counsel for the plaintiff class of any proposed modification of the rights and privileges accorded plaintiffs by this decree prior to seeking

formal court approval for any such modifications. The parties will attempt in good faith to resolve all disputes concerning such modifications between themselves in the first instance.

d. If defendants are unable to implement fully the terms of this decree, despite their best efforts, plaintiffs are free to seek such other and further relief from the Court as may be necessary to bring about elimination of the conditions which this decree seeks to remedy.

27. Jurisdiction

This Court shall retain jurisdiction over this matter to insure compliance with the foregoing provisions until such time as all provisions of this decree have been fully implemented.

28. Attorneys' Fees

The parties agree to attempt to negotiate attorneys' fees and costs. Should the parties be unable to reach a settlement as to attorneys' fees and costs within 120 days of final approval of this decree, the matter shall be submitted to the Court for its determination; provided, however, that this time period may be extended by stipulation of the parties if approved by the Court.

Samuel L. McDonald
SAMUEL L. McDONALD, Plaintiff

Dick Moore
DICK MOORE, Director MDCHR

Rayfield Newlon (P-1)
RAYFIELD NEWLON, Plaintiff

Jerry J. Bolin
JERRY BOLIN, Director of Adult Institutions, MDCHR

Thomas Battle
THOMAS BATTLE, Plaintiff

Bill Armontrout
BILL ARMONTROUT, Warden MSP

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C

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SAMUEL L. McDONALD, et al.,)	
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Plaintiffs,)	
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v.)	No. 85-4422-CV-C-5
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BILL ARMONTROUT, et al.,)	
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Defendants.)	

CONSENT DECREE FOR
CAPITAL PUNISHMENT INMATES AT FRDC

This cause originated with the filing of a complaint on August 19, 1985. Plaintiffs requested that they be permitted to proceed as a class pursuant to Federal Rules of Civil Procedure 23(a), and 23(b) (1) and (2). On January 15, 1986, the Court (the Honorable Scott O. Wright) granted plaintiffs' motion for class action status and certified a class comprised of (i) all inmates presently confined under sentence of death at the Missouri State Penitentiary (MSP), and (ii) all inmates who may in the future be confined under sentence of death by the Missouri Department of Corrections and Human Resources (MDCHR), either at MSP or elsewhere.

Plaintiffs alleged in their complaint that they and all other inmates confined under sentence of death at MSP have suffered and are suffering violations of their rights under the First, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States. Defendants denied that any violations of plaintiffs' constitutional rights have occurred.

Desiring an amicable settlement of this matter, the parties herein agreed to the entry of a decree and filed the same on May 22, 1986, without trial, the taking of any evidence, adjudication, or the admission of liability by any party with respect to any claim or allegation made in this action. Although no findings of fact or conclusions of law were made by the Court, this decree contemplated and was intended to eliminate any conditions of confinement which may have denied the inmates sentenced to death the rights, privileges, and immunities secured to them by the Constitution and the laws of the United States. The court approved this decree with addendum on January 7, 1987.

Certain provisions of this agreement may depend upon future appropriations by the Missouri General Assembly for implementation. Defendants agree that they shall, in good faith, request with the utmost speed such additional appropriations as may be necessary to put into effect all components of this decree, by requesting such appropriations in a request to be presented to the next session of the Missouri General Assembly, which convenes no later than in January of 1990. Defendants will in good faith make their best efforts to secure such appropriations from the Missouri General Assembly. If sufficient funds are not appropriated in the next legislative session, defendants shall make an ongoing effort to seek necessary funds. If, however, provisions of this decree are not put into effect due to the Missouri General Assembly's failure

to appropriate the necessary funds, despite defendants' best efforts to secure such funds, defendants shall not be found in contempt. In that event, defendants shall, to the extent possible within the current resource levels and within future appropriation levels, implement the provisions of this decree.

WHEREFORE, upon the consent of the parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I.

This Court has jurisdiction over the subject matter of this action and of all parties hereto.

II.

A. Plaintiffs

The plaintiff class consists of (i) all inmates presently confined under sentence of death at MSP and (ii) all inmates who may in the future be confined under sentence of death by the MDCHR, either at PCC or elsewhere.

B. Defendants

Defendants are the Governor of the State of Missouri, the Director of MDCHR, the Director of the Missouri Division of Adult Institutions within MDCHR, and the superintendent of PCC.

Pursuant to Rule 25(d), F.R.Civ.P., the successors in office of the above-named defendants will automatically be substituted as parties in this suit and in this decree.

III.

Terms

1. Mutuality

a. The responsibilities imposed by this decree are mutual.

b. Damage to or abuse of programs, facilities or equipment by inmates will be a defense in any judicial proceedings on their behalf to cure defects in such programs, facilities or equipment occasioned by that abuse.

c. In the event of continued or consistent abuse or misuse, the nature of which renders such programs, facilities or equipment a risk to the safety and security of inmates, staff or the institution, those programs, facilities or equipment may be substantially modified, suspended, or discontinued to the extent necessary to restore said safety and security. Defendants shall give notice to plaintiffs' counsel and file a request with the Court for modifying, suspending, or discontinuing programs, facilities, or equipment required by this decree. It is contemplated by the parties to this decree that damage, abuse, or misuse by a single individual will normally be handled by appropriate action as to that individual.

2. Legal Mail and Materials

a. Legal mail which is readily identifiable as such will not purposefully be opened in the mail room. Legal mail shall only be opened in the presence of the inmate as required by regulation IS13-1.1.

b. Legal materials which an inmate has in his cell will not be read during searches or shakedowns. Legal materials will, however, be searched for contraband during cell searches and shakedowns. Reasonable care shall be taken to avoid damage or scattering of legal materials.

c. Inmates who believe their legal or personal mail has been improperly handled by prison staff shall notify the prison officials in writing either by letter or by grievance.

3. Religious Services

a. A privacy room will be provided for the capital punishment inmates except those in the punitive segregation unit. This room may be used for religious services, religious counseling, psychological and psychiatric counseling, interviews and evaluations, and medical examinations. Up to two inmates shall be permitted to attend a group religious service. Defendants shall evaluate this number on a yearly basis to see whether security and management consideration would allow the increase of that number for any of the different security levels of death sentenced inmates.

4. Telephone Access

a. Capital punishment inmates shall have access to telephones to make collect telephone calls during their recreation hours.

b. Close Custody, administrative segregation, and disciplinary segregation inmates shall have access to telephones

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to make collect telephone calls by making arrangements with their case worker or other prison staff.

c. Telephone calls to attorneys shall be of unlimited duration unless it becomes necessary to terminate the call in order to accommodate another inmate who needs to place a call to his attorney on the same day.

d. Calls other than those to attorneys shall be allowed to last twenty minutes or less in light of existing circumstances, availability of equipment and number of inmates wishing to use the telephone. Telephone calls under 20 minutes shall be terminated if necessary to accommodate other inmates who wish to place telephone calls the same day, or if security needs of the prison demand such termination.

5. Medical Services

a. Doctor's sick call shall take place in the prison clinic each week, absent a medical or custody emergency which prevents the medical doctor from conducting said sick call. In the event of such an emergency, doctor's sick call will be rescheduled as soon as possible. Sick call conducted by staff shall continue to take place Monday through Friday in either the prison clinic or the C.P. inmates' unit.

b. Neither custody officers nor inmate workers shall have access to medical or psychological records for capital punishment inmates, except that custody officers shall be permitted to carry these files when escorting an inmate to any destination where said records are needed.

c. A medical staff shall pass out the evening medications rather than a custody officer except in the event of a security emergency. The medication shall be handed directly to the inmates.

d. During sick call, inmates may obtain medical services request forms from medical staff to attend the dental or eye clinic. These request forms may also be obtained from the death row caseworkers or custody staff. After obtaining and filling out the request form, the inmate shall send the request to the hospital. Within eight working days of receipt of the request, the inmate shall be escorted to the appropriate clinic.

e. Medication prescribed for an inmate shall be dispensed within 48 hours, or sooner if required by the prescription, and after that shall be dispensed at the intervals required on the prescription.

6. Mental Health Care

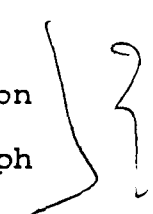
a. A mental health care provider who has at least a Master's Degree in psychology and at least one year of professional experience or its equivalent shall be assigned to the capital punishment inmates to provide the services set forth below.

b. All newly admitted capital punishment inmates shall be psychologically evaluated within two weeks as a part of the reception process. Defendants reserve the right to seek a court order in state court to provide treatment to an inmate who

declines such care if defendants believe such care is medically advisable.

c. The psychologist shall make referrals to a psychiatrist whenever the evaluations or classification team meetings (see paragraphs 6(e) and 7, infra) indicate that psychiatric care is advisable.

d. The psychiatrist shall make referrals to the a State Mental Hospital as appropriate.

e. A psychologist shall sit on the death row classification committee, but is not necessarily a voting member (see paragraph 7, infra). 

f. The psychologist shall write and implement treatment programs when appropriate after evaluating each inmate. In the event that medication is a part of the treatment program, a referral shall be made to a psychiatrist who shall evaluate the inmate prior to prescribing medication.

g. All prescriptions for psychotropic, antipsychotic or hypnotic medication will be reviewed on a regular basis by a psychiatrist.

h. The caseworkers who are assigned to the capital punishment inmates shall be given mental health care training concerning the detection of mental health problems, and death and dying.

i. All capital punishment inmates not under treatment shall be reevaluated by the psychologist once every year and, if necessary, shall be provided treatment as described above.

j. All medical and psychological records shall be confidential as provided in §217.075 and § 217.205, RSMo (1986).

7. Classification

a. The Classification Policy at PCC FRDC inmates contemplates 4 classifications: Minimum Custody CP; Medium Custody CP; Close Custody CP; Administrative Segregation CP. Additionally, death sentenced inmates can be placed on disciplinary segregation status for 10 days or less pursuant to Division Regulation IS21-1.4 (212.010). Protective Custody or security needs may also require an individual be placed on no contact status with one or more death sentenced inmates (said status may include some or all of one privileges of the classification the inmate is assigned when placed on full or partial no contact status).

The Classification Policy is intended to give inmates greater privileges commensurate with good behavior.

b. Any future modifications to the classification system proposed by defendants shall be furnished immediately to counsel for plaintiff class, and counsel shall be afforded at least 7 days in which to comment before any such modifications are adopted.

c. Defendants shall seek prior approval of the Court for any modifications of the classification system which are inconsistent with the terms and intent of this decree, otherwise court approval is not warranted. If defendants believe that modification is immediately necessary to preserve

the security and safety of the inmates or staff, which is inconsistent with the Consent Decree, such modification may be implemented on an emergency basis without prior approval of the Court, provided that approval is sought promptly thereafter. After appropriate review, the Court may delete or alter the modifications to conform to the terms and intent of this decree.

d. The classification system, and any subsequent modifications of the classification system, shall be printed and distributed by defendants to every member of the plaintiff class.

8. Staffing

a. Custody staff for the capital punishment inmates shall receive instruction as to the special needs of death row inmates, the appellate and post-conviction process in death cases, and the requirements of this decree.

9. Recreation

a. Minimum (formerly Medium) Custody death sentenced inmates will be given the opportunity for 16 hours of outdoor and 16 hours indoor recreation.

b. Medium Regular Custody death sentenced inmates will be given the opportunity for 10 hours of indoor and 10 hours of outdoor recreation a week.

c. Close Custody and administrative segregation capital punishment inmates will be given the opportunity for one hour of recreation every other day.

d. Protective Custody inmates will be given the opportunity for recreation commensurate with their status unless security needs require that recreation be reduced.

10. Fire Safety

a. A fire safety evaluation of the capital punishment unit will be conducted jointly by defendants' consultant and plaintiffs' consultant. Defendants shall pay plaintiffs' consultant a reasonable fee and expenses for his work. The consultants may submit a report if appropriate. If a report is necessary, it shall follow the format of the reports filed pursuant to the original Consent Decree. If the parties consultants disagree about the necessity of a report or the fire safety issue, the disagreement shall be submitted to the court for resolution.

b. If the two consultants disagree as to whether any particular fire safety measure is necessary, the disagreement shall be submitted to the Court for resolution. Following adoption of a final fire safety plan, the two consultants shall inspect PCC once to ensure the necessary fire safety measures have been implemented.

11. Visiting

a. Defendants will make every effort to make a contact visit available to attorneys who wish to visit a capital punishment inmate and have notified defendants 48 hours in advance, except that inmates who are on administrative segregation or punitive segregation status shall receive a

noncontact visit. All attorney visits for inmates with execution dates will be contact visits.

b. Minimum Custody inmates may have up to 2 contact visits per month, with up to 4 visitors each visit. The days these visits may occur will be set by prison staff. Non-contact visits may occur at the discretion of the prison's superintendent or his designate. *chp*

c. Medium Custody inmates may have up to 2 medium contact visits per month which may last up to 2 hours per visit, with up to 2 visitors each visit. The days these visits may occur will be set by prison staff.

d. Close Custody and administrative segregation inmates may have 1 no contact visit per month, lasting 1 hour, with 1 visitor. The day this visit may occur will be set by prison staff. Close Custody inmates or inmates serving disciplinary segregation time may have contact visitation only in the discretion of the prison superintendent.

12. Education

Defendants will provide inmates with an education program for G.E.D.

13. Lighting

a. Defendants will supply inmates with light bulbs sufficient to provide 20 footcandles of light at the bed and desk level.

14. Sanitation

a. An environmental and sanitation evaluation of the capital punishment unit and all other areas where food for capital punishment inmates is prepared or stored will be conducted jointly by defendants' consultant and plaintiffs' consultant. Defendants will pay plaintiffs' consultant reasonable fees and expenses for their work. The consultants may submit a report if appropriate. If a report is necessary, it shall follow the format of the reports filed pursuant to the original Consent Decree. If the parties' consultants disagree about the necessity of a report or the fire safety issue, the disagreement shall be submitted to the court for resolution.

b. If the two consultants disagree as to whether a particular environmental or sanitary measure is necessary, the disagreement shall be submitted to the Court for resolution. Following adoption of a final environmental and sanitation plan, the two consultants shall inspect PCC once that all necessary environmental and sanitary measures have been implemented.

15. Feeding

Defendants will make good faith efforts to provide death row inmates with meals on the same schedule that applies to feeding of general population inmates.

16. Equal Access

All inmates on death row shall have equal access to all rights and privileges conferred upon persons within their classification status by this decree, and to all other programs

and facilities according to their classification and security status.

17. Inspections

Until such time as the Court determines that full compliance has been achieved with all provisions of this decree, the attorneys for the plaintiff class shall be allowed access to the death row walks and recreation areas upon 24 hour advance notice to the attorneys for defendants.

18. Reports

For at least six months from the date of final approval of this decree, defendants shall submit a quarterly report to the Court, with a copy to the attorneys for the plaintiff class, detailing the state of their compliance with each and every provision of this decree.

19. Implementation

a. Counsel for the plaintiff class will bring any complaints of noncompliance to the attention of defendants' counsel prior to initiating any court action. The parties will attempt in good faith to resolve all such disputes between themselves in the first instance.

b. Defendants' counsel will notify counsel for the plaintiff class of any proposed modification of the rights and privileges accorded plaintiffs by this decree prior to seeking formal court approval for any such modifications. The parties will attempt in good faith to resolve all disputes concerning such modifications between themselves in the first instance.

c. If defendants are unable to implement fully the terms of this decree, despite their best efforts, plaintiffs are free to seek such other and further relief from the Court as may be necessary to bring about elimination of the conditions which this decree seeks to remedy.

20. Jurisdiction

This Court shall transfer jurisdiction over this matter to the Eastern District of Missouri to insure compliance with the foregoing provisions until such time as all provisions of this decree have been fully implemented.

Respectfully submitted,

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