Settlement Agreement Between the U.S. Department of Justice and Wicomico County, Maryland Regarding the Wicomico County Detention Center

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I. INTRODUCTION

On October 5, 2000, the United States notified Wicomico County officials of its intent to investigate conditions of confinement at the Wicomico County Detention Center, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. Section 1997. On January 26-28, 2001, the United States conducted an inspection of the Wicomico County Detention Center with consultants in the fields of penology, correctional health care, environmental health and safety, and mental health care.

Throughout the course of the investigation and inspection of the facilities, the United States received complete cooperation and access to all facilities and documents from Wicomico County Department of Corrections Director Douglas C. Devenyns and his staff and County Attorney Edgar A. Baker, Jr.

On September 9, 2002, the United States issued a findings letter ("Findings Letter"), pursuant to 42 U.S.C. Section 1997 (a)(1), which concluded that certain conditions in the Wicomico County Detention Center violated the constitutional rights of detainees and recommended remedial measures.

The United States acknowledges that since the Findings Letter was issued and since the inspection of the facility was conducted, the Wicomico County Detention Center has drafted and/or implemented many of the new and revised policies and procedures required by this Settlement Agreement ("Agreement").

The parties agree that this Agreement does not constitute an admission by the County of the truth of findings contained in the Findings Letter and does not constitute an admission of liability by the County. The parties enter into this Agreement solely for the purpose of avoiding the risks and burdens of litigation.

II. DEFINITIONS

1. "BAU" shall mean the Behavior Adjustment Unit of the Wicomico County Detention Center, which is used for disciplinary segregation.
2. "County" shall mean Wicomico County, Maryland, the President of the Wicomico County Council in his official capacity, the Director of the Wicomico County Department of Corrections in

his official capacity, and their agents and successors in office.

3. "DOJ" shall mean the United States Department of Justice.

4. "Effective Date" shall mean the date this Agreement is signed by all the parties.

5. "Inmates" or "detainees" shall mean individuals sentenced to, incarcerated in, detained at, or otherwise confined at the Wicomico County Detention Center.

6. "Including" shall mean "including, but not limited to."

7. "Qualified Medical Professional" shall mean an individual with a minimum of masters-level education and training in medicine or nursing, who is currently licensed by the State of Maryland to deliver those health care services they have undertaken to provide.

8. "Qualified Medical Workers" and "Qualified Medical Staff" shall mean individuals who have completed an educational program at an accredited school of nursing, and who have complied with licensing requirements in the State of Maryland; or, individuals with substantially equivalent education and training, and two years of experience providing health care services.

9. "Qualified Mental Health Professional" shall mean: (a) an individual with a minimum of masters-level education and training in psychiatry, psychology, counseling, social work or psychiatric nursing, who is currently licensed by the State of Maryland to deliver those mental health services they have undertaken to provide; or, (b) a registered nurse with a bachelor's degree in nursing with a minimum of two (2) years psychiatric experience, or a registered nurse with a minimum of five (5) years psychiatric experience.

10. "Qualified Mental Health Workers" and "Qualified Mental Health Staff" shall mean individuals with a minimum of a bachelor's degree and two years of experience providing mental health services.

11. "Special needs inmates" shall mean those inmates who are suicidal, mentally ill, mentally retarded, intoxicated, seriously or chronically ill, physically disabled, or otherwise a danger to themselves.

12. "Security staff" shall mean all employees, irrespective of job title, whose regular duties include supervision of inmates at the Wicomico County Detention Center.

13. "Semi-annual Report" shall mean reports the Wicomico County Detention Center will submit to the DOJ to demonstrate its compliance with this Agreement as specified in Paragraphs 53 and 54.

14. "Use of Force" shall mean (1) the use of chemical agents; (2) the non-routine use of restraints (i.e., use of restraints for purposes other than routine purposes such as handcuffing inmates for transport); (3) the use of deadly force; (4) any physical contact with an inmate for the purpose of controlling the inmate's movement or behavior, provided, however, that the term does not include escorting a person with no or minimal resistance; and (5) the use of any weapon (firearm, baton, etc.) even where no contact results (e.g., discharge of a firearm) provided, however, that threatening to use a weapon by waving or brandishing it shall not constitute a use of force.

15. "Wicomico County Detention Center" or "WCDC" shall mean the jail facility located at 411 Naylor Mill Road, Salisbury, Maryland.

III. SUBSTANTIVE REMEDIAL MEASURES

A. MEDICAL AND MENTAL HEALTH CARE

General Policy

16. The County shall continue to ensure that inmates receive necessary medical and mental health care, regardless of their ability to pay.

17. The County shall continue to implement its written policies and procedures governing health care in accordance with applicable Local, State and Federal law governing the management of correctional institutions, including policies regarding: initial inmate health screening and health assessments; staffing levels and job descriptions; sick call and other access to medical services; housing of special needs inmates; distribution and management of medications; chronic care; emergency care; dental care; mental health care; communicable disease testing and control; medical records; staff training; quality control/improvement; and medical grievance procedures.

Screening and Specialty Care Referrals

18. The County shall continue to conduct medical and mental health intake screening of all inmates within 24 hours of admission to the facility and a health assessment and examination within 14 days of admission to the facility and make appropriate referrals for treatment or evaluation.

19. The County shall continue to screen inmates for tuberculosis at intake, including performing a tuberculosis skin test or obtaining written documentation of a tuberculosis skin test conducted within three months preceding the inmate's admission.

20. The County shall continue to perform mental health evaluations for all inmates whose histories or whose responses to initial screening questions indicate a need for such an evaluation. The County shall make timely and appropriate referrals for specialty care.

Sick Call and Staffing

21. The County shall continue to ensure all inmates have adequate access to sick call.

22. The County shall continue to provide access to sick call request forms to inmates housed in the general population and ensure sick call request forms are reviewed by qualified medical staff in accordance with the standards of the National Commission on Correctional Health Care, which require review of such forms by qualified medical staff within 24 hours of the submission of the request. For non-emergency requests, the County shall ensure inmates receive treatment by a qualified medical professional in a manner consistent with current generally accepted professional standards within 24 hours of the review of the sick call request (or within 72 hours on weekends).

23. The County shall continue to require qualified medical staff to conduct daily sick call rounds in the BAU.

24. The County shall continue to retain adequate qualified medical staff to provide necessary medical treatment and shall ensure that all sick call examinations are conducted by appropriately qualified and licensed medical professionals or medical staff.

25. The County shall ensure delivery of necessary mental health services and respond promptly to requests from security staff for mental health information/intervention.

26. Mental health workers shall speak routinely with security staff in all housing units, including the BAU, to assess whether inmates in the general population, who have not self-identified as requiring mental health care, should be evaluated by a mental health professional.

Chronic and Critical Care

27. The County shall continue to ensure that inmates with serious and/or chronic illnesses, including mental illnesses, receive necessary diagnosis, monitoring and treatment. The County shall provide and document routine tests and follow-up appointments when necessary and specify the minimum frequency and scope of evaluation for such appointments.

28. The County shall develop and implement a written protocol for monitoring and treating inmates known to have serious and/or chronic illnesses. The protocol shall be submitted for DOJ review and approval within 120 days of the effective date of this Agreement.

29. The County shall develop and implement a written policy on housing special needs inmates. At a minimum, the revised policy shall:

(a) prescribe a protocol to identify inmates requiring heightened medical and/or mental health monitoring;

(b) prescribe a method of triaging these special needs inmates for classification and assigning housing based on assessed need; and

(c) specify a means of providing enhanced monitoring for inmates who require such close monitoring, pursuant to the County's policies, but for whom no space is available in the housing unit designated for special needs housing.

Mental Health Treatment

30. The County shall continue to provide timely and appropriate mental health treatment. The County shall ensure that an individual mental health treatment plan is prepared in a timely manner by qualified mental health professionals for each inmate requiring treatment for mental illness.

31. The County shall continue to use restraints during mental health treatment only for legitimate security purposes or for clinically appropriate reasons.

Medication Administration

32. The County shall ensure that prescription medications are administered to inmates as prescribed except when refused by the inmate. The County shall ensure the continuation of prescription medications which are deemed necessary by its qualified medical professional as soon as is reasonably possible, based on the qualified medical professional's judgment. Such prescriptions will be administered only after verification by the prescribing authority, unless immediate administration is necessary for the preservation of life.

33. The County shall document the administration of medication, particularly any missed or refused doses of medication. A nurse shall review all medication administration records on a routine basis.

Medical Records

34. The County shall continue to maintain all of its medical and mental health records in a confidential and well-organized manner.

35. The County shall continue to implement its protocol for recording and maintaining appropriate information in inmates' medical and mental health records. The County shall ensure that said protocol is reduced to writing within 90 days of the effective date of this Agreement. When permissible under Federal, State and Local law, the County shall release inmates' records to outside agencies when determined pertinent and necessary by a qualified medical professional. When inmates are sent for medical or mental health treatment by outside agencies, the County shall request copies of the records regarding such treatment and use its best efforts to obtain such records.

36. Access to individual inmate medical and mental health records shall be restricted to medical and mental health personnel, the WCDC Director, and the WCDC Deputy Director, and such information shall be shared with security staff only when a qualified medical or mental health professional determines this is necessary.

Quality Assurance/Improvement

37. The County shall develop and implement a written quality assurance/improvement program to examine and assess all aspects of the WCDC's medical and mental health operations on an ongoing basis within 180 days of the effective date of this Agreement. This program shall include routine physician and psychiatrist review of charts, logs, and other records maintained by qualified medical and mental health professionals to assure appropriateness of decision-making and documentation.

38. When the County has the authority to do so, the County shall request an autopsy for every inmate who dies while in the WCDC or upon transfer to an outside hospital as part of the County's quality assurance/improvement program. The County shall also conduct a critical incident/mortality review of every such inmate death. Critical incident review teams shall involve physicians, nurses, and other relevant County personnel, including WCDC security staff, and shall seek to determine whether there was any identifiable pattern of circumstances, which might be avoided to prevent similar deaths in the future. The review team shall also examine events immediately surrounding the inmate death to determine if appropriate interventions were undertaken.

B. SECURITY, SUPERVISION AND PROTECTION FROM HARM

Use of Force Policies

39. The County shall revise and augment its policies on the use of force to provide additional operational guidance to staff regarding the use of force. The revised use of force policies shall be submitted for DOJ review and approval within 90 days of the effective date of this Agreement. The policies shall:

(a) require staff to report all uses of force, including chemical agents and non-routine use of restraints;

(b) require use of force reports to include a detailed description of the facts and circumstances of the incident and the inmate and officer's actions;

(c) provide that staff are subject to discipline for failure to report a use of force when policy requires such a report;

(d) provide for a preliminary investigation of all uses of force by a supervisor who was not involved in the use of force, including interviews of the inmate, witnesses, and all involved officers, except when such interviews of staff would be inappropriate in light of Garrity v. New Jersey, 385 U.S. 493 (1967);

(e) provide for the review of all use of force preliminary investigations and by the Director or his or her designee and the full investigation of any use of force deemed unnecessary or excessive; an investigation of all failures to report a use of force will be conducted thoroughly and appropriately by trained investigators who were not involved in the use of force;

(f) require that, when feasible, medical professionals are consulted regarding any contra-indications before any planned use of chemical agents on an inmate;

(g) require that, when feasible, mental health professionals are consulted before any planned use of force or non-routine use of restraints on any inmate with a diagnosis of mental illness;

(h) provide that illiterate inmates may report allegations of the use of excessive force orally to any staff member, who shall reduce the report to writing;

(i) relate the generally accepted force options available to security staff for use in standard situations;

(j) provide that mentally ill inmates who must be restrained shall be monitored by a qualified mental health professional as soon after restraint as practicable and at appropriate intervals thereafter; and

(k) provide that, if WCDC returns the restraint chair to service, it must develop written policies and procedures regarding its use, which shall be subject to DOJ review and approval.

40. Security staff shall receive special training on all revised use of force policies.

Security Staffing and Training

41. The County shall hire and train sufficient security staff to provide adequate supervision of inmates in every housing unit, including escorting inmates and conducting adequate rounding.

42. The County shall implement a system for the allocation of security staff throughout WCDC which facilitates an appropriate distribution of staffing.

43. The County shall continue to require all security staff to attend sufficient training, in accordance with the requirements of the Maryland Correctional Training Commission, including training in de-escalation techniques, and the use of restraints. The County will continue to pursue innovative staff training techniques, and, as budgetary resources permit, will attempt to increase staff in-service training to 40 hours of training per person per year.

44. The County shall continue to maintain individual training records for all staff, documenting the date and topic of all pre-service and in-service training completed after the effective date of this Agreement.

45. The County shall designate staff member(s) and train them to conduct internal security audits. These security audits shall, at a minimum, include a review of the following: staffing allocation, including a comparison of a sample of staffing rosters to security logs; the classification and housing of inmates; injuries to staff and inmates; trends in inmate discipline and grievances; and trends in the use of force. A security audit shall be conducted every six months for the duration of this Agreement. This audit is a general overview designed to reveal any systemic security issues which need to be addressed at the WCDC. Thus, any reporting requirement in connection with this section shall be comprised of an aggregate assessment compiled by the responsible staff member.

Classification

46. The County shall continue to use its classification system to evaluate the security risks posed by inmates and ensure that inmates are housed based on their classification, including, at a

minimum, that maximum security inmates are not housed with minimum security inmates. This procedure shall also ensure that inmates who are only in the WCDC's custody on weekends receive appropriate housing assignments.

C. ENVIRONMENTAL HEALTH AND SAFETY

Food Service

47. The County shall ensure that food service at the WCDC is operated in a safe and hygienic manner. The County shall develop and implement a written food service plan and shall provide the plan to DOJ for its review and approval within 90 days of the effective date of this Agreement. To reduce the risks of food-borne illnesses, the DOJ shall provide technical assistance to the County in developing a plan to address food preparation and handling procedures, sanitation of food preparation areas, and training of food service workers.

Sanitation and Maintenance

48. The County shall continue to ensure that the WCDC is maintained in a clean and sanitary manner. The County shall develop and implement a written sanitation plan within 90 days of the effective date of this Agreement, which shall require routine cleaning and inspection of inmate-occupied areas.

49. The County shall continue to ensure that maintenance requests are responded to in a timely manner. The County shall develop a written preventative maintenance plan within 90 days of the effective date of this Agreement, which shall specify a protocol for accurate and timely documentation of all maintenance requests and responses.

Personal Hygiene and Laundry

50. The County shall continue to provide essential personal hygiene items to each inmate at intake and continue to ensure that such items are made available for purchase by all inmates and are provided to indigent inmates free of charge, except where any item may pose a safety threat.

51. The County shall continue to ensure that general population and BAU inmates are provided clean clothing and bedding on a reasonably regular basis. The County shall continue to ensure that inmates are provided with two sets of clothing, as required by current policy.

Physical Plant

52. The County shall continue to ensure that hot water provided to inmate-occupied areas is maintained at a temperature below scalding temperature.

IV. REPORTING REQUIREMENTS

53. The County, through the Director of the Department of Corrections, shall report semi-annually to DOJ concerning its compliance with the terms of the Agreement (the "Semi-annual Report"). The first Semi-annual Report shall be due six months from the date of this Agreement, and every six months thereafter, until the Agreement is terminated as provided in paragraphs 59 and 60. At a minimum, the Semi-annual Report shall include the following sections:

(a) a general narrative summary of the County's compliance with the terms of this Agreement; where applicable, the summary shall specifically note when the County has been unable to meet any requested reporting timeframe specified in this Agreement.

(b) a training summary, in which the County reports the number of hours and type of training provided to staff during the reporting period, separately by supervisory and non-supervisory staff, and, if applicable, separately for security, medical, mental health and civilian staff.

(c) copies of supporting data and/or reports as specifically requested within this Agreement and itemized in paragraph 54.

54. The Semi-annual Report shall include the following documentation and reports:

(a) a status report regarding the monitoring and treatment of inmates with serious and/or chronic conditions.

(b) reports on both medical and mental health staffing.

(c) a report of all mortality statistics for inmates who die in custody or upon transfer to an outside hospital, including the number of deaths; date of death; age; and suspected cause of injury or death.

(d) an update on steps taken to hire and retain qualified security staff.

55. During the term of this Agreement, upon reasonable notice, the DOJ and its consultants shall have access to the WCDC and to its records to the extent necessary to assure compliance with the specific terms of this Agreement. Upon request, the County shall provide to the DOJ, within a

reasonable time, copies of, or access to, WCDC documents or records and/or documents or records created by any agent or contractor authorized by Wicomico County to work or to provide services at the WCDC.

56. DOJ shall have the right to conduct confidential interviews with inmates. The County shall continue to permit inmates to send and to receive confidential legal mail to attorneys of record, courts and to representatives of the Department of Justice.

V. IMPLEMENTATION, ENFORCEMENT and TERMINATION

57. The County shall provide to the DOJ each plan, policy, form and/or training materials revised pursuant to this Agreement within 90 days, unless another time is specified herein. Any subsequent revisions to these materials shall also be submitted to the DOJ during the term of this Agreement. Any such plans, policies, procedures, forms and/or training materials for which this Agreement requires review and approval by the DOJ shall be expeditiously reviewed by the DOJ. The DOJ shall not unreasonably withhold any such approval. If DOJ does not provide a written objection to said materials within Forty-Five (45) days of receipt of same, the materials will be deemed approved by DOJ.

58. In the event that DOJ has additional concerns regarding any of the policies or procedures addressed by this Agreement, the parties will agree to negotiate the matter in a good-faith effort to achieve a mutually satisfactory conclusion.

59. This Agreement shall terminate two years after the effective date of the Agreement.

60. This Agreement shall terminate earlier if the County has substantially complied with the substantive terms of the Agreement (which do not include the reporting requirements of paragraphs 53 and 54) and maintained substantial compliance for at least one year. Once the County has determined that it is in substantial compliance with the substantive terms of this Agreement, the County shall notify DOJ in writing, by fax and regular mail. If DOJ does not provide a written objection to such determination within sixty (60) days of receipt of said notice, the County will be deemed to be in substantial compliance beginning on the date of the notice. If DOJ provides a written objection to such determination, in whole or in part, the parties shall make good faith efforts to resolve the dispute.

61. Nothing in this Agreement shall preclude the DOJ from initiating an action pursuant to 42 U.S.C. § 1997a or any other applicable provision of law. In the event of any such litigation, this Agreement shall not be introduced or used as evidence.

62. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to the Agreement, and shall inure solely to the benefit of the parties to this Agreement. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against the County for its conduct or the conduct of County employees or agents; accordingly, it does not alter legal standards governing any such claims.

63. This Agreement shall be applicable to and binding upon all parties, their officers, agents, employees, assigns, and their successors in office, all in their official capacities.

64. The County shall make the substantive terms of this Agreement available to all inmates by maintaining a complete copy of the Agreement in the law library.

FOR THE UNITED STATES:

THOMAS M. DIBIAGIO
United States Attorney
District of Maryland

R. ALEXANDER ACOSTA
Assistant Attorney General
Civil Rights Division

BRADLEY J. SCHLOZMAN
Deputy Assistant Attorney General
Civil Rights Division

SHANETTA Y. CUTLAR
Chief
Special Litigation Section

SANDHYA L. SUBRAMANIAN
Special Counsel
Special Litigation Section

JOHN A. HENDERSON
Trial Attorney
Special Litigation Section

MICHAEL D. FRAZIER
Trial Attorney
U.S. Department of Justice
Civil Rights Division
Special Litigation Section - PHB
950 Pennsylvania Avenue NW
Washington, D.C. 20530

DATED: July 6, 2007

FOR WICOMICO COUNTY, MARYLAND:

THEODORE E. SHEA II
Wicomico Administrative Director
in his official capacity

TONY SARBANES
President Wicomico County Council
in his official capacity

EDGAR A. BAKER, JR.
Wicomico County Attorney
in his official capacity

DOUGLAS C. DEVENYNS
Director
Wicomico County Department of Corrections
in his official capacity

DATED: 7-16-2007