

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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DISABILITY LAW CENTER, INC.,

Plaintiff,

v.

MASSACHUSETTS DEPARTMENT OF  
CORRECTION, et. al.,

Defendants

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CIVIL ACTION  
NO. 07-10463 (MLW)

**SETTLEMENT AGREEMENT**

**Introduction**

The Plaintiff Disability Law Center, Inc. filed the instant lawsuit, *Disability Law Center, Inc. v. Massachusetts Department of Correction, et al.*, Civ. No. 07-10463 (D. Mass.), seeking declaratory and injunctive relief on behalf of its constituents, inmates with mental illness in the custody of the Massachusetts Department of Correction, alleging, *inter alia*, that their confinement in Segregation is in violation of the Eighth and Fourteenth Amendments of the United States Constitution, 29 U.S.C. § 794 (the Rehabilitation Act) and 42 U.S.C. § 12132 (the Americans with Disabilities Act).

The Defendants deny that they have violated any such constitutional or statutory rights. The Defendants also state that prior to and since the initiation of this litigation, the Department had commenced significant initiatives to enhance the delivery of mental health services, and the process has been ongoing throughout the course of the litigation. To date, the Department's initiatives include the following: Implementation of a definition of Serious Mental Illness (SMI); Implementation of Mental Health Classification; Exclusion of SMI inmates from long-term Segregation; Operation of two maximum security mental health treatment units: the Secure Treatment Program (STP) and the Behavior Management Unit (BMU); Provision of weekly out-of-cell clinical contact to SMI inmates in short-term segregation units; Monthly review by the Central Office Segregation Review Committee of SMI inmates who are segregated more than

thirty (30) days; Establishment of a maximum security Residential Treatment Unit; Operation of three medium security Residential Treatment Units (RTUs) for general population inmates; Tasking Old Colony Correctional Center (OCCC) to serve as a special prison for inmates with mental illness; Incorporation of clinical mental health input into the disciplinary system; Enhancement of the Inmate Management System (IMS) to identify Mental Health Classification, SMI status, and incidents of self-injurious behavior by type; and Implementation of the suicide prevention recommendations of the Department's consultant.

The parties have conducted extensive discovery.

Without conceding any infirmity in their claims or defenses, the parties have engaged in extensive and arms length settlement negotiations to resolve the claims raised by this action.

Plaintiff and Defendants have reached an agreement for settling this litigation. The parties believe that this agreement is fair, reasonable, and adequate to protect the interests of all parties. The parties further believe that this Settlement Agreement will benefit inmates with Serious Mental Illness who are confined in correctional facilities under Defendants' control.

The parties will file this Settlement Agreement with the Court, and ask that the Court approve it, which approval is a condition precedent to the Agreement's effectiveness.

## **I. Definitions**

**Department** – The Massachusetts Department of Correction (“Department”).

**Disability Law Center** – The Disability Law Center, Inc. (“DLC”).

**Exigent Circumstances** – Circumstances, including institutional emergencies as set forth in the Department's regulations, or emergencies in Segregation or a Secure Treatment Unit, under which the doing of an act otherwise required by this Settlement Agreement would create an unacceptable risk to the safety of any person.

Exigent Circumstances shall not include the opinion of a clinician that notwithstanding an inmate's Serious Mental Illness, the inmate may remain in Segregation.

Whenever an act otherwise required by this Settlement Agreement is excused on account of Exigent Circumstances, the Department shall attempt to resolve the Exigent Circumstances as soon as possible, and the act shall be performed as soon as possible after the Exigent Circumstances cease to exist.

**Mental Health Classification** – The Department's system that identifies and codes the level of mental health services that an inmate requires based upon his /her mental health need.

**Qualified Mental Health Professional** - Treatment providers who are psychiatrists, psychologists, psychiatric social workers, psychiatric nurses, and others who by virtue of their

education, credentials and experience are permitted by law to evaluate and care for the mental health needs of patients, and to perform each function otherwise required by this Settlement Agreement (e.g., diagnosis).

**Secure Treatment Unit** - The term Secure Treatment Unit (“STU”) refers to any Department maximum security residential treatment program designed to provide an alternative to Segregation for inmates diagnosed with Serious Mental Illness who cannot be housed in general population due to safety and/or security concerns. The Department currently operates two STUs: the Secure Treatment Program (“STP”) and the Behavioral Management Unit (“BMU”). The Department also operates Residential Treatment Units which are not deemed STUs because the Department operates them as general population units.

**Segregation** - The term Segregation refers to the confinement of an inmate in: (1) the Departmental Disciplinary Unit (“DDU”), (2) any Special Management Unit (“SMU”), or (3) any unit where the inmate is confined to his cell for approximately 23 hours per day. For purposes of this definition, Segregation shall not include any placement ordered by a medical or mental health provider, including but not limited to, the placement of an inmate in clinical seclusion or restraint at Bridgewater State Hospital, the placement of a civilly committed Treatment Center inmate in the Minimum Privilege Unit, the placement of a civilly committed Massachusetts Alcohol and Substance Abuse Center (MASAC) or a civilly committed MCI-Framingham inmate in an observation cell, the placement of an inmate in a Health Services Unit, the placement of an inmate in a hospital or the placement of an inmate on a mental health watch.

**Serious Mental Illness (SMI)** - For purposes of assessing whether Segregation may be clinically contraindicated, or whether an inmate in Segregation should be placed in a Specialized Treatment Unit, the term “Serious Mental Illness” shall be defined as the following:

a. Inmates determined by the Department’s mental health vendor to have a current diagnosis or a recent significant history of any of the following types of DSM-IV-TR Axis I diagnoses:

- (1) Schizophrenia (all sub-types)
- (2) Delusional Disorder
- (3) Schizophreniform Disorder
- (4) Schizoaffective Disorder
- (5) Brief Psychotic Disorder
- (6) Substance-Induced Psychotic Disorder (excluding intoxication and withdrawal)
- (7) Psychotic Disorder Not Otherwise Specified
- (8) Major Depressive Disorders

## (9) Bipolar Disorder I and II

For purposes of this definition, “recent significant history” shall be defined as a diagnosis specified above in section (a)(1)-(9) upon discharge within the past year from an inpatient psychiatric hospital.

b. Inmates diagnosed by the Department’s mental health vendor with other DSM-IV-TR Axis I disorders that are commonly characterized by breaks with reality, or perceptions of reality, that lead the individual to experience significant functional impairment involving acts of self-harm or other behaviors that have a seriously adverse effect on life or on mental or physical health.

c. Inmates diagnosed by the Department’s medical or mental health vendor with a developmental disability, a dementia or other cognitive disorders that result in a significant functional impairment involving acts of self-harm or other behaviors that have a seriously adverse effect on life or on mental or physical health.

d. Inmates diagnosed by the Department’s mental health vendor with a severe personality disorder that is manifested by episodes of psychosis or depression, and results in significant functional impairment involving acts of self-harm or other behaviors that have a seriously adverse effect on life or on mental or physical health.

### Significant Functional Impairment

Factors for consideration when assessing significant functional impairment shall include the following:

1. The inmate has engaged in self harm which shall be defined as a deliberate act by the inmate that inflicts damage to, or threatens the integrity of one’s own body. Such acts include but are not limited to the following behaviors: hanging, self-strangulation, asphyxiation, cutting, self-mutilation, ingestion of a foreign body, insertion of a foreign body, head banging, drug overdose, jumping and biting.

2. The inmate has demonstrated difficulty in his or her ability to engage in activities of daily living, including eating, grooming and personal hygiene, maintenance of housing area, participation in recreation, and ambulation, as a consequence of any DSM IV-TR Axis I or Axis II disorder.

3. The inmate has demonstrated a pervasive pattern of dysfunctional or disruptive social interactions including withdrawal, bizarre or disruptive behavior, etc. as a consequence of any DSM IV-TR Axis I or Axis II disorder.

## **II. Screening and Evaluation of Inmates in Segregation to Determine SMI**

### **A. Screening Prior to Placement in Segregation**

Prior to placement in Segregation, all inmates shall be screened by a qualified health care professional (e.g., a physician, physician assistant, nurse, or nurse practitioner) to determine (1) whether the inmate has a Serious Mental Illness, and/or (2) whether there are any acute mental health contraindications to Segregation. Acute mental health contraindications to Segregation include that the inmate appears acutely psychotic, is actively suicidal or has made a recent serious suicidal attempt, or is otherwise in need of immediate placement on mental health watch. If there is an acute mental health contraindication to Segregation, the inmate will immediately be placed in an alternative setting (e.g., mental health watch, inpatient hospitalization, or other appropriate healthcare setting).

#### **B. Segregation Rounds**

1. A Qualified Mental Health Professional shall make mental health rounds in the DDU and each Special Management Unit two (2) times a week. The Qualified Mental Health Professional shall arrange for an out-of-cell meeting with any inmate for whom a confidential meeting is warranted in the clinician's professional judgment. Custody staff shall provide escorts to facilitate out-of-cell meetings with clinicians, except in Exigent Circumstances and except where the inmate refuses.

#### **C. Evaluation of Inmates in Segregation**

1. Any inmate with an open mental health case who is placed in Segregation, must be assessed by a Qualified Mental Health Professional within seven (7) days of initial placement in Segregation, and not less than once every thirty (30) days thereafter, to determine if he has an SMI. If the inmate is currently designated as SMI, a clinical evaluation need not be performed.
2. Any inmate without an open mental health case who is placed in Segregation must be assessed by a Qualified Mental Health Professional within thirty (30) days of initial placement in Segregation, and not less than once every ninety (90) days thereafter, to determine if he has a Serious Mental Illness.
3. The assessments described in paragraphs (C)(1) and (2) above must include, absent Exigent Circumstances, a face-to-face interview with the inmate conducted in a private confidential setting. If an inmate refuses the face-to-face interview, the clinician shall document in the progress note all attempts made to engage the inmate in such a private interview.
4. When any inmate in Segregation is determined to have a Serious Mental Illness, he shall be removed from Segregation, referred to a Secure Treatment Unit Review Committee, referred to a Residential Treatment Unit, or provided with mental health services in accordance with Section III below.
5. If the clinical director of the Department's mental health provider determines that continued Segregation will pose an imminent risk of substantial deterioration to an inmate's

mental health, the inmate shall be removed from Segregation, referred to the Secure Treatment Unit Review Committee, referred to a Residential Treatment Unit, or provided with mental health services in accordance with Section III below.

#### **D. Evaluation of Inmates Prior to DDU Placement**

Prior to the placement of any inmate in the DDU, he shall be evaluated by a Qualified Mental Health Professional to determine whether he has an SMI. If the inmate is currently designated as SMI, a clinical evaluation need not be performed. Upon a determination that the inmate has an SMI, the clinician shall prepare a STU referral form and submit it to the Secure Treatment Unit Review Committee so that the inmate can be considered for placement in a STU.

### **III. Housing and Review of Inmates with Serious Mental Illness**

#### **A. Departmental Disciplinary Unit Housing**

Inmates with SMI shall not be housed in the DDU except: (1) In Exigent Circumstances; or (2) In accordance with Section III(C). However, the parties understand that there may be times when the Department lacks an appropriate alternative placement for all SMI inmates with DDU sanctions. In that event, if the inmate has been approved for STU placement pursuant to Section III(D)(3), and after approval by the Deputy Commissioner of Classification, Programs, and Reentry and appropriate clinical staff, the Department may confine an SMI inmate in the DDU pending the availability of a Special Treatment Unit (“STU”) bed. Such inmates shall be considered to be “pre-program inmates.” The Department shall address the placement of such pre-program inmates on a case by case basis, taking into account the length of time that each such inmate has been awaiting STU placement and his clinical needs.

At a minimum, pre-program inmates in the DDU shall be offered additional mental health and other services, consisting of the following:

##### **1. Less Than Thirty (30) Days**

- a. Two (2) out-of-cell sessions of structured individual or group activity per week shall be offered. These sessions shall be part of a treatment plan and shall include at least one session with a mental health clinician. The length of the out-of-cell clinical sessions shall be determined by the clinician on a case-by-case basis.
- b. In addition to the five (5) hours of out-of-cell leisure activity already offered to DDU inmates, two (2) additional hours of out-of-cell leisure activity per week shall be offered. These extra hours may be provided either by offering additional out-of-cell sessions or by extending the period of existing out-of-cell sessions.
- c. Upon entering the DDU from a Special Management Unit, pre-program inmates shall be offered the level of visitation, radio, and telephone privileges that had been provided in

Segregation prior to DDU placement. Pre-Program inmates shall also be eligible to earn all privileges available to DDU prisoners, contingent upon compliance with the Department's, institutional, and DDU rules.

## **2. Over Thirty (30) Days**

After thirty (30) days in the DDU, the amount of weekly out-of-cell services offered to a pre-program inmate with a mental health classification of MH-4 shall be increased to four (4) sessions of structured out-of-cell individual or group activity and, in addition to the five (5) hours of out-of-cell leisure activity already offered to DDU inmates, four (4) additional hours of out-of-cell leisure activity. A Qualified Mental Health Professional will review the mental health classification of each pre-program inmate in the DDU every 30 days, and more frequently if dictated by the inmate's mental health needs to ensure that the inmate is appropriately classified. For purposes of this section, placement of the inmate on mental health watch shall not be deemed to interrupt the duration of time in the DDU.

## **3. DDU Transfer Policy**

To maximize the effective utilization of the STU beds, within one year from the effective date of this agreement the Department will develop and implement a policy providing that, notwithstanding any outstanding DDU sanction, an STU inmate may be transferred to general population, including a residential treatment unit, if doing so would not be clinically inappropriate and would not pose a substantial threat to the safety of any person or the security of the institution.

### **B. Other Segregation Housing**

Inmates with SMI shall not be housed in any other Segregation Unit as defined by this Settlement Agreement for more than thirty (30) days, except in Exigent Circumstances; provided however, that the parties understand that there may be times when the Department lacks an appropriate placement for all SMI inmates in Segregation. In that event, the Department will use all reasonable efforts to minimize the number of SMI inmates in Segregation and to remove them from Segregation as soon as possible.

At a minimum, SMI inmates held in Segregation shall be offered the following mental health and other services:

#### **1. Less than Thirty (30) Days**

a. If the SMI inmate has a Mental Health Classification of MH-1, MH-2 or MH-3, one (1) session of structured out-of-cell individual or group mental health per week, commencing in the first week of segregation, and which shall be part of a treatment plan; the opportunity to speak to a mental health clinician at least five (5) days per week, and in-cell programming. A Qualified Mental Health Professional will review the mental health classification of each SMI inmate in

Segregation every thirty (30) days, and more frequently if dictated by the inmate's mental health needs to ensure that the inmate is appropriately classified.

b. An SMI inmate with a Mental Health Classification of MH-4 shall be offered two (2) sessions of structured out-of-cell individual or group activity per week. These sessions shall be part of a treatment plan and shall include at least one session with a mental health clinician. The length of the out-of-cell clinical sessions shall be determined by the clinician on a case-by-case basis.

c. In addition to the five (5) hours of out-of-cell leisure activity already offered to inmates in segregation, an SMI inmate with a Mental Health Classification of MH-4 shall be offered two (2) additional hours of out-of-cell leisure activity per week. These extra hours may be provided either by offering additional out-of-cell sessions or by extending the period of existing out-of-cell session.

## **2. Over Thirty (30) Days**

After thirty (30) days in Segregation, the amount of weekly out-of-cell services offered to an MH-4 SMI inmate shall be increased to four (4) sessions of structured out-of-cell individual or group activity per week and, in addition to the five (5) hours out-of-cell leisure activity already offered to inmates in segregation, four (4) additional hours of out-of-cell leisure activity. For purposes of this section, placement of the inmate on mental health watch shall not be deemed to interrupt the duration of time in Segregation.

## **C. Secure Treatment Unit Program Termination**

Inmates with SMI shall not be returned to Segregation from an STU prior to completing the program, except in Exigent Circumstances or for program termination as follows:

1. Pursuant to the procedures established for review of Exigent Circumstances, the Department shall periodically reassess inmates who have been terminated from a STU and returned to Segregation. The inmate shall be referred to the same or a different STU if the inmate's behavior and motivation demonstrably improve. The inmate shall have a treatment plan designed to motivate him or her to participate in clinically-indicated therapeutic programming in an appropriate setting.

2. Inmates may be considered for termination from an STU prior to completing the program if the inmate engages in assaultive behavior or presents severe behavioral problem without demonstration of any effort to change and it is the consensus of the treatment team that the behavior has not improved and shows no indication of future change. Termination will not be considered without evidence and documentation of consistent refusal to engage in programs or chronic disruptive behavior that compromises the integrity of the program. The treatment team will meet to determine if further treatment interventions can be expected to produce no or



minimum behavior changes. The treatment team will also consider whether transfer to a different STU would be appropriate. If termination is decided, the treatment team will develop a discharge plan consistent with the inmate's needs. Final approval of termination shall be made by the STU Committee.

#### **D. Segregation Review**

##### **1. Institutional Segregation Committee**

At each facility at which inmates with SMI are held in Segregation, an Institutional Segregation Committee will meet at least weekly for the purpose of reviewing the status of such inmates to determine the reason(s) for Segregation and whether alternatives exist. Such review may include a review of pending investigation status, classification status, mental health developments, and disciplinary status. The membership of the Institutional Segregation Committee or such other designated committee shall include at least one Qualified Mental Health Professional.

##### **2. Central Office Segregation Oversight Committee**

Membership of the Central Office Segregation Oversight Committee shall include the Deputy Commissioner, Prison Division; the Deputy Commissioner, Classification, Program and Reentry Division; Assistant Deputy Commissioners for the Northern and Southern Sectors, the Director of the Central Inmate Disciplinary Unit; a mental health professional from the Health Service Division; and a mental health professional from the Department's mental health vendor, or if any member is unable to attend a meeting, his or her designee.

The role of the Central Office Segregation Oversight Committee shall include:

- a. Developing strategies to reduce time spent in Segregation by inmates with SMI, including reducing time on awaiting action or identifying alternatives to Segregation for such inmates; and expansion of privileges for SMI inmates remaining in Segregation;
- b. Conducting a monthly review of the circumstances of inmates with SMI, including pre-programs inmates, who has been in Segregation for a period exceeding thirty (30) days as of the date of the monthly review. The review shall include consideration of facilitating the inmates discharge from Segregation, assessment of the inmate's mental health classification level, and whether additional out-of-cell time is clinically indicated. For purposes of this review, placement of the inmate on mental health watch shall not be deemed to interrupt the duration of time in Segregation.

The Central Office Segregation Oversight Committee shall maintain minutes that document reviews and actions taken, with the reasons for the Committee's decision and the potential alternatives for Segregation considered.

##### **3. Secure Treatment Review Committee**

The Secure Treatment Review Committee shall review STU referrals regarding inmates with SMI in Segregation to determine whether the inmate should be placed in a STU. If STU placement is appropriate, the Committee shall recommend such placement to the Assistant Deputy Commissioner, Clinical Services and the Assistant Deputy Commissioners, Northern and Southern sections, who shall determine in which STU the inmate shall be placed. Any determination of Exigent Circumstance shall be made by the Deputy Commissioner for Prisons.

The members of the Committee shall include the Department's Mental Health and Substance Abuse Coordinator, the Clinical Director of the Department's mental health provider, and the Coordinators of any existing STUs, such as the STP and BMU, or if any member is unable to attend a meeting, his or her designee.

#### **IV. Specialized Treatment Units and Other Methods to Reduce Placement of SMI Inmates in Segregation**

##### **A. Number of Secure Treatment Units and Beds**

1. The Department currently operates a (19) nineteen bed Secure Treatment Program (STP) at the Souza Baranowski Correctional Center and a ten bed Behavioral Management Unit (BMU) at MCI Cedar Junction.

2. The Department agrees to maintain the current number of STU beds for the period set forth in Section X(B)(2) unless it determines that fewer beds are adequate to ensure that no inmate with SMI is housed in Segregation in violation of the time limitations set forth in this Settlement Agreement.

3. Subject to Section III, the Department retains discretion to decide on appropriate methods to most effectively ensure that inmates with SMI are not confined to the DDU, or held in other Segregation units for longer than thirty (30) days. Specifically, the Department, in its discretion, may opt to achieve this outcome by reducing the amount of time inmates are held on awaiting action status; reducing the length of DDU sentences; transferring clinically and behaviorally stable inmates from STUs to RTUs or general population; increasing clinical mental health input into the disciplinary and classification processes; developing more effective treatment modalities in general population through mental health classification or other strategies; creating short-term step-down high security treatment units; developing additional STUs; transferring clinically stable inmates from STUs to RTUs or population; or adopting any other method which will achieve the above-stated outcome.

##### **B. STU Treatment and Programming**

###### **1. Programs**

a. Each STU shall provide a variety of treatment programs and modalities to optimize the overall level of functioning of inmates with SMI within the correctional environment, and to prepare them for successful reentry into general population or the community.

b. Behavioral programming in the STUs shall include incentives to encourage positive behavior. These incentives may include, where appropriate, the opportunity to earn additional privileges and reduce disciplinary sanctions, including the opportunity to reduce sentences to the DDU. The Department may make earned good time available in the STUs within statutory limits to inmates who are not serving DDU or disciplinary detention.

## **2. Out-of-Cell Time**

Inmates in an STU shall be scheduled for fifteen (15) hours of structured out-of-cell activity per week, with no fewer than ten (10) hours to be offered, and ten (10) hours per week of unstructured out-of-cell activity to be offered, including exercise but excluding showers, absent Exigent Circumstances.

For inmates assigned to a program phase that allows contact with other inmates, out-of-cell activities shall include opportunities for socialization including congregate exercise and dining, as determined by the treatment team.

## **3. Treatment Plans**

Every inmate with SMI in an STU or Segregation shall have an individual treatment plan, developed by a clinician with participation from the inmate and from others, as appropriate (e.g., medical staff, security staff).

Treatment plans shall ordinarily be reviewed every ninety (90) days for the first year and then every six (6) months, but more frequently as needed. For example, if an inmate with SMI is returned to Segregation from an STU for programmatic or security reasons, the treatment plan shall indicate goals to effect the inmate's return to a STU or general population, as appropriate.

## **4. Staffing**

Staffing of the STUs shall be adequate and appropriate to achieve the purposes of the unit and shall include:

Designated administrator and supervising clinician

Designated clinical staff;

Sufficient clinical and rehabilitative staff to provide required programming;

Sufficient correctional personnel to escort inmates to and from treatment activities;

Sufficient correctional personnel who are trained to work with inmates who have SMI.

## **V. Mental Health Watch**

A mental health watch shall be no longer in duration than necessary to deal with the mental health crisis that caused the inmate to be placed under observation. The Department's goal is to safely discharge inmates from mental health watch to their housing units within ninety-six (96) hours; however, any decision to discharge the inmate from mental health watch is a clinical judgment.

In all cases in which an inmate is maintained on mental health watch for more than ninety-six (96) hours the clinical director or designee of the Department's mental health provider shall be consulted until the inmate is discharged from mental health watch.

An inmate who is discharged from mental health watch to Segregation shall be assessed by a Qualified Mental Health Professional upon the third and seventh day following discharge, or upon such greater frequency or longer duration as may be determined by a Qualified Mental Health Professional.

## **VI. Role of Mental Health Staff in the Disciplinary Process; Related Discipline Issues**

### **A. Self-Injurious Behavior and Related Behavior**

Disciplinary reports solely for self-injurious behavior are prohibited. Disciplinary reports for behavior directly and wholly related to self-injurious behavior, such as destruction of state property, are also prohibited. Likewise, disciplinary reports for reporting to the Department or contract staff feelings or intentions of self-injury or suicide are prohibited.

### **B. Notification to Mental Health –SMI Inmates**

Mental Health staff will be notified prior to service of a disciplinary report on any inmate with SMI who is charged with a Category 1 or Category 2 offense, as defined by the Department of Correction Inmate Discipline regulation, 103 CMR 430.00, et seq.

### **C. Superintendent's Review of Disciplinary Reports**

During regularly scheduled reviews of recently issued disciplinary reports, the Superintendent or designee shall receive consultation from a facility mental health staff member regarding mental health issues that may be implicated in the events described by the disciplinary report, and whether there are appropriate alternatives for addressing the matter by means other than the disciplinary process. Upon determination that the case should be managed by means other than the disciplinary process, the Superintendent may order that the disciplinary report be dismissed in whole or in part.

## **D. Mental Health Issues at the Disciplinary Hearing**

### **1. Consultation on Disposition**

Following the entry of a guilty finding on a Category 1 or Category 2 disciplinary offense for an inmate with a Mental Health Classification of MH-4, the hearing officer, if not recommending a DDU sanction, shall consult with mental health staff. Mental health staff will render an oral opinion, if pertinent, as to whether there are mental health considerations that may bear on the issues of mitigation and determination of an appropriate sanction. This may include an opinion on the effect of particular sanctions or combination of sanctions on the inmate's mental health (e.g., loss of visits, canteen, television, etc.). The hearing officer will indicate by "check off" on the disciplinary hearing form that he or she has received an opinion from mental health staff and document any change in the disposition of the case entered pursuant to that opinion.

### **2. Guilty Plea**

In the event that an inmate with a Mental Health Classification of MH-4 charged with a Category 1 or 2 offense pleads guilty to disciplinary charges, prior to the imposition of disciplinary detention, other than a sanction of "time served," the hearing officer or disciplinary officer will consult with mental health staff with respect to dispositional recommendations and document any such change in disposition as provided in Section VI(D)(1).

## **E. Thirty Day Limit on Disciplinary Detention**

The Department may impose a disciplinary detention sanction on an inmate with SMI of up to thirty (30) days unless there are acute clinical contraindications to such detention. However, no inmate shall be placed continuously in disciplinary detention for more than fifteen (15) days. Inmates with SMI placed on disciplinary detention must have access to all mental health services that are generally available (i.e., mental health rounds, opportunity to request mental health contact as needed, opportunity to see the inmate's primary care clinician when regularly scheduled if this falls within the time period that the inmate is serving disciplinary detention).

## **VII. Training**

### **A. Pre-Service Mental Illness and Suicide Prevention Training**

All new correctional, medical and mental health staff shall receive eight (8) hours of initial suicide prevention training. At a minimum, training should include avoiding negative attitudes to suicide prevention, prison suicide research, why correctional environments are conducive to suicidal behavior, potential predisposing factors to suicide, high-risk suicide periods, warning signs and symptoms, identifying suicidal inmates, and components of the Department's suicide prevention policy.

### **B. In-Service Mental Illness and Suicide Prevention Training**

## **1. Annual Training for Correction Personnel**

(a) Subject to collective bargaining agreements and bidding process, correction officers and correctional program officers shall receive annual in-service training, of at least two hours per year, on mental health issues.

(b) Such annual training for correction officers and correctional program officers shall include the identification and custodial care of inmates with mental illness and may include (i) interpreting and responding to symptomatic behaviors, and communication skills for interacting with inmates with mental illness with emphasis on SMI; (ii) recognizing and responding to indications of suicidal thoughts; (iii) conducting a proper suicide prevention observation; (iv) responding to mental health crises, including suicide intervention and cell extractions; (v) recognizing common side-effects of psychotropic medications; (vi) professional and humane treatment of inmates with mental illness; (vii) trauma informed care; (viii) de-escalation techniques; and (ix) alternatives to discipline and use of force when working with inmates with mental illness.

## **2. Secure Treatment Units**

Subject to collective bargaining agreements and bidding process, there shall be initial pre-service and annual in-service training of all staff in the STUs regarding mental health and mental illness, medications, co-existing disorders, and programming needs. Training shall be as follows:

a. Upon the opening of any new STU, all security and treatment staff regularly assigned to the unit will receive forty (40) hours of training.

b. New security and treatment staff assigned to a STU after it is open and operational will receive eight (8) hours of orientation training at the time of assignment. The Department will endeavor to provide each new staff member with an additional thirty-two (32) hours of structured on-the-job training during the first seventy-five (75) days of assignment.

## **VIII. DLC's Designated Expert, Reports, Dispute Resolution and Enforcement**

### **A. Designated Expert**

1. DLC will retain Kathryn A. Burns, M.D. to serve as its designated expert to assess the Department's compliance with the terms of this Settlement Agreement. If Dr. Burns becomes unavailable, DLC will select a successor designated expert of its choice, after consultation with the Department. Within a reasonable time after its retention of a designated expert, DLC shall provide the Department with written assurance that the designated expert will avoid any conflict of interest in her activities in Massachusetts during the period set forth in Section X(B).

2. DLC shall pay all fees and costs incurred by the designated expert and any consultants retained by her.

3. The designated expert shall have access to all Department facilities that have a Segregation unit, with reasonable notice, to assess compliance with this Settlement Agreement. All site visits shall take place on consecutive days. There shall be no more than three site visits in each year that the Settlement Agreement is in effect. These visits may take up to three days each, and the designated expert may visit as many facilities as is practicable on each visit.
4. The designated expert shall have access to meet with and interview personnel whose duties pertain to the provision of mental health services and/or who work with inmates.
5. The designated expert shall have a reasonable opportunity to conduct confidential interviews of inmates to assess whether designations of SMI are being made in conformity with this Settlement Agreement.
6. The designated expert shall conduct an in person or telephonic "exit interview" with one or more Department representatives, designated by the Department, at a time mutually convenient to the designated expert and the Department before the conclusion of each monitoring visit. Unless otherwise stated by the designated expert, any opinions or observations shared with Department representatives during such exit interview shall be deemed to be preliminary and subject to revision.
7. The Department may retain Dr. Jeffrey Metzner or another mental health expert at its own expense to serve as the Department's designated expert.

## **B. Records and Reports**

1. Three times per year during the course of this Settlement Agreement, at intervals to be agreed upon by the parties, the Department will provide DLC with data and documents collected by the Department and its mental health vendor to track compliance with the Settlement Agreement. This data will cover each Department of Correction facility that operates one or more STU or Segregation unit, but shall not include data pertaining to Bridgewater State Hospital patients, civil commitments at the Massachusetts Treatment Center, civil commitments at the Massachusetts Alcohol and Substance Abuse Center (MASAC), and civil commitments at MCI-Framingham. Specifically, the data and documents to be provided are set forth in Appendix A attached to this Settlement Agreement.
2. DLC and its designated expert may also request additional, relevant Department documents to track compliance with the Settlement Agreement, except documents protected by attorney-client or work product privileges, subject to the Court's August 12, 2010 Protective Order (Docket No. 133) and the September 13, 2011 Amended Protective Order (Docket No. 239), or any subsequent protective order entered by the Court. If these documents are requested in conjunction with a site visit, the Department will provide these documents to the extent feasible within ten (10) days prior to the visit.

3. During the site visits, DLC's designated expert shall have reasonable access to current inmate mental health records. If DLC requests copies of any inmate's mental health or other records, the Department shall provide copies within thirty (30) business days of the request, and DLC shall pay the Department twenty cents (\$.20) per page within thirty (30) days of receipt. Within thirty (30) days of the effective date of this Settlement Agreement the parties shall agree to a procedure to ensure access to and the confidentiality of inmate records.

#### **C. Designated Expert's Reports**

The designated expert may prepare written reports on the Department's efforts to meet the terms of this Settlement Agreement, and may also include additional advice, suggestions or proposals in the nature of quality assurance or quality improvement as the designated expert deems appropriate. The designated expert shall make her written report, if any, available to the Department within thirty (30) days from the completion of her visit and the delivery by the Department of any documents requested by the designated expert, unless the time for submission is extended by agreement of the parties. Although the Department will give full consideration to advice, suggestions and proposals offered by a designated expert, all decisions concerning the provision of mental health services by the Department's mental health provider will be made by the Department in accordance with the terms of this Settlement Agreement and statutory and other legal responsibilities. If the designated expert reports that the Department had not met the terms of any provision or provisions of this Settlement Agreement, she shall make recommendations as to actions she believes to be necessary to meet the terms of the provision or provisions.

#### **D. Dispute Resolution and Enforcement**

1. If DLC believes the Department is not in substantial compliance, i.e., is in substantial non-compliance, with any provision of this Settlement Agreement, DLC shall provide the Department, in writing, specific reasons why it believes that the Department is not in substantial compliance with such provision or provisions, referencing the specific provision or provisions. DLC may not allege that the Department is not in Substantial Compliance based on minor or isolated delays in compliance. DLC may also not allege that the Department is not in substantial compliance without evidence of a pattern of substantial non-compliance with regard to that provision or provisions. To the extent DLC relies on observations or opinions of its designated expert to support an allegation that the Department is not in substantial compliance, DLC shall make reference to the written reports of the designated expert or to portions thereof which support DLC's belief. To the extent DLC relies upon documents provided by the Department to support an allegation that the Department is not in substantial compliance, DLC shall make reference to the specific performance measures which support DLC's belief.

The Department shall have the opportunity to consult its designated expert with respect to DLC's allegations that the Department is not in substantial compliance with such provision or



provisions. The Department shall provide DLC with a written response to the notification within thirty (30) days of its receipt. The Department's response shall contain a description of the steps it took to investigate the issues addressed in the DLC's notice, the results of the investigation, and, where the Department proposes corrective action, a specific plan for addressing the described issues. If no corrective action is proposed by reason of funding constraints (including the unavailability of appropriated funds), legal considerations or for other reasons, the Department's response shall specifically state those reasons and any statutes, regulations, expert opinion or technical bases upon which it is relying in reaching such conclusion.

DLC agrees to advise the Department of its acceptance or rejection of the Department's response within seven (7) business days of its receipt. Either the Department or DLC, in any of the written submissions pursuant to this paragraph, may request a meeting to discuss and attempt to resolve any matter addressed in the written submissions. The Department and DLC shall meet within fourteen (14) business days of the receipt of the request, unless a later meeting is agreed by both sides.

If the Department and DLC are not successful in their efforts to resolve the matter, they may jointly or individually seek relief from the Court to effect substantial compliance with the Settlement Agreement, but not through a petition for contempt.

2. The Court's jurisdiction shall terminate at the end of the three (3) year settlement period with respect to any provision or provisions of this Settlement Agreement for which there is no outstanding determination that the Department is not in substantial compliance, i.e., is in substantial non-compliance. If the Court determines that the Department is not in substantial compliance, i.e., in substantial non-compliance, with a provision or provisions of this Settlement Agreement at any time during the three (3) year period of the Settlement Agreement, the Court's jurisdiction with respect to such provision or provisions relating thereto shall continue for the remainder of the three (3) year period or for a period to be ordered by the Court of not more than two (2) years from the date of the Court's finding that the Department is not in substantial compliance.

3. If the Court finds that the Department is not in substantial compliance, i.e., is in substantial non-compliance, with a provision or provisions of this Settlement Agreement, it may enter an order consistent with equitable principles, but not an order of contempt, that is designed to achieve compliance.

4. If DLC contends that the Department has not complied with an order entered under the preceding paragraph, it may, after reasonable notice to the Department, move for further relief from the Court to obtain compliance with the Court's prior order. In ruling on such a motion, the Court may apply equitable principles and may use any appropriate equitable or remedial power then available to it.

## **IX. Implementation Timeline**

**A.** Upon the effective date of this Settlement Agreement, the Department will not place an inmate with Serious Mental Illness in the DDU, except in accordance with Section III of this Settlement Agreement.

**B.** Within six (6) months from the effective date of this Settlement Agreement, the Department will have sufficient STU beds, or will have made other modifications to its policies and practices, to ensure that no inmate with SMI is placed in any other Segregation Unit for more than thirty (30) days, except in accordance with Section III of this Settlement Agreement.

**C.** The Department shall maintain written policies that are consistent with the terms of this Settlement Agreement.

## **X. Form of Agreement**

### **A. Scope**

1. The parties hereby memorialize the terms of their agreement in this Settlement Agreement.

2. This Settlement Agreement settles any and all claims against the defendants and shall be binding on the parties, their successors and assigns.

3. This Settlement Agreement constitutes the entire agreement of the parties and, except for any Protective Order entered by the Court, supersedes all prior agreements, representations, negotiations and undertakings in this litigation not set forth or incorporated herein.

### **B. Court Approval, Jurisdiction and Enforcement**

1. The Settlement Agreement is not effective absent approval by the Court. All Parties and their counsel will use their best efforts to obtain Court approval of this Agreement.

2. The term of this Settlement Agreement and the jurisdiction of the Court shall commence upon the date of approval by the Court and shall extend for three (3) years from said date of approval, subject to paragraph VIII(C)(2) of this Settlement Agreement.

3. The Court shall be the sole forum for the enforcement of this Settlement Agreement. Any order to achieve compliance with the provisions of this Settlement Agreement shall be subject to the applicable provisions of the Prison Litigation Reform Act, 18 U.S.C. section 3626.

4. Subject to the provisions of Sections X(1) and (2) of this Settlement Agreement, in recognition of the time necessary for implementation of this Settlement Agreement, as provided in Section IX, the parties agree not to seek termination or otherwise challenge this Settlement Agreement or any order approving this Settlement Agreement during the period of time that the

Court retains jurisdiction pursuant to Section X(B)(2). Nothing in this paragraph shall limit the parties' rights to challenge or appeal any finding as to whether the Department is not in substantial compliance, i.e., in substantial non-compliance, or consequent order entered by the Court pursuant to Section VIII(C)(2) of this Settlement Agreement.

5. This Settlement Agreement may be enforced only by the parties hereto. Nothing contained in this Settlement Agreement is intended or shall be construed to evidence an intention to confer any rights or remedies upon any person other than the parties hereto.

6. This Settlement Agreement may not be relied on as precedent in any future claim. Nothing in this paragraph limits the parties' rights to bring claims arising out of paragraph VIII(D) of this Settlement Agreement.

7. Nothing in this Settlement Agreement shall be interpreted to diminish or otherwise restrict any authority granted to DLC as the protection and advocacy system for persons with disabilities in Massachusetts.

### **C. Amendments**

1. By mutual agreement, the parties may change the terms of this Settlement Agreement, including, but not limited to, the timetables for taking specific actions, provided that such mutual agreement is memorialized in writing, signed by the parties and approved by the Court.

2. During the term provided in Section X(B) of this Settlement Agreement, the Department shall not make any changes to any policy provision implementing the provisions of this Settlement Agreement without providing DLC a written draft of such policy or policies, for its review and comment. DLC shall have fifteen (15) days to comment. Without prior agreement of the parties, no Department policy provision may be amended to conflict with the terms of this Settlement Agreement while the Settlement Agreement remains in effect. The Department shall not approve any changes to a policy maintained by its mental health provider that conflicts with the terms of this Settlement Agreement. During the term of this Settlement Agreement, the definition of Serious Mental Illness as defined herein shall not be amended without agreement of the parties.

### **XI. Funding**

**A.** The parties acknowledge that implementation of this Settlement Agreement is subject to the availability and receipt of appropriated funds.

**B.** The parties further acknowledge that the lack of funding does not preclude the Court from entering any order to achieve compliance with this Settlement Agreement that comports with the applicable provisions of the Prison Litigation Reform Act, 18 U.S.C. section 3626 and with other applicable law, provided that the Department reserves the right to assert that the lack of funding should be taken into account in any remedial order.

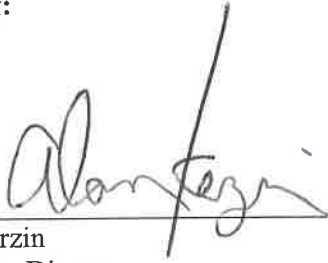
C. The Department agrees to make all possible good faith efforts to seek all necessary funding to implement fully the terms of this Settlement Agreement.

D. In the event that the parties are unable to agree as to whether there is sufficient funding to implement fully this Settlement Agreement, the parties shall meet and confer, and if necessary, consult the Court. In the event that the parties continue to be unable to agree, either the Department or DLC may invoke the dispute resolution procedures in Section VIII(C) of this Settlement Agreement to seek the assistance of the Court.

## **XII. Attorneys' Fees**

The Department and DLC do not agree as to the prevailing party in this case. Nevertheless, for the purpose of compromise and settlement, the Department, through the Commonwealth of Massachusetts, agrees to pay DLC a total of one million, two hundred and fifty thousand dollars (\$1,250,000) to settle DLC's claim for attorneys' fees and costs. DLC agrees not to seek further fees and costs with respect to work incurred prior to the date of approval of this Settlement Agreement. However, DLC does not waive its right to seek reasonable attorneys' fees and costs for successful enforcement of this Settlement Agreement, and the Department, on behalf of the defendants, reserves its right to oppose any such petition for fees and costs, including all appellate rights.

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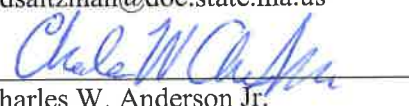
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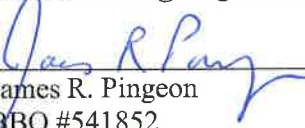


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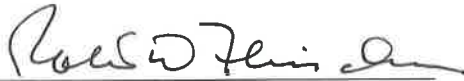
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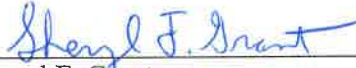


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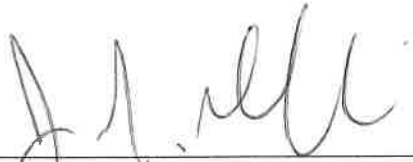


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**Appendix 1 - Table of Statistics and Documents**

<b>Statistics &amp; Documents</b>	<b>Settlement Agreement Provision</b>
<p><u>Monthly Segregation Statistics (by facility):</u></p> <p># of Segregation rounds completed;</p> <p># out of cell contacts for MH4 in Segregation;</p> <p># out of cell contacts for SMI in Segregation;</p> <p># of individual out-of-cell contacts in DDU</p> <p># of individual mental health professional sessions in DDU, indicating no-show and reasons.</p>	<p><b>Segregation Rounds</b></p>
<p><u>Monthly Segregation Statistics (by facility):</u></p> <p># of mental health Segregation updates completed;</p> <p># of new mental health watches;</p> <p>Total days mental health watch (by constant and close);</p> <p># of 18(a) transfers out of Segregation;</p> <p># of 18(a) returns to Segregation.</p> <p><u>Monthly DDU Statistics:</u></p> <p># of new mental health watches;</p> <p>Total days mental health watch (by constant and close);</p> <p>18(a) transfers out of DDU;</p> <p>18(a) returns to DDU.</p> <p><u>Monthly RTU Statistics (by unit):</u></p> <p># of new admissions.</p> <p><u>Other Documents:</u></p>	<p><b>Evaluation of Inmates in Segregation</b></p>



<p>Facility lists of SMI inmates admitted to and discharged from Segregation.</p>	
<p><u>Monthly STU Statistics (by unit):</u></p> <p># of new admissions.</p> <p><u>Other Documents:</u></p> <p>STU referral forms.</p>	<p><b>Evaluation Prior to DDU Placement</b></p>
<p><u>Monthly DDU Statistics:</u></p> <p># of SMI in DDU;</p> <p># of MH-4 in DDU;</p> <p># of groups offered;</p> <p># of mental health professionals offering groups;</p> <p># of group therapy sessions held;</p> <p># of no-shows for groups by reason.</p> <p><u>Monthly Segregation Statistics (by facility):</u></p> <p># of MH-4 placed in Segregation;</p> <p># of SMI placed in Segregation;</p> <p>Average length of stay of MH-4 inmates (calculated upon release from segregation);</p> <p>Average length of stay of SMI inmates (calculated upon release from Segregation);</p> <p># of out of cell contacts for MH-4;</p> <p># of out of cell contacts SMI;</p> <p># of individual mental health professional sessions;</p> <p># of no-shows and reasons;</p>	<p><b>Housing and Review of Inmates with Serious Mental Illness</b></p>

<p># of groups offered;</p> <p># of mental health professionals offering groups;</p> <p># of group sessions held per month;</p> <p># of inmates in group therapy per month;</p> <p># of no-shows and reasons.</p> <p><u>Other Documents:</u></p> <p>Central Office Segregation Oversight Committee Minutes;</p> <p>Forms for tracking the provision of structured and unstructured out of cell time and privilege levels provided to SMI pre-program inmates and SMI SMU inmates (three times a year, by request).</p>	
<p><u>Monthly STU Statistics (by unit):</u></p> <p># of inmates discharged by termination.</p> <p><u>Other Documents:</u></p> <p>Report of clinical case conference convened upon termination consideration.</p>	<p><b>STU Termination</b></p>
<p><u>Documents:</u></p> <p>IMS Unit Operations – SMU Reviews screen (by facility, upon request three times a year);</p> <p>Central Office Segregation Review Committee Monthly Report;</p> <p>STU referral forms and packages.</p>	
<p><u>Documents:</u></p> <p>DOC notification to DLC upon:</p> <ol style="list-style-type: none"> <li>1. STU bed number change;</li> <li>2. Major change in policies or programs that facilitate</li> </ol>	<p><b>Number of Secure Units and Beds</b></p>

<p>the goal of reducing SMI confinement in DDU or SMUs.</p>	
<p><u>Monthly STU Statistics (by unit):</u></p> <p># of individual psychiatry sessions;</p> <p># of no-shows for psychiatry by reason;</p> <p># of individual mental health professional sessions;</p> <p># of no-shows for individual contact;</p> <p># of group treatment sessions scheduled;</p> <p># of group treatment sessions conducted (by type);</p> <p># of inmates enrolled in group therapy;</p> <p># inmates that participated in group therapy;</p> <p>% group attendance;</p> <p># of no-shows for groups by reason;</p> <p>Average # of hours out-of-cell structured programming per inmate;</p> <p>Average # of hours out-of-cell unstructured programming per inmate.</p> <p><u>Other Documents:</u></p> <p>Group schedules;</p> <p>Forms for tracking the provision of structured and unstructured out-of cell-time and privilege levels provided to STU inmates, by unit (three times a year, by request.)</p> <p>Notification of changes to STU Inmate Handbooks;</p> <p>Program Descriptions, and 103 DOC 650, <u>Mental Health Services</u>;</p> <p>Health Services Treatment Plan Audits.</p>	<p><b>STU Treatment and Programming</b></p>

<p><u>Monthly Facility Statistics (by facility):</u></p> <p>Average duration mental health watch (days)</p> <p><u>Other Documents:</u></p> <p>Health Services Division Mental Health Watch Audit.</p>	<p><b>Mental Health Watch</b></p>
<p><u>Documents:</u></p> <p>Morning Meeting Minutes (three times a year, by request);</p> <p>103 DOC 650, <u>Mental Health Services</u>;</p> <p>Mental Health Consultation for Disciplinary Disposition Forms (three times a year, by request).</p>	<p><b>Role of Mental Health in the Disciplinary Process</b></p>
<p><u>Documents:</u></p> <p>Lesson plans and rosters for training conducted.</p>	<p><b>Training</b></p>
<p><u>Documents:</u></p> <p>A roster of the inmates in each Segregation unit and STU listing the name of each inmate housed in those units on the first day of each month during the reporting period, the date of admission to the unit and length of stay in the unit, whether the inmate is an open mental health case, the inmate's mental health classification, whether the inmate is designated as SMI, the diagnosis and any current psychotropic medications. For inmates in the DDU, the roster will also state the reason for the inmate's DDU placement and the date of his projected release.</p> <p>The Department of Mental Health reviews of Segregation Units conducted pursuant to G.L. c. 127, § 39, along with the Department's responses;</p> <p>All completed mortality reviews for any suicide or suicide-related death conducted by the Department</p>	<p><b>Other Documents</b></p>

pursuant to 103 DOC 622, Death Procedures, and provided in accordance with state confidentiality laws concerning any open mental health inmate in Segregation or any STU.