

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA PROTECTION AND ADVOCACY)	
SERVICES COMMISSION, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 1:08-cv-01317 TWP-MJD
)	
COMMISSIONER, INDIANA DEPARTMENT)	
OF CORRECTION,)	
)	
Defendant.)	

**Stipulation to Enter Into Private Settlement Agreement
Following Notice to the Class and Fairness Hearing**

The parties, in person and by their counsel, stipulate and agree as follows:

I. The history of the case

1. This action was filed in 2008 and sought declaratory and injunctive relief against the Commissioner of the Indiana Department of Correction (“DOC”).
2. The action alleged that the DOC violated both the Eighth Amendment and certain federal statutes by housing seriously mentally ill prisoners in segregated or excessively isolated and harsh conditions where they failed to receive adequate mental health care.
3. At all times the DOC denied, and continues to deny, all of plaintiffs’ material allegations.
4. The operative complaint in this case is the Amended Complaint of December 2, 2009 (Dkt. 75-1, 75-2, 80), in which the plaintiffs are the Indiana Protection and Advocacy Services Commission and three prisoners, Joshua Harrison, Gregory Sims, and James Panozzo.
5. On April 27, 2010, the Court certified this case as a class action with the class represented by the three prisoners and defined as:

all current and future mentally ill prisoners who are committed to the Indiana Department of Correction and who are housed in settings in Department of Correction Institutions or in the New Castle Correctional Facility that feature extended periods of time in cells, including, but not limited to, prisoners in disciplinary segregation, administrative segregation, or in the New Castle Psychiatric Unit.

(Dkt. 109).

6. The DOC no longer refers to “segregation,” and instead utilizes the term “restrictive status housing” and the parties therefore agree that the class includes those who are placed in what is now known as disciplinary restrictive status housing, administrative restrictive status housing, or protective custody, as well as the New Castle Psychiatric Unit. The term “segregation/restrictive housing” will be used in this agreement to reflect the change in terminology.

7. In an earlier decision, on July 21, 2009, the Court denied DOC’s motion to dismiss plaintiff Indiana Protection and Advocacy Services Commission, holding that Indiana Protection and Advocacy Services Commission had standing to sue on behalf of seriously mentally ill DOC prisoners. (Dkt. 58).

8. The Court conducted a bench trial in this case from July 25, 2011 through July 29, 2011.

9. The plaintiffs did not pursue their federal statutory claims, instead arguing only that the DOC was violating the Eighth Amendment rights of the prisoners included in the class.

10. On December 31, 2012, the Court issued its Entry Following Bench Trial (Dkt. 279), and concluded that “Plaintiffs have prevailed as to their Eighth Amendment claim.” (*Id.* at 36). The Court did not, however, enter any final judgment at that time or at any time since.

11. Since the Court’s Entry the parties, as set out in more detail below, have been working to address concerns expressed by the Court and to modify the conditions of confinement for the class.

12. The DOC continues to deny that it has at any time violated the Eighth Amendment rights of the class and denies the various claims made by plaintiffs to support their Eighth Amendment argument. However, the parties are desirous of attempting to reach a settlement of this matter and therefore they enter into this Stipulation. Plaintiffs stipulate that defendant's entry into this Private Settlement Agreement ("Agreement") is not an admission of any kind and imposes no liability on defendant or any of its agents, employees, officers or other persons for any violation of law, constitutional or otherwise.

13. Insofar as the plaintiffs have sought relief under 42 U.S.C. § 1983 for violations of the United States Constitution and federal law, this litigation is subject to the Prison Litigation Reform Act, 18 U.S.C. § 3626, *et seq.* This Act imposes certain requirements on judicially sanctioned agreements made in litigation such as this, but provides that the parties may enter into private agreements which are exempted from the requirements of the Act. 18 U.S.C. § 3626(c). However, such agreements are not subject to enforcement under federal law other than through potential reinstatement of the proceedings, although they are enforceable under state law as breaches of contract. *Id.*

14. Inasmuch as this case is a certified class action the Court must determine, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that this Agreement is a fair, reasonable, and adequate resolution of this matter. The Court cannot ascertain this until after reasonable notice is given to the class. Accordingly, even though this Private Settlement Agreement has been agreed to by the DOC and all named plaintiffs and Indiana Protection and Advocacy Services, it will not go into effect until after notice is given to the class and the Court conducts the hearing required by Rule 23(e). Indiana Protection and Advocacy Services and the named plaintiffs specifically agree that their approval of this Agreement is contingent on the Court finding that the Agreement

is fair, reasonable, and adequate, and in the event that the Court does not find that the Agreement is fair, reasonable, and adequate, this Agreement will immediately be deemed null and void. The plaintiffs will file, along with this Agreement, a motion seeking approval of the form and manner of notice to the class of this Agreement.

15. Accordingly, to the extent that the parties agree to the terms and conditions as set forth below, this is deemed to be a private settlement agreement under the Prison Litigation Reform Act.

16. This Agreement is supported by good and valuable consideration. This includes, but is not limited to, the following. Plaintiffs agree that they will not seek a final judgment in this cause. The DOC agrees that it will not seek to appeal this Court's Entry of December 31, 2012, whether as an interlocutory matter or after final judgment, and will not challenge any of the Court's other rulings in this cause, unless this case is reinstated as set out below.

II. The definition and enumeration of seriously mentally ill prisoners

17. In the Court's Entry of December 31, 2012, the Court defined seriously mentally ill prisoners as follows:

prisoners with a current diagnosis or recent significant history of a DSM-IV Axis I diagnosis of: schizophrenia, delusional disorder, psychotic disorder, schizoaffective disorder, schizophreniform disorder, major depression, bipolar disorder who are actively suicidal. And, the term includes prisoners who have engaged in a recent serious suicide attempt, regardless of diagnosis, who because of their mental illness have a recent history of hallucinations, or who have organic brain syndrome, mental retardation, or severe anxiety disorder, leading to significant functional impairment or self-harm behaviors or who have personality disorders manifesting in frequent episodes of psychosis or depression.

(Dkt. 279 at 11).

18. The parties have agreed on the following definition of seriously mentally ill prisoners, which includes and expands upon the group of offenders covered by the Court's definition:

a. Prisoners determined to have a current diagnosis or recent significant history of schizophrenia, delusional disorder, schizophreniform disorder, schizoaffective disorder, brief psychotic disorder, substance-induced psychotic disorder (excluding intoxication and withdrawal), undifferentiated psychotic disorder, bipolar I or II disorders;

b. Prisoners diagnosed with any other validated mental illness that is clinically severe, based on evidence-based standards, and that results in significant functional impairment; and

c. Prisoners diagnosed with an intellectual or developmental disability or other cognitive disorder that results in a significant functional impairment.

d. As used above:

(i) “Recent significant history” refers to a diagnosis made at any time in the last 12 months.

(ii) “Significant functional impairment” includes one of the following as determined by qualified mental health staff:

- Within the previous 6 months, the prisoner has either made a suicide attempt that mental health staff considers serious, inflicted self-injury that mental health staff considers serious, or both;
- The prisoner has demonstrated difficulty in his/her ability to engage in activities of daily living including:
 - Eating
 - Grooming and/or personal hygiene
 - Maintenance of housing area
 - Participation in recreation
 - Ambulation
- The prisoner has demonstrated a pervasive pattern of dysfunctional or disruptive social interactions, bizarre or disruptive behavior, *etc.*, as a result of mental illness.

(iii) A misdiagnosis does not qualify as a diagnosis or determination of mental illness for purposes of this settlement, once the error has been determined by a qualified mental health professional.

19. Inasmuch as the Court's definition is subsumed within the definition noted in paragraph 18, for the purpose of this Agreement the term "seriously mentally ill" is defined as noted in paragraph 18.

20. In May of 2013, a Request for Proposals created by the DOC estimated that that there were approximately 664 prisoners to whom the Court's December 31, 2012 Entry applies, including 402 mentally ill prisoners in segregation/restrictive housing beds and 128 such prisoners at the New Castle Psychiatric Facility and 134 prisoners at the Wabash Valley Special Needs Unit.

III. The development of mental health programming by the DOC following the Court's Entry of December 31, 2012

21. Following the Court's December 31, 2012, Entry the parties met and the DOC committed to a course of action that would allow seriously mentally ill prisoners in the certified class to be placed in a setting where they could receive at least 10 hours a week of therapeutic programming, not including the time out of cell for recreation, showers, or other purposes permitted generally to offenders not in the certified class. The parties agreed, and continue to agree, that the term "therapeutic programming" can include formal group therapy, individual therapy, therapeutic milieu activity, and other activity as determined by mental health professionals as part of an individualized treatment plan. The parties also agree, as set out further below, that under certain circumstances seriously mentally ill prisoners may be allowed to remain in segregated/restrictive housing for up to 30 days where they will not receive therapeutic programming and that receipt of the therapeutic programming is subject to waiver and exceptional or extraordinary circumstances as described below.

22. To this end the DOC determined to continue to utilize existing facilities and programs and develop new facilities and programs for seriously mentally ill prisoners in segregation/restrictive housing or similar housing in the DOC.

23. At the current time the following specialized mental health programs and facilities are in place for male prisoners.

a. New Castle Psychiatric Facility – This facility is located within the New Castle Correctional Facility that is operated by the GEO Group. It has 128 beds in 8 separate cell blocks. At the current time prisoners are offered a minimum of 10 hours of out-of-cell therapeutic programming each week. Depending on their functioning level they are provided a decreasing amount of individual therapy from at least weekly to at least monthly. They are also provided at least one hour of recreation a day and three showers a week. Prisoners are provided additional out-of-cell unstructured time as warranted. Treatment plans are maintained for all prisoners and are regularly reviewed by treatment teams made up of both treatment and correctional staff. Prisoners who are on psychiatric medication are regularly seen by either psychiatrists or advance practice nurses, or both, for medication reviews and monitoring.

b. Wabash Valley Correctional Facility – The Special Needs Unit (“SNU”) continues to house up to 134 mentally ill prisoners who can benefit from a transitional program in anticipation of returning to general population. The prisoners are offered, at a minimum, 10 hours of out-of-cell therapeutic programming each week. Treatment plans are maintained for all prisoners and are regularly reviewed by treatment teams made up of both treatment and correctional staff. Prisoners who are on psychiatric medication are

regularly seen by psychiatrists or advance practice nurses, or both, for medication reviews and monitoring.

c. Pendleton Correctional Facility – Subsequent to the Court’s December 31, 2012, Decree the DOC opened a new unit and treatment facility known as the Pendleton Treatment Unit/INSIGHT (Intent on Shaping Individual Growth with Holistic Treatment) Unit. As currently envisioned, when fully occupied the unit will have the capacity to house up to 250 seriously mentally ill prisoners, many of whom were formerly in segregation/restrictive housing. Prisoners are being, or will be, housed in single cells or double cells, depending on their needs. A structure at Pendleton Correctional Facility has been rehabilitated into a treatment center, complete with rooms for group therapy, individual therapy, and offices. By agreement of the parties the treatment unit has been populated slowly, approximately five new prisoners each week. Prisoners in this unit receive at least 10 hours of out-of-cell therapeutic programming each week. They are also allowed, in addition to recreation and showers, significant time each day out of their cells for communal activities on their cell blocks and outside when weather permits. Individualized treatment plans are maintained for all prisoners and are regularly reviewed by treatment teams made up of both treatment and correctional staff. Prisoners who are on psychiatric medication are regularly seen by either psychiatrists or advance practice nurses, or both, for medication reviews and monitoring. These occur at least every 90 days.

24. The number of seriously mentally ill female prisoners is significantly less than the number of male prisoners. Generally there have been no more than 10 seriously mentally ill female prisoners in segregation/restricted confinement at any one time. These prisoners are

housed in the segregation/restrictive housing unit at the Indiana Women's Prison. However, unlike non-seriously mentally ill prisoners housed in that unit, these prisoners receive at least 10 hours of out-of-cell therapeutic programming each week. Individual therapy is also provided as needed. One hour of recreation is offered daily. Seriously mentally ill prisoners are transitioned as quickly as possible from the segregation/restrictive housing unit to the special needs unit at Indiana Women's Prison where prisoners are out of their cells, aside from count periods, from approximately 5:00 a.m. to 10:00 p.m.

25. The parties agree that there are also seriously mentally ill prisoners who are placed in settings in the DOC other than the specialized units noted above.

IV. Substantive Agreement

Staffing

26. The plaintiffs acknowledge that the DOC has made extraordinary efforts since the Court's Decree of December 31, 2012, to address the issues noted by the plaintiffs and the Court.

27. To meet the terms of the Private Settlement Agreement set out below the DOC, either directly or through its contract providers, has already, as appropriate, increased both correctional staffing and mental health staffing for seriously mentally ill prisoners. The DOC agrees that it will maintain sufficient staff to manage the mental health units noted below and to identify seriously mentally ill prisoners and divert them from placement in segregated/restrictive housing in keeping with considerations of safety and security. At the current time the DOC has no plans to decrease existing staffing levels.

28. This agreement uses the term "mental health professional." This term includes the following professionals: psychiatrists, psychologists, masters-prepared therapists, and psychiatric nurse practitioners.

The removal of seriously mentally ill from segregation/restrictive housing

29. While not agreeing with the conclusions of the Court in its December 31, 2012 Entry or that the following is mandated by the United States Constitution, and subject to the 30-day provision, waiver and “exceptional circumstances” as defined in paragraphs 30, 32, and 33, the DOC agrees that:

a. no seriously mentally ill prisoners shall be placed in segregation/restrictive housing (including protective custody) if they are known to be seriously mentally ill prior to such placement.

b. if a prisoner in segregation/restrictive housing (including protective custody) is found to be, or becomes, seriously mentally ill subsequent to such placement the prisoner shall be removed at the earliest opportunity and placed into an appropriate placement where his or her mental illness can be addressed.

30. This private settlement agreement is subject to the following qualification that has previously been referenced as “the 30-day provision.” The parties recognize that if a seriously mentally ill prisoner is scheduled to be in segregation/restrictive housing for 30 days or less that it may be more disruptive to his or her mental health to move the prisoner to a mental health unit. Therefore, a seriously mentally ill prisoner may be placed into segregation/restrictive housing for as many as 30 continuous days if, and only if, mental health professionals determine that the prisoner may be safely housed in the segregated/restrictive housing for that period and that placing the person in such housing is preferable to a short-term move to a mental health or other unit.

31. If a seriously mentally ill prisoner continues to be housed in segregated/restrictive housing because the prisoner is scheduled to be in segregation/restricted housing for 30 days or less the prisoner will, at a minimum, have face-to-face contact with a mental health professional multiple times a week, with no more than 3 non-contact days between contacts and with such contact being recorded in the prisoner’s file and with the prisoner being offered out-of-cell

evaluation and counseling by a mental health professional at least once every two weeks, but more often if specified in the prisoner's individualized treatment plan. The prisoner will be removed from the housing in the event that mental health staff determines that his or her mental health has decompensated such that staying in segregation/restricted housing, even for the remaining period of time, would cause problems that outweigh the disruption to the prisoner's mental health caused by the removal.

32. The parties acknowledge that there may be exceptional circumstances where barring or removing a seriously mentally ill prisoner from segregation/restrictive housing would pose an unacceptable risk to the safety and security of one or more prisoners and/or the staff. If such a situation arises the need for confinement in segregation/restrictive housing must be approved by the Superintendent of the facility where the prisoner is located, or his or her designee, following consultation with an appropriate mental health professional. The opinions of the mental health staff concerning the mental health needs of the prisoners will be honored unless there are real and substantial security or safety concerns noted. The decision shall be recorded in the prisoner's permanent record. The DOC shall attempt to resolve any such exceptional circumstances so that the prisoner may be removed from segregation/restrictive housing at the earliest possible opportunity. If a determination of exceptional circumstances is made it shall be reviewed at least every 14 calendar days by the Superintendent, or his or her designee, the mental health treatment team in the facility, and the head of mental health services for either the DOC or any contract provider responsible for the provision of mental health services to DOC prisoners. Such review, and the decisions made as the result of the review, will be documented in writing in the prisoner's permanent record. When the term "exceptional circumstances" is used in this Agreement with reference to retention of prisoners in segregation/restrictive housing it shall refer

to the circumstances noted in this paragraph. In the event that a seriously mentally ill prisoner is required by exceptional circumstances to remain in segregated/restrictive housing a specific written plan of mental health care will be created for the prisoner that will set out the frequency of contact of the prisoner with mental health staff with the frequency to be at least that specified in paragraph 31 above. Defendants will maintain a list of seriously mentally ill prisoners who remain in segregation because of exceptional circumstances, and share that list with plaintiffs' counsel no less often than once per calendar quarter on the request of plaintiffs' counsel.

33. The parties acknowledge that some seriously mentally ill prisoners may refuse to leave segregated/restrictive housing to go to an appropriate permanent placement where their mental illness may be best addressed. The DOC has the authority to involuntarily transfer a prisoner, and reserves the right to do so in appropriate circumstances as noted below. The parties agree that under the following circumstances a prisoner may waive the DOC recommendation that he or she leave segregated/restrictive housing. If a prisoner indicates that he or she wishes to refuse to be transferred the refusal will be documented in the prisoner's medical file. All reasonable efforts will be made to counsel the prisoner to voluntarily leave segregation/restrictive housing. In the event that a determination is made that the harm that will occur if the prisoner is allowed to remain in segregation/restricted housing outweighs the harm that the prisoner will suffer if the prisoner is moved to a placement where the prisoner is able to receive appropriate treatment for his or her mental illness, the prisoner will be transferred even though the prisoner objects. If the prisoner is allowed to remain in segregation/restrictive housing, the prisoner will continue to be monitored with the frequency noted in paragraphs 34-35 below and will, at least monthly, be offered the opportunity to be transferred if the prisoner's mental health needs continue to warrant such a transfer. The DOC is not, however, required to provide the minimum adequate treatment

set out in paragraph 42 below, and the provisions of this paragraph supersede the documentation and counseling requirements set forth in paragraph 43 below.

The monitoring of prisoners in segregation/restricted housing

34. The DOC agrees that the mental health status and needs of prisoners in segregated/restricted housing will be monitored frequently by mental health personnel to, among other things, assure that if they are seriously mentally ill, or become seriously mentally ill, steps will be taken to remove them from the segregation/restrictive housing, subject to the exceptional circumstances and waiver situations noted in paragraphs 32 and 33.

35. This monitoring shall consist of daily at-cell-front monitoring by correctional and medical staff during each shift. Additionally, prisoners with a mental health diagnosis shall be visited at least once a week, at their cell front, by mental health personnel and shall be offered monthly out-of-cell monitoring by a mental health professional. Absent a significant change in circumstances the weekly visit need not be recorded in the prisoner's medical records although some general log or record will be kept that demonstrates that the visit occurred. Unless correctional necessity dictates otherwise, out-of-cell monitoring will occur outside of the audible range of correctional staff.

36. In the event that a female prisoner in segregated/restrictive housing is found to be seriously mentally ill she shall be placed in the segregated/restrictive housing unit at the Indiana Women's Prison, absent waiver or exceptional circumstances, and subject to the 30-day period noted in paragraph 30 above, and offered minimum adequate treatment, as set out below.

The reclassification of mentally ill prisoners

37. The plaintiffs acknowledge that due to an original misdiagnosis or other circumstances, a patient previously classified as seriously mentally ill may properly no longer be so classified.

38. In the situation described in paragraph 37, a mental health professional may revise the prisoner's prior diagnosis. Plaintiffs acknowledge that this rediagnosis may allow the DOC to continue to house the prisoner in segregation/restrictive housing. The DOC acknowledges that if a prisoner is diagnosed with any of the mental illnesses noted in paragraph 18(a), the fact that the condition is in remission is not, by itself, justification for a rediagnosis of the prisoner.

39. The DOC or its designee will notify the plaintiffs' lead counsel, who is currently Kenneth J. Falk, either before or, at the option of DOC, within 30 days after, the occurrence of either of the following events:

a. A prisoner who was reclassified from seriously mentally ill to not seriously mentally ill is placed in restrictive/segregated housing within 6 months of the reclassification;

b. A prisoner who is in restrictive/segregated housing is reclassified from seriously mentally ill to not seriously mentally ill and is retained in restrictive/segregated housing.

40. In the event of an occurrence described in Paragraph 39a or 39b, and regardless whether notice has been given as provided in Paragraph 39, the plaintiffs' counsel may review the prisoner's medical records upon submission of a written request. The defendant's counsel will be notified in writing if the identity of the plaintiffs' lead counsel changes.

The provision of minimum adequate treatment to seriously mentally ill prisoners in the DOC's mental health units

41. As indicated above, the DOC is maintaining a number of correctional placements specifically for prisoners who are seriously mentally ill. These placements, referred to below as "mental health units" are:

a. For male prisoners – New Castle Psychiatric Facility, Special Needs Unit at Wabash Valley Correctional Facility, and the Pendleton Treatment Unit.

- b. For female prisoners – The segregation/restrictive housing unit at the Indiana Women’s Prison and the Special Needs Unit at the Indiana Women’s Prison.

The DOC has no current plans to change the location of these specialized units for the housing of seriously mentally ill prisoners.

42. The DOC agrees that absent extraordinary circumstances, as set out below in paragraphs 46-47, every seriously mentally ill prisoner who is housed at the New Castle Psychiatric Facility, the Special Needs Unit at the Wabash Valley Correctional Facility, the Pendleton Treatment Unit, or the segregation/restrictive housing unit at the Indiana Women’s Prison shall receive the following treatment, at a minimum, while confined in the respective unit. This is referred to in this Agreement as “minimum adequate treatment.”

- a. An individualized treatment plan created by a treatment team consisting of mental health professionals and correctional staff who are familiar with the prisoner. The individualized treatment plan will be specific to the prisoner and will be reviewed at least every 90 days.

- b. At least 10 hours of therapeutic programming each week, which can include formal group therapy, individual therapy, therapeutic milieu activity, and other activity determined by a mental health professional to be therapeutic, as individually tailored to the prisoner by mental health professionals. Normal recreation is excluded from therapeutic programming hours. Prisoners will be allowed to attend group therapy sessions without restraints, except to the extent restraints are deemed necessary for security reasons. Prisoners will receive individual therapy at least once a month and more as needed. The individual therapy will be provided by a mental health professional. Prisoners will be allowed to attend individual therapy without restraints, except to the

extent restraints are deemed necessary on a case-by-case basis for security reasons. Unless unsafe to do so for security reasons, as determined on a case-by-case basis, the patient and the therapist will be provided aural privacy. Individual therapy does not include medication reviews of prisoners receiving psychiatric medication that will occur by a psychiatrist or other medical doctor or advanced practice nurse consistent with existing DOC policy.

c. Recreation and showers will be offered consistent with general DOC policy.

d. As noted, the 10 hours a week of therapeutic programming is a minimum amount and additional hours may be provided.

e. Where possible and appropriate the prisoners will be provided additional out-of-cell time that may, or may not, involve therapeutic programming.

43. The minimum adequate treatment referred to in this Agreement represents out-of-cell opportunities offered to prisoners. The parties recognize that prisoners may, at times, refuse the offer of out-of-cell opportunities either because of their mental illnesses or for other reasons. In the event that a prisoner refuses to attend either individual or group therapy, the refusal will be documented in the prisoner's medical records. On any day on which the prisoner refuses to attend therapy, the prisoner will be visited at least once by a member of the mental health staff, who will endeavor to counsel and work with the prisoner so that he or she will attend future meetings. This will also be documented in the prisoner's medical records. The DOC may withhold privileges, such as access to a television, in order to facilitate the prisoner's therapeutic involvement.

44. Seriously mentally ill prisoners will not be discharged from the New Castle Psychiatric Unit or the mental health program at the Indiana Women's Prison because of their refusal to

participate in minimum adequate treatment unless the treatment team is in agreement that the offender is competent to refuse to participate and that discharge from the unit does not pose an excessive risk to the offender's mental health. If the prisoner is discharged into segregation/restrictive housing his or her mental health will be monitored as noted above in paragraphs 34-36. If the prisoner is discharged into a unit that is not segregation or restricted housing the prisoner will also receive appropriate monitoring. The purpose of the monitoring is to ascertain, and attempt to prevent, any deterioration in the prisoner's mental health. If placement back into the New Castle Psychiatric Unit or the mental health program at the Indiana Women's Prison remains appropriate the prisoner will be returned if a determination is made that he or she will participate.

45. A seriously mentally ill prisoner may be removed involuntarily from the Pendleton Treatment Unit or the SNU only under the following circumstances:

- a. The prisoner requires a higher degree of care than is provided in that unit.
- b. The prisoner does not require the care provided in that unit.
- c. The prisoner's continued presence in that unit endangers his own safety and security or that of others, as in the case of prisoners in separatee status.
- d. The prisoner needs health care other than mental health care that cannot be provided adequately in the unit.

46. The requirements of the paragraphs above, concerning the provision of treatment to prisoners in the mental health units maintained by the DOC, are subject to prisoner-specific emergency circumstances where a particular prisoner is not offered minimum adequate treatment. These emergency circumstances exist where removing the prisoner, or allowing the prisoner to exit his or her cell, to attend the specified treatment would pose an unacceptable risk

to the safety and security of prisoners and/or the staff. It is anticipated that if such a situation arises it will last only until the prisoner's condition has been stabilized and the prisoner can safely leave his or her cell. In such a situation the need to remove the prisoner from the minimum adequate treatment must be documented in the prisoner's medical record and the prisoner must be visited at least daily by a mental health professional to ascertain the prisoner's condition and to assist the prisoner in reaching the stabilized condition that will allow him or her to resume receiving the minimum adequate treatment. These daily visits will allow for a daily review as to whether the prisoner may resume minimum adequate treatment. These visits should take place outside of the prisoner's cell if possible but if the prisoner's condition does not safely allow such a visit it may occur at cell-front.

47. Additionally, short-term emergency situations affecting the specific mental health unit may justify the temporary suspension of treatment, however such suspension shall only be for the period of time that an emergency exists. During a facility-wide lockdown, DOC will continue to provide minimum adequate treatment to seriously mentally ill prisoners unless doing so poses an unacceptable risk to the safety and security of the facility, its staff, its prisoners, or the public.

The discharge of prisoners from the mental health units

48. Discharge planning will be considered by the treatment team each time a prisoner's treatment plan is reviewed. The goal for each prisoner in each of the DOC's mental health units is to discharge him or her into an appropriate general population setting when it is therapeutically appropriate to do so.

49. While prisoners who, but for this agreement, would be in disciplinary restrictive housing are committed to one of the mental health units described above, their disciplinary time will

“run” so that each day in the mental health unit will be treated as one less day of disciplinary confinement. If a seriously mentally ill prisoner has disciplinary restrictive housing time left at the time of his or her discharge from the mental health unit, the prisoner will be returned to segregated/restrictive housing only if exceptional circumstances, as outlined in more detail in paragraph 32, are present such that placing the prisoner outside of segregation/restrictive housing would pose an unacceptable risk to the safety and security of prisoners and/or the staff. If the DOC contemplates returning the prisoner to disciplinary restrictive housing it must comply with all requirements and procedures noted in paragraph 32. If the prisoner’s diagnosis or condition has changed such that he or she is no longer seriously mentally ill, the prisoner will not be returned to disciplinary restrictive housing unless approved by the Executive Director of Mental Health and Special Populations, or his or her designee, following consultation with an appropriate mental health professional. The decision shall be recorded in the prisoner’s permanent record.

50. A seriously mentally ill prisoner who was, prior to admission to a mental health unit, in administrative restrictive housing or protective custody will be returned to such housing only if exceptional circumstances, as outlined in more detail in paragraphs 32 and 33, are present such that placing the prisoner outside of segregation/restrictive housing would pose an unacceptable risk to the safety and security of one or more prisoners and/or the staff. If the DOC contemplates returning the prisoner to administrative restrictive housing or protective custody it must comply with all requirements and procedures noted in paragraph 32 or 33. If the prisoner’s diagnosis or condition has changed such that he or she is no longer seriously mentally ill, the prisoner will not be returned to administrative restrictive housing or protective custody unless approved by the Superintendent of the facility where the prisoner is located, or his or her designee, following

consultation with an appropriate mental health professional. The decision shall be recorded in the prisoner's permanent record.

51. If a prisoner is released out of the DOC directly from a mental health unit, discharge planning will begin at the earliest opportunity, including contact with outside mental health providers to establish continuity of treatment to the greatest extent possible.

Discipline

52. Prisoners within the mental health units noted above are subject to all disciplinary rules and policies of the DOC. However, the DOC acknowledges that it is inappropriate to punish a mentally ill prisoner if the conduct in question is caused or strongly influenced by the prisoner's mental illness.

53. Accordingly, the DOC's Disciplinary Code for Adult Offenders (currently Policy and Administrative Procedure - Manual of Policies and Procedures [No. 02-04-101]) currently provides that in the event that discipline is contemplated with a prisoner with a mental illness, the Disciplinary Review Officer will contact the appropriate mental health professional. If it is determined that the incident in question was the result of the prisoner's mental illness, the prisoner will receive a written reprimand documenting the behavior, but will not receive other discipline. The parties agree that the DOC may change its Disciplinary Code for Adult Offenders without notice to, or consultation with, plaintiffs' counsel. However, the DOC agrees that prior to imposing discipline upon any prisoner who is seriously mentally ill and resides within a mental health or segregation unit that the appropriate mental health professional with that unit will be contacted and if it is determined that the incident in question was the result of the prisoner's mental illness, the prisoner will receive a written reprimand documenting the behavior, but will not receive other discipline.

54. As a temporary modification of the treatment plan a prisoner may be confined without access to the minimum adequate treatment set out above. However, such confinement will exceed 7 continuous days in duration only under emergent conditions that threaten safety or security. During such time the prisoner will be seen daily by a mental health professional, with the meeting occurring out-of-cell if possible consistent with institutional security and the prisoner's mental health. The prisoner will be released from such confinement for recreation when doing so is consistent with considerations of safety and security.

Observation of those who threaten suicide or self-harm or engage in self-harm

55. If a prisoner threatens suicide or self-harm, or engages in self-harm, he or she may be placed in a setting consistent with the suicide-safer cell checklists outlined within DOC policy.

56. During the time that the prisoner is confined in such setting the DOC is not required to provide the prisoner with the minimum adequate treatment noted above. In that event, consistent with DOC policy, mental health staff will monitor the prisoner daily and the prisoner will be provided appropriate mental health services and treatment.

Policies and procedures

57. The DOC routinely creates certain documents, including, but not limited to, documents in its Manual of Policies and Administrative Procedures, which set out the procedures to be followed throughout the DOC.

58. Additionally, DOC facilities may create facility or program-specific rules and guidelines.

59. The DOC has provided the plaintiffs' counsel with hard copies, digital copies, or both of a number of Administrative Policies and Procedures and other DOC-created documents that have been created specifically for use in the mental health units or otherwise deal specially with mentally ill prisoners.

60. The DOC is free to create new documents or alter these existing ones. Plaintiffs' counsel may, every six months, request and receive from defendant's counsel new and amended Administrative Policies and Procedures and other DOC-created documents that have been created specifically for use in the mental health units or otherwise deal specially with mentally ill prisoners.

Continued right of review by plaintiffs' counsel

61. The DOC recognizes that during the time that this Agreement is actively in effect, as set out below, plaintiffs' counsel will have a continued right to information and review of the treatment of seriously mentally ill prisoners as follows:

- a. If the DOC alters the location or identity of any of its mental health units it shall immediately notify plaintiffs' counsel.
- b. The DOC will transmit to plaintiffs' counsel any new policies or procedures used in any of the mental health treatment units within 30 days of the time they go into effect.
- c. Every six months plaintiffs' counsel, either by themselves or with their retained consultants, may tour each or any of the DOC's mental health units.
- d. If plaintiffs' counsel have specific named prisoners concerning whom they have questions, they may review the medical records of the prisoners upon notice to the defendant's counsel of record in this cause or the DOC's Director of Legal Services.
- e. At least once every six months plaintiffs' counsel, upon application, will be given access to the medical records of 10 prisoners from each of the DOC's mental health units as well as the Westville Control Unit and Custody and Control Unit at the Wabash Valley Correctional Facility.

f. The above enumerated records may not be all the records desired by plaintiffs' counsel in the future. Plaintiffs' counsel acknowledges that the DOC has been extremely accommodating in sharing information since the Court's Decree of December 31, 2012. The parties fully anticipate that this cooperation will continue and defendant's counsel will comply with all reasonable requests for documents by plaintiffs' counsel.

g. Unless the Court specifies otherwise, the parties agree to file a status report with the Court at least every six months, with the first report to be filed no later than six months after the date that this Private Settlement Agreement is approved by the Court.

62. Nothing in the preceding paragraph prevents employees of Indiana Protection and Advocacy Services from seeking access to prisoners' records if such access is necessary for matters that fall within the organization's statutory and regulatory purview and are unrelated to this litigation.

Attorneys' Fees – Monitoring Activities

63. Defendant shall pay to plaintiffs' counsel the sum of \$585,000 in full satisfaction of any claims in this lawsuit for attorneys' fees and costs owing as of the date of this Agreement. The payment shall be made within 60 days of the Court finding that this Settlement Agreement is fair, reasonable, and adequate pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

64. As noted above, plaintiffs' counsel anticipate that they will continue to monitor this agreement during the time that it remains in effect. Absent a final judgment or other order that allows fees to be sought pursuant to 42 U.S.C. § 1988, plaintiffs' counsel will not seek attorneys' fees or costs for their monitoring efforts.

65. Plaintiffs' counsel reserve the right to employ consultants to assist in monitoring efforts. If defendant agrees in writing, including via electronic communication, to that retention and to the identity of any consultant so retained, defendant will reimburse one-half of the cost incurred.

V. Further proceedings

66. The defendants will not be required to be in full compliance with the terms of this agreement until 90 days have passed from the date the Court finds this agreement to be fair, reasonable, and adequate.

67. In the event that plaintiffs believe that the DOC is not complying with the terms of this Settlement Agreement they will report this to defendant's counsel in writing and the parties will meet within 30 days, if necessary, to resolve the alleged non-compliance. If plaintiffs believe that the alleged non-compliance is still not resolved they may, no earlier than 14 days after the meeting, move this Court for a status conference to discuss this matter with the Court or the Magistrate Judge.

68. The parties recognize that this Settlement Agreement is in lieu of any further decisions in this matter by the Court. Plaintiffs reserve the right to seek to reinstate the case and seek further formal relief from the Court if the request for the status conference noted above does not resolve the plaintiffs' concerns. However, if plaintiffs do this then this Settlement Agreement is null and void and both parties retain their right to appeal following a final judgment in this cause, or as otherwise permitted by rules of procedure.

69. Plaintiffs may, if they believe that this Agreement is not being complied with, elect to file a breach of contract action in Indiana state court.

VI. Termination of this Agreement

70. It is the parties' intention that this Agreement will remain actively in effect for 3 years from the date that the Court finds that it is a fair, adequate, and reasonable settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. At that point, absent written agreement as noted in paragraph 71 below, the case will automatically be dismissed without prejudice.

71. The period that this Settlement Agreement is actively in effect may be extended by written agreement of the parties entered into before the end of the 3-year period noted above. It may thereafter be further extended by written agreement of the parties. In the event of any extension the case will be automatically dismissed without prejudice at the end of the extended period.

For the plaintiffs:

s/ Kenneth J. Falk

Kenneth J. Falk
No. 6777-49

s/ Gavin M. Rose

Gavin M. Rose
No. 26565-53

s/ Jan P. Mensz

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

s/ Melissa L. Keyes

Melissa L. Keyes
No. 30152-49

s/ Thomas E. Crishon

Thomas E. Crishon
No. 28513-49
Indiana Protection and Advocacy Services
4701 N. Keystone Ave. – Suite 222
Indianapolis, IN 46205
317/722-5555
Fax: 317/722-5564
mkeyes@ipas.IN.gov
tcrishon@ipas.IN.gov

For the defendant:

s/ David A. Arthur (w/permission)

David. A. Arthur

No. 2461-48

s/ Thomas D. Quigley (w/permission)

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