

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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FITZPATRICK PERRY, <u>et al.</u> ,)	
)	
Plaintiffs,)	
v.)	C.A. No. 89-cv-00031-RWZ
)	
MICHAEL V. FAIR, <u>et al.</u> ,)	
)	
Defendants,)	
_____)	

MODIFICATION TO CONSENT DECREE

Upon the Joint Motion to Modify Consent Decree filed by the Plaintiffs, Fitzpatrick Perry, et al., and the Defendant Guy Glodis (hereinafter "Sheriff Glodis"), it is hereby ORDERED that the Consent Decree entered by this Court on October 6, 1989 is modified as follows:

A. General. Unless the context requires otherwise, Defendant Glodis, the current Sheriff of the Worcester County Jail and House of Correction, shall be substituted for Defendant John M. Flynn throughout the Consent Decree.

B. Section III ("Jail's Physical Plant"). Section III of the Consent Decree is modified to reflect that the rated capacity of the Jail's presently existing physical plant according to the Massachusetts Department of Corrections is 822 inmates. Section III of the Consent Decree is amended to include the following references to the Annex facility and the modular units that have been constructed since 1989:

- i. The Annex facility consists of an open-plan building of approximately 5,141 square feet divided roughly in half and including a multi-use area and a dormitory designed for occupancy by 100 persons. The rated capacity of this area is 100 inmates. The Annex contains fifteen (15) toilets, twenty-two (22) sinks and fifteen (15) showers.
- j. Modular Units H, I, J, K, and L each consist of two tiers of 30 cells (60 cells per unit) designed for occupancy by one person. The rated capacity of each modular unit is 119 inmates. There are ten (10) showers for each modular unit. Each cell is approximately 74 square feet, and contains two metal beds affixed to the wall, a sink and toilet, and a desk.

Paragraphs 2, 3, and 4 of Section III of the Consent Decree are deleted in their entirety.

C. Section IV ("Construction of Modular Units"). Section IV of the Consent Decree is deleted in its entirety.

D. Section V ("Jail Population"). Paragraph 1 of Section V of the Consent Decree is deleted in its entirety. Paragraph 2 of Section V of the Consent Decree is modified to increase to 1251 the total number of prisoners that may be held in the existing facilities of the Jail, as defined in Section III, which number shall include those sentenced inmates participating in the Sheriff's electronic monitoring program. The effective date for Paragraph 2 of Section V of the Consent Decree shall be changed to 45 days after approval of this Court of the modification. Paragraph 3 of Section V of the Consent Decree is deleted in its entirety and in its place shall be substituted the following language: "From holding or confining more than one inmate in any cell of the maximum security facility (as referenced in Article III, Paragraph 1, Section a), medium

security facility (as referenced in Article III, Paragraph 1, Section c), and in any cell in which a person is placed on suicide watch.” Section V of the Consent Decree is modified to include the following additional Paragraph:

5. From failing to implement and administer a program, as described in the attached Policy Guidelines, as amended from time to time, by which appropriate pretrial detainees shall remain in the Sheriff’s custody and secured to an electronic bracelet, provided that decisions as to which pretrial detainees may participate in the program shall be made by an Associate Justice of the Massachusetts Superior Court upon recommendation by the Sheriff. Pretrial detainees participating in this program shall be eligible for jail credits as if housed in the County Jail.

Notwithstanding anything set forth above, pretrial detainees charged with violations of G.L. c.265, §§ 13F and 13B (indecent assault and battery), 15A, 15B, 18-18B (armed assault), or 22-24B (rape); or G.L. c. 272, §§ 35 or 35A (unnatural and lascivious acts) - including persons charged with attempting to commit these statutory offenses - or for trafficking in a Class A or Class B substance shall not be eligible for this pretrial detainee program. If, for whatever reason, this pretrial detainee program is not implemented as anticipated above, the parties may seek additional relief from this Court, including but not limited to the institution of a prisoner release plan.

E. Section VI (“Enforcement of Population Caps”). In the first sentence of Paragraph 1 of Section VI of the Consent Decree, the two references to the “number of pretrial detainees” is changed to the “total number of pretrial detainees and sentenced inmates.” In the

second sentence of Paragraph 1 of Section VI of the Consent Decree, the two references to “pretrial detainees” are modified to refer instead to “pretrial detainees or sentenced inmates.” In the first and third sentences of Paragraph 2 of Section VI of the Consent Decree, the two references to the “pretrial detainee population” are changed to the “inmate population.” In the second sentence of Paragraph 2 of Section VI of the Consent Decree, the two references to “pretrial detainee” are modified to refer instead to “pretrial detainee or sentenced inmate.” Paragraphs 3, 4, and 5 of Section VI of the Consent Decree are deleted in their entirety.

F. Section VII (“County Lockup Cells”). Paragraph 2 of Section VII of the Consent Decree is deleted in its entirety. Paragraph 4 of Section VII of the Consent Decree is modified by deleting the reference to “103 C.M.R. 943.00” and substituting in its place “the Sheriff’s written disciplinary policy.”

G. Section VIII (“Confinement of Pretrial Detainees”). Section VIII of the Consent Decree is deleted in its entirety. In its place, the following provision is added:

VIII. ISOLATION CELLS

The Isolation Cells consist of the six cells in the rear of the maximum security facility and four cells in the rear of the medium security facility each designed for occupancy by one person. The rated capacity of these cells is 10 inmates. The Sheriff shall be permitted to confine persons in the isolation cells in compliance with the Jail’s discipline policy, as amended from time to time, on the condition that (1) the Isolation Cells shall be used solely as isolation cells in conformity with G.L. c. 127, § 41; (2) that no person shall be confined in any of these Isolation Cells for a continuous period of more than ten days as a result of any one offense; (3) that the Isolation Cells shall be modified on or before May 1, 2008 to admit natural light (though this provision shall not

prevent the Sheriff from confining persons in the Isolation Cells prior to such modifications); (4) that the physical features of the Isolation Cells shall satisfy all of the minimum standards promulgated by the Commissioner of the Massachusetts Department of Corrections, (5) that any person confined in one of these Isolation Cells shall be initially evaluated and then monitored by a mental health clinician on a daily basis; and (6) that the Isolation Cells shall be modified on or before May 1, 2009 so that persons confined in any one of these Isolation Cells shall be continuously monitored by video (though this provision shall not prevent the Sheriff from confining persons in the Isolation Cells prior to such modifications).

H. Section IX ("Admission"). Section IX of the Consent Decree is deleted in its entirety.

I. Section X ("Access To The Courts"). Section X of the Consent Decree is deleted in its entirety.

J. Section XI ("Medical Care and Treatment"). Section XI of the Consent Decree is deleted in its entirety.

K. Section XII ("Visitation Rights"). Section XII of the Consent Decree is deleted in its entirety.

L. Section XIII ("Programs, Activities and Inmate Jobs"). In the first sentence of Paragraph 1 of Section XIII, the clause, "and activities outside of their cells or their tiers of Day Rooms for at least twenty-five (25) hours each week" is deleted.

M. Section XIV ("Food Services"). Section XIV of the Consent Decree is deleted in its entirety.

N. Section XV ("Laundry"). Section XV of the Consent Decree is deleted in its entirety.

O. Section XVI ("Submission of Plan"). Section XVI of the Consent Decree is deleted in its entirety.

P. Section XVII ("Attorney's Fees"). Section XVII of the Consent Decree is deleted in its entirety.

Q. Section XVIII ("Notice of Class and Continuing Jurisdiction"). Paragraphs 1 and 2 of Section XVIII of the Consent Decree are deleted in their entirety.

R. Termination of Consent Decree. The Consent Decree is modified by adding the following provision:

XIX. TERMINATION OF CONSENT DECREE.

This Consent Decree, as modified, shall terminate at such time when additional facilities are constructed at the Jail with a rated capacity of two hundred (200).

S. Notice to Classes. This Modification to Consent Decree shall become effective on the date of entry upon conditional approval of this Court. Upon conditional approval by the Court, Sheriff Glodis shall provide notice to the plaintiff classes by posting one copy of the 1989 Consent Decree and one copy of this Modification in each of the following locations: each of the Day Rooms, the visiting rooms, in the receiving area of the Jail's library or school, and in the Jail's Infirmary. Members of the plaintiff classes shall be able to submit written comments and/or objections to this Court by August ²⁷, 2007. Written comments and/or objections should be addressed to:

Douglas W. Salvesen, Esq.
Yurko, Salvesen & Remz, P.C.
One Washington Mall, 11th Floor
Boston, Massachusetts 02108

After consideration of such comments, this Court shall, if warranted and after a hearing to be held August ²⁸~~8~~, 2007, if necessary, enter final approval of the Modification. The Defendant Sheriff shall comply with the terms of this Modification within forty-five (45) days following the Court's final approval. ^{0 21:30 p.m.}

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE

Date: 7/23/07