

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

EDWARD BRAGGS, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 JEFFERSON S. DUNN, in his)
 official capacity as)
 Commissioner of)
 the Alabama Department of)
 Corrections, et al.,)
)
 Defendants.)

CIVIL ACTION NO.
2:14cv601-MHT
(WO)

PHASE 2A ORDER AND INJUNCTION RE:
BIBB SEGREGATION REMEDY

On April 4, 2018, the parties submitted stipulations in open court regarding the issues raised in the plaintiffs' "emergency motion for temporary restraining order or a preliminary injunction requiring the immediate closure of Bibb Correctional Facility's segregation units." They agreed that the stipulations should be reduced to an enforceable order and further agreed to some clarifications of the stipulations. Accordingly it is ORDERED as follows:

(1) The stipulations (doc. no. 1748), as clarified in open court on April 4, 2018, are approved.

(2) Pursuant to the stipulations, the plaintiffs' emergency motion for temporary restraining order or a preliminary injunction requiring the immediate closure of Bibb Correctional Facility's segregation units (doc. no. 1614) is withdrawn with prejudice.

(3) Defendants Jefferson Dunn and Ruth Naglich are ENJOINED and RESTRAINED from failing to comply with the attached provisions, as clarified in open court on April 4, 2018.

As part of the clarifications made in open court on April 4, 2018, it is further ORDERED that, with regard to subsection II.2.ii of the attached provisions, defendants Dunn and Naglich are affirmatively to inform clinicians (as that term was clarified in open court on April 4, 2018), in a manner that is documented, (1) that they have both the authority AND the obligation to inform corrections when they have "determined that [an] inmate's likelihood of decompensation requires a

transfer to an RTU, SLU, or Stabilization Unit (SU)" and (2) that such a determination is not merely giving advice to corrections, but that it will trump any decision to the contrary and will be carried out promptly.

DONE, this the 9th day of April, 2018.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE

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Commissioner of)	
the Alabama Department of)	
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)	
Defendants.)	

ATTACHMENT

Unless otherwise specified below, the processes and procedures outlined below will be implemented by the ADOC within sixty (60) days of the date of the recitation of these Stipulations to the Court.

I. RESTRICTIVE HOUSING UNIT STAFFING

1. Within thirty (30) months of the date of these stipulations, ADOC will fill all six (6) mandatory posts identified as "Restrictive Housing Officer ABCDEF" (collectively, the "Bibb RHU Posts" or

individually, "Bibb RHU post") for both twelve hour shifts, as mandated by the Post Plan developed and provided by Russ and Meg Savage for Bibb Correctional Facility ("Bibb"), if the units remain open.

2. Until ADOC fills all Bibb RHU posts, ADOC will house all inmates on the mental health caseload who are placed in Restrictive Housing at Bibb together within a single Restrictive Housing Unit, and the ADOC must fill both 12-hour shifts of the RHU Post associated with the single Restrictive Housing Unit.

II. TRANSFER OF PRISONERS WITH A SERIOUS MENTAL ILLNESS

1. ADOC will transfer inmates with a Serious Mental Illness (SMI) from Bibb's Restrictive Housing Unit consistent with the following provisions:

a. For the period between May 1, 2018, and June 30, 2018, inmates with an SMI who are housed in Bibb's Restrictive Housing Unit absent

exceptional circumstances must be moved to a Residential Treatment Unit (RTU) or Structured Living Unit (SLU) within five (5) calendar days of placement on the unit.

b. For the period between July 1, 2018, and August 30, 2018, inmates with an SMI who are housed in Bibb's Restrictive Housing Unit absent exceptional circumstances must be moved to an RTU or SLU within seventy-two (72) hours of placement on the unit.

c. Beginning on September 1, 2018, and continuing thereafter, inmates with an SMI who are housed in Bibb's Restrictive Housing Unit absent exceptional circumstances must be moved to an RTU or SLU within forty-eight (48) hours of placement on the unit, excluding weekends and holidays. In the event of a holiday or weekend, the inmate shall be transferred before 12:00 p.m. on the next non-holiday or weekday.

2. Prisoners with an SMI who are housed in Bibb's Restrictive Housing Unit under exceptional circumstances will be removed from Restrictive Housing or transferred to an RTU or SLU as soon as practicable, but consistent with the following provisions:

a. Under no circumstance will ADOC house an inmate with an SMI in Restrictive Housing:

i. For more than thirty (30) days, or

ii. When a clinician has determined that the inmate's likelihood of decompensation requires a transfer to an RTU, SLU, or Stabilization Unit (SU).

3. If the transfer of an inmate with an SMI to an RTU or SLU is delayed, ADOC will work to resolve the delay as soon as practicable.

4. Counsel for ADOC will notify counsel for Plaintiffs within seven (7) days of any occasion when the ADOC does not transfer an inmate consistent with the terms of this Stipulation. ADOC counsel will also

provide the name of the inmate, the receiving institution and the date of his transfer.

III. CARE FOR PRISONERS WITH A SMI WHILE IN RESTRICTIVE HOUSING AT BIBB

Prisoners with an SMI who are housed in Bibb's Restrictive Housing Unit will receive the same level of mental health care and out-of-cell time as inmates housed in a SLU after they have been housed in the Restrictive Housing Unit for a period of seventy-two (72) hours.

IV. LEVEL OF CARE FOR INMATES WITHOUT A SMI WHO ARE ON THE MENTAL HEALTH CASELOAD HOUSED AT BIBB

Prisoners on the mental health caseload in Restrictive Housing shall be provided at least the same level of treatment as they received outside of Restrictive Housing.

V. PRESERVATION OF ARGUMENTS AND CLAIMS PERTAINING TO INMATES IN RESTRICTIVE HOUSING WHO ARE NOT ON THE MENTAL-HEALTH CASELOAD

In its liability opinion, the Court found that "the [ADOC] fails to identify and classify appropriately those with mental illnesses." (Doc. No. 1285 at 71). In addition, Plaintiffs maintain that individuals who do not currently have a serious mental health need may develop one while assigned to a restrictive housing unit. Nothing contained in these Stipulations shall limit, restrict, waive, or otherwise address any of Plaintiffs' arguments pertaining to the two groups of inmates identified in the preceding sentence. Plaintiffs expressly preserve these arguments until such time as the Court (a) rules on the pending argument pertaining to inmates who may develop mental illness as a result of his or her assignment to Restrictive Housing (see Doc. Nos. 1364, 1390, 1434 and 1532), and (b) addresses any subsequent remedial relief pertaining to inmates in Restrictive Housing who have an undiagnosed mental illness or develop a mental illness as a result of his or her assignment to a Restrictive Housing Unit.

VI. ADDITIONAL PROVISIONS FOR ALL PRISONERS ON THE MENTAL HEALTH CASELOAD IN RESTRICTIVE HOUSING

1. All inmates on the mental health caseload in Restrictive Housing at Bibb will be afforded an opportunity to shower every other day. Any refusal by an inmate to shower will be documented by ADOC.

2. All inmates on the mental health caseload in Restrictive Housing at Bibb will be afforded an opportunity for at least five (5) hours of out-of-cell exercise time per week. Any refusal by an inmate to participate in out-of-cell exercise time will be documented by ADOC.

VII. DOCUMENT AND VIDEO PRODUCTION FOR OVERSIGHT PURPOSES

1. ADOC will produce the duty post logs for all Restrictive Housing Units at Bibb monthly. Production will occur on the tenth (10th) day of each month and will include logs for each day during the previous month.

2. Quarterly, beginning June 1, 2018, Plaintiffs may identify up to six (6) twelve (12) hour periods of time of which video surveillance is to be produced.

a. Selection of each of the twelve (12) hour time frames that is to be produced shall be communicated to defense counsel at least ten (10) days in advance of the selected time frame.

b. Defense counsel shall not disclose to ADOC any identified time period in advance.

c. Within fourteen (14) days following the selected time frame, defense counsel shall produce the video of selected times to Plaintiffs.

d. Production shall include videos for each of the six (6) pods for each selected twelve (12) hour time frame.

e. Each video produced under this section shall be marked as "Confidential - Attorneys' Eyes Only" pursuant to the existing protective order.

f. In the event that a technical issue prevents the production of video for a selected time frame, Plaintiffs shall be permitted to select another time frame for which video will be produced under the same procedures addressed above in Section VII.2.(a)-(e).

g. If technical difficulties prevent video production for one (1) or more Restrictive Housing Units, but not every Restrictive Housing Unit, selection and production of a replacement time frame shall be limited to the pods influenced by the technical difficulty. The production shall occur under the same procedures addressed above in Section VII.2.(a)-(e).