

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Civil Action
) No. 94-90-H-CCL
STATE OF MONTANA, et al.,)
)
Defendants.)
_____)

STIPULATED AGREEMENT

In negotiating for and entering into the following Stipulated Agreement ("Agreement"), defendants do not admit or concede that Montana inmates' rights under the United States or Montana Constitutions or under any other law or regulation are currently being or have been in the past violated at the Montana State Prison ("MSP").

For the purpose of resolving the issues of inmate protection from harm and risk of harm and fire safety at MSP, raised by this litigation, the United States, plaintiff, and the State of Montana et al., defendants, enter this Agreement. The parties agree that this case will be dismissed conditioned on defendants' compliance with the terms of this Agreement.

Immediately upon execution of this Agreement, the parties shall jointly move the Court for entry of an Order conditionally dismissing this action, pursuant to Fed. R. Civ. P. 41(a)(2), conditional upon defendants' achieving compliance with its terms, and shall attach this Agreement to such motion. The motion shall request that the case be placed on the Court's inactive docket,

U.S. v. Montana



PC-MT-003-005

though the Court shall retain jurisdiction over the case until a final dismissal with prejudice.

If defendants fail to comply with the terms of this Agreement within the time frames listed, the United States may file a motion to restore the case to the Court's active docket for purposes of adjudicating, where necessary, issues relative to inmate protection from harm or fire safety.

I. SUBSTANTIVE REQUIREMENTS

A. Predatory inmates

1. Isolation. Defendants shall modify their classification policy or develop a separate policy based upon their classification policy and implement the modification or new policy to objectively identify and appropriately house predatory inmates. The policy shall include identifying inmates with a history of predatory behavior, including both before and during confinement at MSP, taking into account written criteria such as seriousness of harm and/or frequency and recency of occurrence of predatory behavior. The policy shall require housing in a high or maximum security setting separate from the non-predatory general population for inmates whose histories or profiles meet these criteria, unless other management practices can assure the reasonable safety of other inmates. Defendants will establish nonexclusive criteria for screening inmates for assignment to a single or double cell. The policy shall include procedures to supply all relevant information about predatory behavior and separation needs to any receiving

institution in the event of an inmate transfer. Further, the classification policy will require automatic reconsideration of an inmate's custody classification for certain types of violent offenses.

2. Security practices in the maximum security unit ("max"). Defendants shall address immediately and modify MSP policy concerning scheduling and inmate use of max dayroom. Defendants shall continue to conduct shakedowns of inmates before allowing inmates access to yard.

B. Vulnerable inmates

1. Identification. Defendants shall modify their classification policy or develop a separate policy based upon their classification policy and implement the modification or new policy to objectively identify potentially vulnerable inmates, such as, but not limited to, informants, law enforcement personnel, child molesters, very young or small inmates, and inmates whose physical appearance is effeminate. The policy shall include procedures to supply all relevant information about vulnerability and separation needs to any receiving institution in the event of an inmate transfer.

2. Housing. Defendants shall modify their classification policy or develop a separate policy based upon their classification policy and implement the modification or new policy to manage inmates identified as vulnerable or potentially vulnerable, or who prove to be vulnerable to harm or serious threats of harm from others, in order to minimize their risk of harm. Such management

shall start at reception, and continue until staff deem and document that it is no longer necessary. The following options shall be developed and implemented in MSP policies and procedures:

a. Mainstreaming. If an inmate appears vulnerable, but in the best professional judgment of MSP staff is capable of being safely housed in general population, then the inmate will be so housed, but with the following special protections, which will be standardized: cell compatibility will be considered, and the inmate's adjustment to general population will be regularly monitored and documented by staff, until staff deem and document that monitoring is no longer necessary.

b. General Population Special Management Housing. Defendants shall modify their classification policy or develop a separate policy based upon their classification policy and implement the modification or new policy to provide that where a vulnerable inmate is, in the judgment of MSP staff, not suited for general population, the inmate will be classified as "special management," and housed consistent with his special needs for protection. The policy will entail consideration for special management classification inmates who are subjected to either undue risk of harm or actual harm in the general inmate population. Units housing inmates classified as special management inmates will generally separate them from other inmates with respect to placement. Special management inmates' activities such as recreation, dining, programming, and jobs will be scheduled in such a fashion as not to compromise their need for a degree of

separation from other inmates. Defendants' policy shall address the need to avoid inclusion of any potentially predatory inmates in any special management setting.

c. Special Management/High Security. Some few vulnerable inmates will not be safe (or will threaten the safety of other vulnerable inmates) even in the General Population Special Management Housing described in paragraph I(B)(2)(b). If necessary, MSP shall house these inmates in a high security setting. In whatever high security setting is chosen, defendants will provide vulnerable inmates who have committed no serious institutional infractions access to the following programs and privileges in a manner comparable to the general population, to the extent such access is feasible according to a feasibility study to be conducted or supervised by the parties' respective expert penologists, in consultation with the Warden:

- (1) Canteen privileges;
- (2) Phone privileges;
- (3) Personal property;
- (4) Access to legal materials;
- (5) Dayroom/out of cell time;
- (6) Yard privileges and scheduling;
- (7) Rehabilitative programming;
- (8) Visitation.

The primary objective of this process shall be to house in a nonpunitive environment inmates whose sole need for high security placement is their need for protection, while accommodating MSP's security and safety requirements. The feasibility study will also consider construction of a sight and sound barrier between special management housing and other maximum security housing.

d. Alternative placements. Defendants shall modify their

classification policy or develop a separate policy based upon their classification policy and implement the modification or new policy to provide that in the event that MSP staff determine that a vulnerable inmate cannot be safely housed at MSP except in the maximum security unit, defendants will consider other settings not at MSP where he could be safely housed. Specifically, they will consider out-of-state placements (at state expense), placement at a regional prison, or other options.

3. Immediate response to reports of harm. The defendants shall modify their classification policy or develop a separate policy based upon their classification policy and implement the modification or new policy to provide inmates -- whether or not previously identified as potentially vulnerable -- with a method to escape risk of harm in the general population that does not result in disciplinary sanctions. In general, when an inmate expresses serious concerns for his safety, staff will deal immediately with the problem, to ensure that the inmate is protected. If the response chosen is to remove the inmate at risk of harm from his current housing, such movement will be accomplished as a classification decision. The inmate will not be immediately required to provide specific names of other inmates, in order to be moved. No inmate will be disciplined for disobeying a direct order or for self-harm solely out of concern for his own safety, so long as the inmate's behavior was reasonable and clearly related to the objective of ensuring his own safety.

In addition, such policy shall provide for staff responses to

inmate safety needs that do not exacerbate an inmate's risk. The policy will address when it is appropriate to divulge the name of an inmate making an accusation relating to harm or threats of harm.

As part of defendants' implementation of the policy developed pursuant to section I(B)(3), defendants shall provide inservice training to all MSP corrections staff regarding the new policy.

C. General Practices.

1. Single Celling. Defendants shall modify their classification policy or develop a separate policy based upon their classification policy and implement the modification or new policy to establish nonexclusive written criteria for screening inmates for single celling assignment. Such identification may include certain predatory and certain vulnerable inmates. As an example, inmates who are known or suspected of having engaged in predatory, coercive, or borderline coercive homosexual activity should be considered for single celling, and if not single celled, reasons for this decision should be documented.

2. Cell Compatibility. Defendants shall modify their classification policy or develop a separate policy based upon their classification policy and implement the modification or new policy to assess cell compatibility for housing decisions made at MSP. The criteria will include factors such as history of predatory behavior, vulnerability, and gang affiliation. Defendants will keep records of each cell assignment of each inmate.

3. Separation needs. Defendants will ask inmates on intake at MSP if they have any need for separation from particular

prisoners (or potential future prisoners), and will continue to manage separation needs throughout each inmate's incarceration. Reasonable separation needs will be maintained in all affected inmates' files. Defendants will consider centrally recording and reviewing separation needs. Separation needs will not be eliminated from any inmate's classification without documentation of the reason for elimination of the separation need. The policy shall include procedures to supply all relevant information about separation needs to any receiving institution in the event of an inmate transfer. In addition, defendants will conduct periodic quality checks to ensure that separation needs are being appropriately documented and followed.

4. Programming. Defendants will continue their efforts to reduce the backlog of inmates eligible for programming and to make programming reasonably available for inmates whose participation in programming may be expected to have a positive effect on release consideration.

D. Reception/Expansion

1. Defendants shall attempt to limit the length of inmate stays in the Expansion unit (for Reception unit overflow) to 120 days, and shall attempt to limit the length of inmate stays in Reception and Expansion combined to 160 days.

2. Defendants shall undertake a feasibility study for provision of visitation at the Expansion unit; when the study is completed, defendants will consider its findings in formulating policy.

3. Defendants shall modify their classification policy or develop a separate policy based upon their classification policy and implement the modification or new policy to provide that, to the extent possible, inmates in the Expansion unit will generally be housed or grouped by their classification. Inmates will not be housed in the Expansion unit in a manner that presents a substantial risk of serious harm.

E. Overflow

Defendants shall modify their classification policy or develop a separate policy based upon their classification policy and implement the modification or new policy to address the safety concerns raised when inmates new to MSP and initially classified to the low side are housed instead (e.g., due to lack of bedspace) on the high side.

F. Other

1. Privacy. Defendants shall modify existing policy or develop and implement a new policy preventing inmate access to sensitive information maintained by prison officials. The policy will restrict inmate access to information which could reasonably be used for improper purposes, including (but not limited to) financial information, criminal history, evidence of cooperation with law enforcement authorities, and familial information.

2. Defendants shall uniformly address homosexual activity by inmates. The policy adopted will provide standardized criteria for disciplining inmates engaging in homosexual activities.

G. Fire Safety.

1. Defendants shall develop and implement a fire safety plan that includes the elements listed in Wayne G. Carson's April 2, 1996 report, paragraph 3, page 3. Defendants will provide fire safety training and routine quarterly fire drills.

2. Defendants will install smoke detectors in the common areas of A, B, and C units. If, by May 1, 1997, MSP fails to receive any funds from the Montana State Legislature as requested in its proposal for its Long Range Building Program in order to institute the fire safety items listed above, and defendants prove unable to institute the fire safety items listed above, this lawsuit shall, upon plaintiff's motion, be restored to the court's active docket with respect to this issue of fire safety.

II. IMPLEMENTATION

1. Defendants' penology expert in this case is Gary DeLand. Plaintiff's penology expert is Steve Martin.

2. Defendants will request plaintiff's expert to provide suggested policy language to the defendants during the four weeks following execution of this Agreement.

3. Defendants will revise current policies or create new policies in accordance with Section I of this Agreement. Defendants will complete drafting of these policies within the four months following execution of this Agreement.

4. Defendants will provide plaintiff and its expert with copies of the draft policies as the policies near final form.

Plaintiff will have three weeks following receipt of a draft policy to review the policy and provide suggested modifications. Plaintiff shall forfeit any right to argue that a policy fails to meet the terms of this Agreement if plaintiff does not notify defendants of any perceived deficiencies immediately following plaintiff's three week review period.

5. Defendants will consider plaintiff's comments and finalize the draft policies. Defendants will provide plaintiff with copies of each finalized policy. In the event that plaintiff and defendants disagree over any proposed policy after it has been finalized by defendants, the parties and their experts shall meet to resolve any differences.

6. To meet fully the terms of this Agreement, defendants must achieve substantial compliance and sustain such substantial compliance for not less than six months for each provision set forth in this Agreement.

7. Incidents of noncompliance do not necessarily prevent a finding of substantial compliance. The determination of substantial compliance shall take into account the extent to which exceptions to substantial compliance are isolated, unintentional, and addressed by corrective action.

8. Monitoring of compliance for fire safety will be done by Wayne G. Carson and James Kembel. Mr. Carson and Mr. Kembel will visit MSP for compliance assessment only if they consider a site visit necessary.

9. Monitoring of compliance for protection from harm will be

done by joint evaluation, including site visit(s) as deemed necessary by Steve Martin and Gary DeLand, the parties' penology experts.

10. Following MSP's adoption of the new (or revised) policies, at a date to be determined by the parties' penology experts, said experts will conduct an audit, which may include a site visit, to determine whether defendants have implemented and reached substantial compliance with this Agreement. If the experts conduct a site visit, no more than one attorney for each party may accompany them, and no attorneys for the parties will be present at tours where the only issue is whether defendants have sustained their substantial compliance with provisions of this Agreement. Whatever documents either expert requests prior to or during a visit will be provided to them, if possible.

11. Within 30 days of completion of an evaluation/tour, the experts shall submit a joint written report regarding the status of defendants' compliance.

12. Where defendants have maintained substantial compliance with any term of this Agreement for six months, the experts' monitoring function is complete as to that term. For those terms of this Agreement where the experts find substantial compliance on their first evaluation/tour, they will monitor whether the defendants remain in substantial compliance by a second evaluation/tour approximately six months after the first evaluation/tour.

13. For areas as to which the experts do not find substantial

compliance on the first evaluation/tour, their report will include assessments and recommendations, and there will be another evaluation/tour conducted within the next six months. A third evaluation/tour may be conducted six months later, and if necessary, a fourth six months after that.

14. If the experts conclude at the end of their fourth evaluation tour that there remain areas in which defendants have failed to reach substantial compliance, defendants will be in default of this agreement, and the case shall, upon plaintiff's motion, be restored to the Court's active docket as to those issues affected by defendants failure to comply.

III. MISCELLANEOUS PROVISIONS

1. Except as otherwise provided in this Agreement, and in subsequent letter agreement between the parties relating to protection of plaintiff's inmate witnesses, plaintiff will not seek relief additional to this Agreement as to any claim for injunctive or declaratory relief on any issue specifically addressed and resolved by this Agreement. If defendants fail to substantially comply with the Agreement or any of its provisions, and plaintiff reinstates the litigation, the remedies plaintiff may seek are not limited by this Agreement.

2. This Agreement shall not be admissible in evidence in any proceeding or trial other than for the sole and limited purpose of claim preclusion and enforcement or implementation of the Agreement.

3. Because this agreement is a document which all parties

have negotiated and drafted, the general rule of construction of interpreting a document against its drafter has no application in future interpretation of the Agreement's terms.

Agreed to this 27th day of January, 1997

FOR THE PLAINTIFF, UNITED STATES OF AMERICA:



Sherry Scheel Matteucci
United States Attorney
District of Montana

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

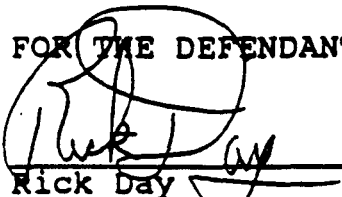
Steven H. Rosenbaum
Chief, Special Litigation Section

Mellie H. Nelson
Deputy Chief, Special Litigation
Section



Timothy R. Payne
William G. Maddox
Mark Masling
Margo Schlanger
Attorneys, Special Litigation Section
P.O. Box 66400
Washington, DC 20035-6400
(202) 514-6441

FOR THE DEFENDANTS, STATE OF MONTANA ET AL.




Rick Day
Director, Montana Department of Corrections

Counsel for Defendants:

Department of Corrections
P.O. Box 201301
Gillespie, P.C.
1539 Eleventh Avenue
Helena, Montana 59620

Keller, Reynolds, Drake & Johnson
38 South Last Chance Gulch
Helena, Montana 59601

By: 
David L. Ohler

By: 
Keith Keller