UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LEROY PEOPLES, et al.,

Plaintiffs,

-against-

BRIAN FISCHER, et al.,

Defendants.

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STIPULATION FOR A STAY
WITH CONDITIONS

Docket Number
11-CV-2694 (SAS)

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The parties, by their attorneys, hereby stipulate as follows:

WHEREAS, Plaintiffs Leroy Peoples, Dwayne Richardson and Tonja Fenton, inmates in custody of the New York State Department of Corrections and Community Supervision ("DOCCS"), filed a Third Amended Class Action Complaint (herein, as amended and corrected, referred to as the "Complaint") alleging that the use and length of confinement sanctions and conditions in DOCCS Special Housing Units ("SHU") create an unconstitutional risk of harm, and seeking declaratory and injunctive relief on behalf of a putative class of similarly situated individuals and damages on behalf of the named plaintiffs;

WHEREAS, following the filing by Defendants of a motion to dismiss Plaintiffs' damages claims and before the filing of an answer to the Complaint or a class certification motion, a Stipulation and Order was entered on May 1, 2013, pursuant to which the Defendants' motion to dismiss was withdrawn without prejudice and all scheduling of briefing and discovery in the lawsuit was suspended for ninety (90) days to permit the parties to conduct settlement negotiations;

WHEREAS, pursuant to endorsed Orders entered on July 29, 2013, October 1, 2013, and December 19, 2013, the Court has extended the litigation stay to and including January 30, 2014, to allow the parties to continue their settlement discussions;

WHEREAS, the parties have each designated an expert in prison operations and segregated housing to assess current prison disciplinary practices in New York State and make recommendations to assist the parties in achieving a resolution of the claims for injunctive relief raised in the Complaint;

WHEREAS, DOCCS recognizes a sound progressive disciplinary system protects the health, safety, and security of all persons within DOCCS correctional facilities;

WHEREAS, DOCCS recognizes that disciplinary sanctions must never be arbitrary or capricious or overly severe and that a sound disciplinary system relies on certainty and promptness of action rather than upon severity;

WHEREAS, inmates designated as seriously mentally ill with SHU confinement sanctions in excess of thirty (30) days have since 2007 been diverted from SHU to alternative programs absent exceptional circumstances; and

WHEREAS, the parties in good faith have negotiated the terms of this Stipulation providing for a further stay of the litigation to establish a process for expert evaluation and consultation and to permit the implementation and evaluation of initial changes with regard to DOCCS' disciplinary system and SHU conditions with the goals of (i) removing certain vulnerable populations from SHU confinement to alternative programs, (ii) increasing system-wide oversight to promote consistent prison disciplinary practices and confinement sanctions that are appropriate and necessary to protect the safety of both staff and inmates, (iii) implementing guidelines for all confinement sanctions to promote transparency and consistency of disciplinary confinement sanctions, (iv) improving SHU conditions as provided in this Stipulation, and (v) reaching a final comprehensive settlement agreement;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED:

SECTION 1. STAY OF LITIGATION.

A. This action shall be stayed for a period (the "Stay Period") of twenty-four (24) months from the Effective Date under Section 8 of this Stipulation or until the Stipulation is vacated and/or the Stay lifted pursuant to Section 5 and, subject to the Court's approval, shall be placed on the Court's Suspense Calendar. During the Stay Period none of the parties may seek judicial relief in this action, except to vacate the Stipulation and/or lift the Stay and proceed with the litigation in accordance with the terms, conditions and procedures set forth in Section 5 of this Stipulation.

B. The actions set forth in Sections 2 and 4 of this Stipulation are being voluntarily undertaken by the Defendants and DOCCS to implement policy goals shared by the parties. The parties agree that none of the terms of this Stipulation contained in Sections 2 and 4 below shall constitute "So Ordered" prospective relief enforceable in any court, nor do such terms constitute contractual obligations of the Defendants or DOCCS enforceable as binding provisions of a stipulation or settlement agreement. During the Stay Period the sole remedy for Plaintiffs is a motion to vacate the Stipulation and/or lift the Stay in accordance with the terms, conditions and procedures set forth in Section 5 of this Stipulation.

C. The actions set forth in Section 2 below shall be implemented in accordance with the time periods specified and goals set in Section 2 and in any event as soon as practicable after the "Effective Date" of this Stipulation as defined in Section 8.

SECTION 2. ACTIONS TO BE TAKEN.

A. Alternatives to SHU Sanctions for Juveniles.

1. Contingent on DOCCS' ability to secure the necessary funding, DOCCS shall ensure that even under the most restrictive form of disciplinary housing, 16 and 17 year old inmates shall five (5) days a week be offered out-of-cell programming and outdoor exercise, limiting time in their cells to nineteen (19) hours a day, except in exceptional circumstances referred to Central Office.

2. Contingent on DOCCS' ability to secure the necessary funding, DOCCS will implement a program to separately house medium security classified 16 and 17 year olds at a thirty (30) cell general population housing unit at Woodbourne Correctional Facility and at a fifty (50) bed dormitory general population housing unit at Greene Correctional Facility. DOCCS will continue to admit qualifying 16 and 17 year olds to its Shock Incarceration program. Maximum security 16 and 17 year old inmates will be housed separately in a twenty-two (22) cell general population housing unit at Coxsackie Correctional Facility. Aged 16 and 17 year old inmates with disciplinary confinement sanctions of less than thirty (30) days will remain at Woodbourne or Greene Correctional Facilities and there will be an eight (8) bed separation unit at Greene Correctional Facility. Aged 16 and 17 year old inmates with SHU confinement sanctions in excess of thirty (30) days will be placed in a separate twenty-two (22) cell housing unit, as an alternative to placement in SHU, at Coxsackie Correctional Facility.

3. If the necessary funding is provided, DOCCS will comply with these provisions as soon as practicable and with an implementation goal in no event later than eighteen (18) months after the Effective Date.

B. Presumption against SHU Sanctions for Pregnant Inmates.

1. Within one month of the Effective Date, DOCCS shall implement a written policy by means of a memorandum issued by the Deputy Commissioner for Correctional Facilities establishing a presumption against placement of a pregnant female inmate in SHU for disciplinary purposes, except in exceptional circumstances referred to Central Office.

C. Alternatives to SHU Sanctions for Special Needs Inmates.

1. DOCCS shall implement a program that, absent exceptional circumstances referred to DOCCS' Central Office and to the extent that space is available in the program, provides an alternative to SHU for certain inmates who have a BETA/WAIS of 70 or below or who DOCCS otherwise determines have significantly limited intellectual capabilities and/or adaptive

functioning and coping skills and have received SHU confinement sanctions exceeding thirty (30) days. This program will be established at Sullivan Correctional Facility and entitled the "Correctional Alternative Rehabilitation" or "CAR" program.

2. The CAR program will involve three phases: (i) assessment and orientation, (ii) treatment, and (iii) transition to non-disciplinary housing settings. Two hours per day of out of cell group programming will be offered in the orientation phase and four hours per day in the second and third phases, five (5) days a week for each phase. In addition to programming, the CAR program will use a range of incentives to reward behavioral progress. The incentives will be offered on an individualized basis and will be treatment-plan driven.

3. DOCCS will implement these provisions as soon as practicable and in no event later than three (3) months after the Effective Date.

D. Central Office Oversight of SHU Confinement.

1. Contingent on DOCCS' ability to secure the necessary funding, a new Assistant Commissioner and a research staff position will be created and filled by DOCCS to oversee and monitor the disciplinary system throughout the State by data collection and performance tracking procedures with the goals of promoting consistency and fairness of SHU confinement sanctions and the health, safety and security of inmates and staff.

2. If the necessary funding is provided, DOCCS will implement this provision as soon as practicable with an implementation goal in no event later than three (3) months after the Effective Date.

E. Disciplinary Confinement Sanctions: Guidelines, Policies and Training.

1. With the exception of guidelines for certain violent and drug-related offenses, no guidelines currently exist for confinement sanctions imposed in prison disciplinary hearings. The existing guidelines for violent and drug-related offenses were put into effect throughout the system by a memorandum issued by the Deputy Commissioner for Correctional Facilities.

2. DOCCS shall implement new comprehensive and prospective guidelines for all disciplinary confinement sanctions (documents Bates-stamped S3682 to S3705, pursuant to and subject to the May 15, 2013 confidentiality agreement ("Confidentiality Agreement") executed by the parties in this litigation).

3. DOCCS shall also implement new disciplinary policies and reinforce existing policies, including without limitation the following: (i) a requirement that Tier Review Officers document reasons for any decision to assign a disciplinary violation other than to the lowest possible tier; (ii) a presumption against consecutive confinement sanctions for violations that arise from the same event absent exceptional circumstances; (iii) guidelines for the application of second and third infractions of a particular rule only where the subsequent infraction occurs within a specified time after the original incident as reflected in the new guidelines; and (iv) discretion for hearing officers to depart upward from these guidelines in appropriate circumstances that shall be articulated by the hearing officer and subsequently referred to Central Office.

4. DOCCS shall develop new training materials for hearing officers to implement the new guidelines for disciplinary sanctions and related policies. Experts retained by the parties will review the training materials and be provided with an opportunity to comment before implementation.

5. DOCCS shall give full consideration to the experts' comments on the training materials. The parties shall meet to discuss the experts' comments within the two-week comment period referred to in Section 2(E)(7)(A). When the training materials are finalized, DOCCS shall share a final version with Plaintiffs' counsel and experts pursuant to the May 15, 2013 Confidentiality Agreement.

6. DOCCS shall undertake a comprehensive training of DOCCS hearing officers on a regional basis in each of the hubs as to the guidelines and related policies. The experts may attend and observe relevant portions of the first training and shall be provided with an opportunity to comment on the training. Any training materials that are revised in response to the experts' comments shall be provided to plaintiffs and the experts pursuant to the Confidentiality Agreement, and all observations by the experts at such training, the content of such training and statements made by any person during such training shall be covered by all provisions of the Confidentiality Agreement.

7. DOCCS will implement the provisions of Subsection E above on the following schedule, with all dates starting from the Effective Date:

   i. Within three (3) months, DOCCS shall have shared draft training materials with the experts. Within two weeks thereafter, the experts will have provided their comments on the training materials to DOCCS;

   ii. Within five (5) months, DOCCS shall have finalized all training materials; and

iii. Within nine (9) months, DOCCS shall have completed training at all regional hubs, and the guidelines referred to in Section 2(E)(2) of this Stipulation will be fully implemented and issued to all staff and inmates in the system by means of a memorandum issued by the Deputy Commissioner for Correctional Facilities.

F. Interim Actions on SHU Conditions.

1. DOCCS shall take the following initial actions with regard to SHU conditions: (i) Outdoor exercise time shall be increased in SHU 200s and Upstate Correctional Facility by one hour per day; (ii) an additional hour of outdoor exercise can be earned on weekends for inmates at PIMS level 3 at Upstate and SHU 200s; and (iii) at Upstate, Southport and SHU 200s, DOCCS shall provide headphones to all inmates after initial processing following admission to SHU and in-cell study packets to all inmates on PIMS Level 1.

2. DOCCS will implement these provisions as soon as practicable and in no event later than three (3) months after the Effective Date.

G. Required Budgetary Approval. Funding provisions required to carry out the actions to be taken during the Stay Period under Sections 2(A) and 2(D) of this Stipulation shall be requested by DOCCS to the Executive for inclusion in the proposed budget to be submitted to the Legislature on or about January 21, 2014. The actions necessary to implement Sections 2(A) and 2(D) of this Stipulation shall be subject to the necessary budgetary approval by the Legislature for the fiscal year beginning April 1, 2014.

SECTION 3. RESOLUTION OF MATTERS ADDRESSED BY THIS INTERIM STIPULATION.

A. Waiver of Further Relief For Vulnerable Populations. Absent the Court vacating this Interim Stipulation pursuant to Section 5(B), *infra*, Plaintiffs waive the right to seek additional relief specific to the following groups of inmates, which Plaintiffs have identified as "vulnerable populations": (i) inmates who are younger than 21 years old; (ii) pregnant inmates; (iii) inmates who are cognitively impaired; (iv) inmates over the age of 55; and (v) inmates who are legally blind or deaf.

B. Limited Waiver of Further Relief With Respect To The Length of Sanctions. During the Stay Period, Plaintiffs waive the right to seek additional relief with respect to the length of disciplinary sanctions.

C. Limitation of Waivers. The aforementioned waivers are specifically limited to items identified in 3(A) and 3(B).

SECTION 4. REPORTING AND EXPERT CONSULTATION DURING STAY PERIOD.

A. Periodic Reporting. During the Stay Period, DOCCS shall provide Plaintiffs' counsel with reports and data concerning the implementation and effects of the actions described in Subsections A through F of Section 2 above. All such reports and information shall be covered by the Confidentiality Agreement. Wherever practicable DOCCS shall provide the data in electronic spreadsheets, such as Excel or .csv file format. The periodic reports and data provided shall include the following:

1. Monthly Data Production. Beginning April 1, 2014, DOCCS shall provide data on the first of each month sufficient to evaluate the following:

i. Demographics of inmates in SHU: who is in SHU and for what reason (for example, administrative segregation, voluntary or involuntary protective custody, or disciplinary confinement by infraction(s)), including demographic information (name, DIN, age, race, sex, facility, OMH level, etc.) and the length of total continuous SHU time served by inmates currently in SHU;

ii. Deprivation orders: the frequency, length and rationale for deprivation orders including demographic information (name, DIN, age, race, sex, facility, OMH level, etc.); and

iii. Exceptional Circumstances: any instances in which Central Office authorizes or reviews an exception to the policies or presumptions in Section 2 and the reasons therefor, including placing a juvenile in SHU, placing a pregnant female in SHU, imposing a SHU sanction that exceeds the maximum allowable under the guidelines, and assigning an infraction to the highest rather than lowest possible tier.

2. Quarterly Periodic Reporting on Outcome and Performance Measures. DOCCS, and in particular the Assistant Commissioner to be hired under Section 2(D), shall consult with the parties' experts to develop reports and performance tracking measures regarding the outcomes of the disciplinary SHU program and various alternatives to SHU programs (for example, the CAR program, the Juvenile Program). These reports shall be produced to Plaintiffs starting on July 1, 2014, and on a quarterly basis thereafter, and may include reports on disciplinary measures: for every instance of an infraction eligible for confinement sanctions, the infraction(s), the confinement and/or non-confinement sanction imposed (including, non-punitive interventions such as referrals to offender rehabilitation coordinators or referrals to OMH, etc.), demographic information (name, DIN, age, race, sex, facility, OMH level, etc.), the facility, and the hearing officer. DOCCS shall give full consideration to any expert comment regarding the quarterly reports. Any underlying data used to produce the quarterly reports not already available to Plaintiffs may also be produced to

Plaintiffs upon request and, where practicable, in electronic spreadsheet format.

B. Non-periodic Reporting. DOCCS shall keep Plaintiffs promptly informed as to any material developments bearing on the timely implementation of the provisions in Section 2, including without limitation the successful completion of relevant benchmarks and the budgetary approval process.

C. Facility Tours, Central Office Meetings, and Expert Requests for Additional Information. During the Stay Period the parties' experts may conduct up to three tours total, each consisting of three individual facilities or three days at one facility. The experts may submit the facilities they wish to tour, but the final selection will be by the Commissioner of Corrections and Community Supervision. The experts may combine such tours with a meeting with DOCCS' Central Office officials and staff. Such tours shall span no more than three (3) consecutive days, including any meeting requested with DOCCS' Central Office. At the request of the experts, the facility tours may include SHU and Keeplock units and locations specified in Subsections A and C of Section 2 of this Stipulation for the program for the 16 and 17 year old inmates and for the CAR program. Tours shall be conducted on a mutually agreed schedule. DOCCS shall provide documents, including SHU rosters and a reasonable number of disciplinary history printouts and disciplinary hearing packets, as may be requested by the experts thirty (30) days in advance of the tour in order for the experts to select inmates to interview during a particular facility visit. All communications between the experts and staff or inmates during the course of such tours and Central Office visits shall be covered by the terms of the Confidentiality Agreement. Nothing shall preclude the experts from making additional reasonable requests for documents and information, which DOCCS shall make available to the experts, if not unduly burdensome. All such documents, reports and information provided under Section 4 shall be subject to the Confidentiality Agreement.

D. Consideration Of Experts' Recommendations.

1. All parties will give full consideration to advice, suggestions or proposals offered by either party's expert during the Stay Period. Any decisions made or actions taken by DOCCS following any such advice, suggestions or proposals shall be made by DOCCS in accordance with the goals of this Stipulation and DOCCS' statutory responsibilities for the care, custody and control of the offender population. The experts may address any issues they determine the parties should consider with regard to the disciplinary SHU system.

2. The parties agree to direct their respective experts to provide their initial advice, suggestions or proposals to DOCCS and the parties' counsel, in New York City or Albany, on or before March 31, 2014. The parties shall separately agree upon a timetable to meet and confer about the experts' advice. Should DOCCS, during the Stay Period, undertake any additional actions in response to the proposals, suggestions or advice of the experts,

the parties shall meet to discuss the implementation and assessment of those actions. The parties shall otherwise continue engaging the experts during the Stay Period with the goal of using the expert process collaboratively to reach a final comprehensive settlement agreement.

SECTION 5. VACATING THE INTERIM STIPULATION AND/OR LIFTING THE STAY.

A. Motion to Vacate Interim Stipulation and/or to Lift Stay. Plaintiffs may move this Court for an order vacating the Interim Stipulation and/or lifting the stay and returning the case to the Court's active calendar for good cause as defined in Section 5(B) or exhaustion of good faith negotiations as defined in 5(C) and subject to the conditions set forth in Section 5(D). Upon such return of the case to the active calendar, the parties will propose an appropriate schedule for motions and responsive pleadings.

B. Vacating the Interim Stipulation and/or Lifting the Stay for Good Cause.

1. The motion to vacate the Interim Stipulation and/or lift the Stay under this Section shall be Plaintiffs' sole and exclusive remedy and recourse for actions or inactions that Plaintiffs perceive to be not in conformity with the provisions of Sections 2 and 4 of this Stipulation. As set forth in Section 1(B) of this Stipulation, the parties agree that the terms of this Stipulation set forth in Sections 2 and 4 above are voluntarily undertaken by Defendants and DOCCS and do not constitute legally binding obligations of Defendants or DOCCS. Plaintiffs may not seek an award of damages, injunctive relief or a finding of contempt based on the alleged non-performance by the Defendants or DOCCS of any provision or term contained in Section 2 or 4 of this Stipulation.

2. Good cause shall exist for vacating the Interim Stipulation and lifting the Stay under the following circumstances:

i. Funding necessary to implement changes in Sections 2(A) or 2(D) of this Stipulation is not allocated, and after meeting and conferring the parties are unable to reach any agreement to continue the interim stipulation in lieu of the funding allocation; or

ii. DOCCS is not acting in substantial conformity with the terms of Sections 2 and 4 of this Stipulation.

C. Lifting the Stay for Exhaustion of Good Faith Negotiations.

Plaintiffs may seek to lift the stay of litigation if the parties cannot reach agreement, after fully exhausting all good faith negotiations, regarding proposals, suggestions or advice provided by the experts pursuant to Section 4(D), *supra*, provided that such proposals, suggestions or advice does not pertain to issues subject to the waivers contained in Section 3, *supra*.

D. Procedures Applicable to Motion. The parties shall meet and confer before any motion to vacate the Interim Stipulation and/or lift the Stay is filed pursuant to 5(B) or 5(C) of this Stipulation. The provisions of the Confidentiality Agreement shall remain in effect during the pendency of any motion to vacate and/or lift the Stay, and shall survive any order to lift the Stay and/or to vacate the Interim Stipulation.

1. Motions Made Pursuant to Section 5(B). Where good cause for vacating the Interim Stipulation and lifting the Stay is alleged pursuant to Sections 5(B)(2)(i) or 5(B)(2)(ii), *supra*, Plaintiffs may not file a motion to vacate the Interim Stipulation, lift the Stay and reinstate the action until the following conditions are also satisfied:

   i. At least six (6) months shall have passed since the Effective Date;

   ii. Plaintiffs' attorneys have provided Defendants' attorneys with a written notice setting forth with specificity the facts that support Plaintiffs' belief that DOCCS is not acting in substantial conformity with the terms of Sections 2 and 4 of this Stipulation and, thereafter, afforded DOCCS thirty (30) days to confer, respond to and/or remedy the alleged nonconformance; and

   iii. Following such thirty (30) day period for DOCCS to respond and/or remedy the alleged nonconformance, in the event that Plaintiffs' attorneys believe that substantial nonconformance exists and/or persists, Plaintiffs' attorneys may thereafter move the Court upon twenty (20) days written notice of motion, for an order lifting the Stay and returning the case to the Court's active calendar for motions, discovery and trial.

2. Motions Made Pursuant to Section 5(C). Where Plaintiffs seek to lift the Stay due to the exhaustion of good faith negotiations pursuant to Section 5(C), *supra*, Plaintiffs may not file a motion to lift the Stay and reinstate the action until the following conditions are also satisfied:

   i. At least twelve (12) months shall have passed since the Effective Date;

   ii. Plaintiffs' attorneys have provided Defendants' attorneys with a written notice setting forth with specificity the facts that support Plaintiffs' belief that the parties have exhausted good faith negotiations and, thereafter, afford DOCCS thirty (30) days to confer and respond to the allegation that negotiations have been exhausted; and

   iii. Following such thirty (30) day period for DOCCS to respond to the alleged exhausted negotiation, in the event that Plaintiffs' attorneys believe that further negotiations would be futile, Plaintiffs' attorneys may thereafter move the Court upon twenty (20) days written notice of motion, for an order lifting the Stay and returning the case to the Court's active calendar for motions, discovery and trial.

SECTION 6. NO ADMISSIONS AND OTHER RESERVATIONS.

This Stipulation and its contents do not constitute (i) an admission by Defendants or DOCCS of any constitutional violation or other violation of law or wrongdoing; (ii) an admission by Defendants or DOCCS that any action, policy, practice or procedure challenged in this action violates or fails to comply with any constitutional requirement or any other applicable law, rule or regulation; or (iii) an admission by Plaintiffs that any action, policy, practice or procedure challenged in this action is constitutional. This Stipulation and its contents are not a waiver of Plaintiffs' individual claims for monetary damages or any other individual claims that might arise after the Effective Date.

SECTION 7. CONCLUSION OF STAY PERIOD.

Unless the parties agree otherwise during the Stay Period, at the conclusion of the Stay Period the litigation will be removed from the suspense calendar and returned to active litigation status, in which case the parties shall propose to the Court a reasonable schedule for motions, responsive pleadings, discovery and trial.

SECTION 8. EFFECTIVE DATE.

This Stipulation shall be submitted to the Court by counsel to the parties and shall become effective on the date when the so-ordered Stipulation is entered by the Court.

SECTION 9. EXECUTION OF THE INTERIM STIPULATION.

This Interim Stipulation may be executed in multiple counterparts, and faxed and/or emailed signatures will be valid and enforceable, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

Dated: New York, New York
January 24, 2014

NEW YORK CIVIL LIBERTIES UNION
Counsel to Plaintiffs

By _____
Taylor Pendergrass
Christopher Dunn

By _____
Alexander A. Reinert
Counsel to Plaintiffs
55 Fifth Avenue, Room 938
New York, New York 10003

MORRISON & FOERSTER LLP
Attorneys for Plaintiffs

By _____
David Fioccola

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorneys for Defendants

By _____
Richard W. Brewster
Assistant Attorney General

NEW YORK STATE
DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION

By _____
Maureen E. Boll 1/27/14
Deputy Commissioner and Counsel

New York, New York
So Ordered: Feb 19, 2014

_____
Shira A. Scheindlin
United States District Judge