

**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

C.B., by and through his next friend, Charleston DePriest, et al.)	Civil Action No. 3:10cv663
)	
)	
Plaintiffs,)	1st REPORT OF MONITORS
)	pursuant to:
)	CLASS ACTION
)	<u>CONSENT DECREE</u>
v.)	
)	August 27, 2012
Walnut Grove Correctional Authority, et al.)	Supplemented:
)	October 2, 2012
)	
Defendants.)	
)	

I. INTRODUCTION

Pursuant to Section IV of the above referenced *Consent Decree*, the Monitors are to submit reports to counsel every four months on the defendants' compliance with provisions of the decree. The Monitors requested an extension from counsel for an additional month in which to file the first report. After receiving comments from counsel, their comments were incorporated, and additional updated compliance information was added in order to make the report as current as possible. This first report chronicles the monitors' activities since approval of the decree on March 26, 2012, and provides observations and findings on the specific provisions of the substantive remedial measures provided in Section III of the *Consent Decree*.

II. METHODOLOGY

During the first two weeks of April 2012, the Monitors had numerous telephonic conference contacts with the Deputy Commissioner of the Mississippi Department of Corrections (MDOC) in order to establish monitoring protocols and to set an initial site inspection of the Walnut Grove Youth Correctional Facility (WGYCF) for Monitor Martin. The

initial site inspection by Monitor Martin occurred on May 7-8, 2012. The site inspection also included a meeting with the MDOC Commissioner to discuss monitoring protocols and initial observations of the site inspection. On May 17, 2012, Monitor Martin filed a MEMORANDUM with the parties (see Attachment 1) setting out a series of observations and accompanying recommendations for the development and implementation of interim measures related to facility staffing, suicide risk management, and out-of-cell activities for the inmate population.

Subsequent to the filing of the May Memorandum, the Monitors worked with the Deputy Commissioner to implement a series of interim measures at WGYCF. On June 25-16, 2012, both Monitors met with the Commissioner and the Deputy Commissioner to address these interim measures and the management of the Youthful Offender Unit pursuant to the terms of the *Memorandum of Agreement Mental Health–Youthful Offender Unit* (MOA Youth Offender).

On August 1, 2012, the Monitors submitted an exhaustive document request to the Deputy Commissioner for timely information related to the operation and management of the WGYCF (see Attachment 2). This information was provided in a timely fashion and has been reviewed in detail for incorporation of the 1st Report.

III. SUMMARY

As was clearly set out in the Court's *Order Approving Settlement*, WGYCF, in March 2012, was a troubled facility that had become unsafe for both inmates and staff. While it remains a troubled facility, MDOC officials, in collaboration with the Monitors, are now in the process of identifying and implementing sound management strategies that will hopefully and steadily advance remedial measures intended to ameliorate these unsafe conditions. The Monitors fully acknowledge that disruptive incidents at the facility through the first six months of the *Consent Decree* have continued at alarming levels. However, because of full transparency by MDOC

officials and very active collaboration between those officials and the Monitors, concrete steps are being taken on a daily basis to abate in the coming months the unsafe conditions that have existed at WGYCF at varying levels for many years.

In May 2012, the Deputy Commissioner in collaboration with the Monitors developed and implemented staffing protocols that enhanced supervision of the housing units by more effective deployment of available staff. Immediate steps were also taken to increase out-of-cell time for inmates at the facility. Finally, the Deputy Commissioner began to work actively with the health care providers to put in place a new set of suicide prevention policies and procedures. While these measures were being advanced, MDOC officials terminated their contract to manage and operate the facility with the GEO Group, Inc. and entered into a new contract, which took effect on July 2, 2012, with the Management and Training Corporation (MTC). On June 25, 2012, the Monitors, in collaboration with the Deputy Commissioner, met with the MTC management officials to provide our recommendations to increase the staffing complement at the facility. We engaged in very open and concrete discussions with the MTC officials on key remedial measures of the *Consent Decree*. Also present at this meeting were corporate officials with the Health Assurance, LLC. (HAC), the private health care provider for the facility. The HAC officials provided a briefing on the status of suicide risk management initiatives being taken at the facility.

In early September, after discussions between the Deputy Commissioner and the Monitors, MTC and MDOC developed an Action Plan currently being implemented at the facility. It included, among other things, the following: 1) deployment of additional supervisors to mentor and train WGYCF officers and their supervisors; 2) deployment at the facility of a MDOC Corrections Investigation Division Investigator; 3) temporary assignment of MDOC

STG Coordinators at the facility to identify gang issues; 4) assignment of additional supervisory personnel to housing units with close custody offenders; 5) transfer from the facility of a select number of inmates with significant histories of disruptive/assaultive behavior. MTC has also retained a consultant to monitor compliance with the *Consent Decree*.

IV. OBSERVATIONS AND FINDINGS ON SUBSTANTIVE REMEDIAL MEASURES (*Consent Decree, Section III*)

A. Classification and Housing System

(1) The MDOC will utilize a classification system that ensures prisoners are appropriately and safely housed within WGYCF. Recommended Compliance Finding: **Partial Compliance**

Observations: The MDOC already has an external classification system that has been evaluated and validated some years ago. What is missing at the WGYCF is an effective internal classification system that ensures prisoners are properly assigned to various housing units based on their risk and security needs. This issue has been problematic over the past few years with the age restriction placed on the WGYCF that requires prisoners to be assigned to the facility until they reach the age of 22. There are a few exceptions to this restriction for youth with significant medical and mental health needs that cannot be met at WGYCF. This age restriction requires a wide array of security populations to exist at the facility. As of last month, approximately 250 prisoners were classified as close custody with another 625 in medium and another 200 in minimum custody. The facility has a general housing plan that separates the youth in housing units according to their custody level and protective care needs. But this internal system needs to be audited and modified to ensure that no mishousing is occurring. The MDOC will also be able to transfer in a more stable and older inmate population to the facility as the age limit is removed. The Monitor will work with the MDOC and the facility operator to develop and implement an internal system over the next 90 days.

B. Protection from Harm

(1) Reasonably Safe Living Conditions. Recommended Compliance Finding: **Non-Compliance**

Observations: During the month of July 2012, there were no less than fifteen inmate/inmate assaults. Seven of these incidents involved prison made weapons resulting in injuries to no less than four inmates. A number of these incidents involved multiple inmates assaulting a single inmate. One of the incidents (July 17, 2012-Unit 4D) involved officer complicity which resulted in three officers being placed on administrative leave (see Attachment 3). Finally, a number of these incidents resulted in intervention staff applications of force including use of chemical agents.

(2) Sufficient Numbers of Adequately Trained Staff. Recommended Compliance Finding: **Partial Compliance**

Observations: As aforementioned, the Monitors and the Deputy Commissioner met with MTC officials on June 25, 2012 to address the security staffing complement for the facility. The staffing patterns recommended for the housing units were established. While MTC officials have not yet hired and trained sufficient staff to fully implement the recommended staffing plan, they have made progress in the actual staffing of the housing units. A review of the daily shift rosters for the last week of July indicates increased deployment of officers according to custody needs. For example, on July 27, 2012, the five occupied housing units had officers assigned to each pod with two of the units having an assigned supervisor. Such a staffing pattern based on a prior review of comparable facility documents for April-May 2012, represented a significant improvement in staffing. To be sure, there remain obvious staffing deficiencies such as the facility operating without any assigned Utility Officers; however, MTC officials remain in a transition period of hiring, training, and assigning new staff to the facility.

(3-12) Use of Force and Chemical Agents. Recommended Compliance Finding: **Partial Compliance**

Observations: A review of the MDOC SOP 16-13-01, Use of Force indicates that it generally comports with the relevant provisions of the *Consent Decree*. A review of SOP 16-23-01, Use of OC or Chemical Agents, indicates that it generally comports with the relevant provisions of the *Consent Decree*, with the following exceptions: 1) the SOP does not include a provision for weighing chemical agent containers at the beginning and conclusion of a shift and that such weight be documented in the Log Book (a review of the Restraint Equipment Log Book for July contained no such documentation notwithstanding documented instances of use of OC for July); and 2) the SOP does not contain a provision requiring staff

in a planned use of force to check for medical contra-indications for use of chemical agents.

A review of all use of force incidents for July 2012 indicates that officers are providing written detailed descriptions of their physical intervention and that each incident is subject to review by appropriate supervising officials.

While both SOP 16-13-01 (Use of Force) and SOP 16-23-01 (Chemical Agents) require training/certification for any staff utilizing chemical agents, these provisions were seriously violated in an incident that occurred at WGYCF on August 4, 2012 (see Attachment 4). This was an incident precipitated by a group of inmates on Unit 4 Pod A refusing to return to their cells. Two facility officials (including the Warden) utilized chemical agents and were not certified to do so. In addition, there is evidence that indicates that the amount of chemical agent deployed was excessive. This matter is currently subject to a full investigation by MDOC officials.

(13) Prohibition on Inmates to Enforce Rules or Impose Discipline of Other Inmates. Recommended Compliance Finding: **Non-Compliance**

Observations: On July 17, 2012, an incident occurred on Unit 4 Delta (segregation) wherein officers allowed inmates to assault two inmates during a delivery of food trays. As a result of this incident three officers were placed administrative leave pending investigation of this incident (a review of the August 2, 2012, Master Staffing Roster indicates that two of the three officers are no longer employed at WGYCF).

(14) Protection of Inmates from Abuse, Harassment, and Punishment on the Basis of Their Actual or Perceived Sexual Orientation, Gender Identity, and Gender Non-Conformity. Recommended Compliance Finding: **Deferred**

Observations: On July 16, 2012, facility officials were notified of allegations related to an offender who was subject to harassment/threats to perform sexual favors. This matter was fully investigated and was subject to the MDOC PREA Protocols (see Attachment 5).

(15) Prohibition of Forcing Inmates to Engage in Physical Exertion that Inflicts Pain or Discomfort. Recommended Compliance Finding: **Deferred**

Observations: According to the Deputy Commissioner all such practices are now strictly prohibited and there have been no allegations that any such practices have occurred during the term of monitoring.

C. Long-Term Cell Confinement

(1) MDOC will not subject prisoners to long-term confinement except in conformity with this consent decree. Recommended Compliance Finding: **Compliance**

(2) Prisoners may be held in long-term cell confinement only for the reasons specified under this section. Recommended Compliance Finding: **Compliance**

(3) Prisoners *may not* be held in long-term cell confinement for the reasons specified under this section. Recommended Compliance Finding: **Compliance**

(4) The MDOC must review all prisoners under long-term confinement every 90 days. Recommended Compliance Finding: **Partial Compliance**

(5) The MDOC must maintain a list of all prisoners held in long-term confinement listing the date of admission, the reason for placement and the date of the last review. Recommended Compliance Finding: **Partial Compliance**

Observations: As of August 27, 2012, there were six prisoners assigned to long-term cell confinement also known as long-term segregation. The electronic documents that list the date the inmate was assigned to long-term segregation, the basis for the admission, and the 90-day reviews were provided to the Monitors. A review of these documents showed that MDOC and WGYCF were in compliance with reasons for admission as stated in the consent agreement. Four of the five cases had their 90-day reviews completed in a timely manner. There is one case where the 90-day period has not been met. Although the MDOC can produce lists of these inmates on a case by case basis, there is not a simple listing of the long-term segregation inmates as required under subsection (5). To reach full compliance the MDOC needs to maintain a table as shown below and ensure the 90 day review is completed within 90 days for all prisoners.

List of Prisoners in Long-Term Segregation at WGYCF

Last Name	First Name	Date Admitted	Days in Seg	Next Review Date	Reason
Williams	Willie	9/20/11	342	10/17/12	Disruptive Gang Activity
Bradley	Shawn	7/20/11	404	10/16/12	Multiple Violent Acts/Gang
Callaway	Dillon	6/12/12	76	9/12/12	Multiple Violent Acts/Gang
Davis	Jamarcus	3/27/12	153	10/20/12	Multiple Weapons/Gang
Coleman	Kenyatta	9/8/12	80	9/8/12	Weapons Capable of Inflicting Death
Reynolds	Arsenio	5/18/12	101	8/20/12	Violent Aggressive Behavior

D. Programming and Behavior Management

(1) Removal of the Paramilitary Elements of the Regimented Inmate Discipline Program (RID). Recommended Compliance Finding: **Deferred**

Observation: The Monitors have been advised by the Deputy Commissioner that the paramilitary elements have been removed from the RID program.

(2) Graduated Sanctions for Rule Violations and Positive Incentives for Good Behavior. Recommended Compliance Finding: **Substantial Compliance**

Observations: SOP 18-01-01 Disciplinary Procedures (Effective 8/1/12) provide a system of graduated sanctions for rule violations. A review of the Disciplinary Hearing Log for July 2012 indicates that sanctions are consistently imposed in accord with SOP 18-01-01.

(3) Out-of-Cell Time and Outside Recreation. Recommended Compliance Finding: **Deferred**

Observations: Based on a schedule issued by the WGYCF Deputy Warden on August 8, 2012, out-of-cell for general population inmates will meet the requirements of this provision if successfully implemented. This schedule represents a vast improvement for out-of-cell time for general population inmates based on the facility practices as observed during Monitor Martin's site inspection on May 8, 2012.

E. Disciplinary Due Process and Grievances

- (1) Due Process for Imposition of Disciplinary Sanctions. Recommended Compliance Finding: **Deferred**

Observations: SOP 18-01-01 Disciplinary Procedures (Effective 8/1/12) meet the requirements of this provision. This provision will be subject to monitoring of hearing packets and observation of actual hearings.

- (2) Adequate Grievance Procedures. Recommended Compliance Finding: **Deferred**

Observations: SOP 20-08-01 Grievance Procedures (Effective 8/1/12) meet the requirements of this provision. This provision will be subject to monitoring of actual grievances and the manner in which they are processed. The Master Roster of August 2, 2012, does not have a designated position for a grievance officer (Legal Claims Adjudicator). Future monitoring will identify the personnel assigned this responsibility and confer with such staff during site inspections.

- (3) Notification to Inmates of Facility Rules. Recommended Compliance Finding: **Deferred**

Observations: SOP 18-01-01 Disciplinary Procedures include the following provision: "All program rules and regulations pertaining to offenders are conspicuously posted in the facility or included in the handbook that is accessible to all offenders and staff." Future monitoring will confirm implementation of this provision during site inspections.

F. Suicide Prevention

- (1-4) Development of Suicide Prevention Policy which Includes Appropriate Housing, Out-of-Cell Activity, Review Process, and Transfer for Intensive Mental Health Services. Recommended Compliance Finding: **Deferred**

Observations: As set out in Monitor Martin's MEMORANDUM of May 17, 2012, suicide risk management at the facility was clearly deficient. Since that time, SOP 16-30: Suicide Prevention Program was developed and subsequently adopted on July 2, 2012. SOP 16-30 meets all the relevant provisions of the Consent Decree.

A review of all July 2012 incidents involving any level of suicide risk reflect a high incidence of suicidal thoughts and gestures by WGYCF inmates as there were no less than thirty-eight such incidents. There were three of these incidents that went beyond suicidal thoughts (one inmate cut his wrists while two inmates were observed with ligatures). A review of the medical health care records related to these incidents indicate timely assessments are being made by mental health care professionals to determine the level of risks/precautions for managing these inmates. It is evident from the review of the health care records that some inmates continue to feign suicidal thoughts knowing they will be removed at least temporarily from their housing assignment, e.g., "I was just trying to get out of the heat on the zone." This pattern will be closely monitored as it will hopefully diminish as the housing units are made safer by improved staffing and supervision.

G. Medical Care

- (1) Provision of Adequate, Appropriate, and Timely Medical and Dental Care. Recommended Compliance Finding: **Deferred**

Observation: The Monitors will discuss with the parties how this provision will be monitored, i.e., possible retention of a qualified health care professional to provide the necessary expertise to allow the monitors to enter compliance findings.

- (2) Prohibition on Housing Inmates with "Serious Mental Illness." Recommended Compliance Finding: **Deferred**

Observation: In discussions with the Health Services Administrator (HSA) for WGYCF, it is evident that protocols need to be developed to implement this provision of the *Consent Decree*. The HSA has advised that the facility has 115 Level of Care (LOC)-C inmates (LOC-C inmates are defined as "patients whose mental condition are stable...") who carry a diagnosis that meets the *Consent Decree* definition of "Serious Mental Illness" ("SMI"). The HSA has stated that all these 115 "SMI" inmates have been recently evaluated as "stable and able to continue to be housed at Walnut Grove (see Attachment 6). Given that Section III.G. (2) of the *Consent Decree* appears to prohibit the use of WGYCF "for long-term housing of prisoners with Serious Mental Illness," the Monitors seek guidance from the parties and the Court on the continued housing of the 115 SMIs at the facility. We have discussed this issue with the Deputy Commissioner who is receptive to developing a set of protocols to ensure that these inmates may be safely and appropriately managed at WGYCF. At a minimum, the protocols would require: 1)30 day

reviews by a mental health care professional to determine whether they remain stable; 2) heightened reviews for placement of SMIs in segregation; 3) consultation with a mental health care professional during the RVR disciplinary hearing process. With these additional safeguards, the Monitors recommend to the parties and the Court that these 115 SMI inmates remain housed at WGYCF so long as they can be safely and appropriately managed there.

- (3) Out-of-Cell Activity for Inmates Who Are in Need of Medical Care. Recommended Compliance Finding: **Deferred**

Observation: A specific protocol will need to be developed to define operationally what this provision requires.

H. Contract Monitoring and Revisions

- (1) Development and Implementation of Comprehensive Contract Monitoring Policies and Procedures. Recommended Compliance Finding: **Partial Compliance**

Observations: SOP 16-29-01 Contract Monitoring Program (Effective 2/15/12) provides for the monitoring of the contracts with MCT and Health Assurance, LLC. A review of the July 2012 Contract Monitoring Worksheet for WGYCF suggests a comprehensive monitoring process as it contains 308 audit items encompassing virtually every operational area, including health care and suicide prevention/intervention. In addition to the MDOC contract monitoring program, Health Assurance, LLC has contracted with AdminPros, LLC to monitor compliance with the health care provisions of the Consent Decree.

- (2) MDOC will revise the contracts currently in place with the operator of WGYCF and the health care provider at WGYCF to incorporate the terms of the Consent Decree. Recommended Compliance Finding: **Deferred**

Observation: To date, the Monitors have not been provided with the contracts.

/s/

Steve J. Martin

/s/

James Austin

October 1, 2012
Date