

THE COMMONWEALTH OF MASSACHUSETTS



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SHERIFF

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May 15, 2023

Clerk Magistrate Jennifer Sullivan, Esq.  
Clerk of Courts  
Bristol County Superior Court  
441 County St., 1<sup>st</sup> Floor  
New Bedford, MA 02740

**Re: Battle, et al. v. Hodgson, et al.**  
**Bristol County Superior Court Civil Docket 1873CV00020**

Dear Ms. Sullivan:

Enclosed for filing, please find the parties' Joint Motion to Approve Settlement Agreement and accompanying Memorandum in Support, as well as the parties' Joint Motion to Postpone Pretrial Conference and Deadline for Joint Pretrial Memorandum.

Thank you for your attention to this matter.

Very truly yours,

Gretchen Bennett, Esq.  
General Counsel

GB/rlm

cc: Bonita Tenneriello, Esq.  
M. Claire Masinton, Esq.

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT  
CIVIL ACTION NO. 1873CV00020

DANYEL BATTLE *et al.*, on Behalf of Themselves

and All Others Similarly Situated,

Plaintiffs,

v.

THOMAS M. HODGSON, Sheriff, Bristol County, et al.,

Defendants.

**JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT**

Pursuant to Mass. R. Civ. P. 23(c), the Parties hereby move this Court to approve the Settlement Agreement entered into by the Parties in this class action and to retain jurisdiction of the case pursuant to Section IV of the Settlement Agreement. A copy of the Settlement Agreement is attached hereto as Exhibit 1. As grounds therefore, the Parties attach a Memorandum in Support of the Joint Motion for Approval of Settlement, and further state:

1. The Complaint alleges that Defendants hold people with mental illness in segregation for extended periods of time and fail to provide them with adequate mental health care in violation of their state and federal statutory and constitutional rights.
2. The Parties have entered into the Settlement Agreement, contingent upon approval by this Court and the retention of jurisdiction over the action. See Ex. 1, Sections IV and VI.
3. As more fully set forth in the attached Memorandum in Support, Rule 23(c) requires Court approval of any settlement in this case, and the Court has the power to retain jurisdiction to enforce the settlement's terms.

4. The proposed Settlement Agreement is fair, reasonable, and adequate, and provides a significant benefit to the Class.

Therefore, the Parties jointly request that the Court approve the proposed Settlement Agreement and retain jurisdiction as provided in the Settlement Agreement.

Respectfully submitted on behalf of the Plaintiffs, by their attorney,

Respectfully submitted on behalf of the Defendants, by their attorneys,

/s/ Bonita Tenneriello  
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Dated: May 15, 2023

### **CERTIFICATE OF SERVICE**

I certify that on May 15, 2023, I served a copy of the foregoing Joint Motion, Ex. 1, accompanying Memorandum in Support, and proposed order on counsel for all parties, by email.

/s/ Gretchen Bennett  
Gretchen Bennett, Esq.

# **EXHIBIT 1**

**(Settlement Agreement)**

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss. SUPERIOR COURT  
CIVIL ACTION NO. 1873CV00020

DANYEL BATTLE et al., on Behalf of Themselves  
and All Others Similarly Situated,

Plaintiffs,

v.

PAUL HEROUX, Sheriff, Bristol County, et al.

Defendants.

**SETTLEMENT AGREEMENT**

**SETTLEMENT AGREEMENT** made this <sup>15</sup> day of May 2023, by and between Danyel Battle, et al., on behalf of themselves and all others similarly situated (the “Plaintiffs”), on the one hand, and the Bristol County Sheriff’s Office (BCSO), Bristol County Sheriff Paul Heroux, BCSO Superintendent Steven Souza, and BCSO Director of Medical Services Judith Borges (collectively, the “Defendants” or each individually a “Defendant”), on the other (collectively referred to herein as the “parties” or each individually as a “party”).

**WHEREAS**, the parties to the present lawsuit, *Danyel Battle, et al. v. Bristol County Sheriff’s Office, et al.*, C.A. No. 1873-CV-00020 (Bristol County Superior Court), have determined that it is in the public interest to resolve this lawsuit and therefore acknowledge and agree that this Settlement Agreement is intended to resolve all claims in this lawsuit;

**WHEREAS**, FOR AND IN CONSIDERATION of the payment of \$315,000.00 (three hundred and fifteen thousand dollars) to cover the fees of Plaintiffs’ attorneys, in consideration of the promises made herein, and on the terms and conditions evidenced in this agreement, the Plaintiffs, DANYEL BATTLE et al., on Behalf of Themselves and All Others Similarly Situated, and their Attorneys do hereby release, acquit and forever discharge the Defendants (hereinafter

“Releases”), their respective agents, affiliates, parents, subsidiaries, divisions, servants, predecessors, successors, assigns, officers, directors, attorneys and employees or any one of them, separately or jointly, from any and all claims for attorney fees, and all claims or causes of action whatsoever on account of all known and unknown injuries, losses and damages allegedly sustained by the Plaintiffs arising from, or in any way connected with the incidents and facts alleged in Plaintiffs’ Complaint;

**WHEREAS**, 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; and

**WHEREAS**, this Settlement Agreement is divided into the following sections, I. Definitions; II. Operational Policy; III. Monitoring; IV. Dispute Resolution, Enforcement, and Termination; V. General Terms; VI. Final Approval; and VII. Releases and Attorneys’ Fees and Costs.

**NOW, THEREFORE**, in consideration of the mutual agreements contained herein and for other good and valuable consideration the receipt and sufficiency of which are hereby mutually acknowledged, accepted, and agreed to, the parties mutually covenant and agree as follows:

## **I. DEFINITIONS**

“Accountability Status” – A disciplinary term utilized for BCSO prisoners placed in the DBU and SMI units for violations of facility rules or prisoner treatment plans, but which excludes behaviors such as self-harm. A Mental Health Watch is never considered or used as Accountability Status.

“Admission” – The time and event of booking a prisoner into a BCSO facility.

“BCSO” – Refers to defendant the Bristol County Sheriff’s Office.

- “BCSO Medical Provider” – Any entity that contracts with BCSO to provide medical services, including mental health services, at BCSO facilities.
- “Booking Officer” – BCSO employee who questions prisoners to gather data necessary to process and book such prisoners into BCSO facilities.
- “Commissioner” – The Commissioner of the Massachusetts Department of Correction.
- “Correctional Staff” – BCSO employees responsible for the care, custody, and control of BCSO prisoners.
- “Dartmouth Behavioral Unit” or “DBU” – A specialized placement restrictive housing unit for those BCSO prisoners who engage in repeated disruptive and/or self-harming behaviors that impair daily functioning in the general prison population. The DBU provides enhanced mental health treatment and behavioral interventions to prisoners who demonstrate an inability to maintain behavioral control, engage in self-injurious behavior, and/or incur frequent disciplinary sanctions.
- “Exigent Circumstances” – This refers to those circumstances, including but not limited to institutional emergencies, under which the doing of an act otherwise required by this Settlement Agreement would create an unacceptable risk to the safety of any person.
- “Functionally Impaired” – An individual is considered “functionally impaired” if he or she has difficulty completing (i) activities of daily living including but not limited to grooming, dressing, and/or personal hygiene care, and/or (ii) instrumental activities of daily living including but not limited to eating properly, keeping his or her cell or other living area clean, sending clothes to be laundered, and/or responding appropriately to commands and orders.
- “Initial Mental Health Screening” – A screening conducted by a Qualified Mental Health Professional of a new BCSO prisoner as part of an initial health care screening. The mental health screening shall take place within a reasonable time period not to exceed 12 hours after admission.
- “Mental Health Assessment” – An evaluation of a BCSO prisoner by a Qualified Mental Health Professional to determine the existence of any mental health condition and the need for mental health services.
- “Mental Health Caseload” – This refers to all BCSO prisoners with a current need for any mental health services.
- “Mental Health Treatment Plan” – A comprehensive, individualized plan for the delivery of mental health services based on the input of a Multi-Disciplinary Treatment Team (MDTT), which team shall include multiple clinical disciplines.

“Primary Care Clinician” – The mental health care clinician assigned as the principal mental health care provider for a BCSO prisoner.

“Prisoner” or “prisoner” – All sentenced prisoners, pre-trial detainees, and ICE detainees held by the BCSO.

“Psychiatric Practitioner” – A psychiatrist or psychiatric mental health nurse practitioner (PMHNP), or others who by virtue of their education, credentials, and experience are permitted by law to evaluate and prescribe psychotropic and other medication to patients. A psychiatric practitioner must be currently licensed by the Commonwealth of Massachusetts, registered, and certified as appropriate to their qualifications to practice.

“Psychiatrist” – A medical doctor licensed to practice medicine in the Commonwealth of Massachusetts, who has completed an approved residency in psychiatry in a program accredited by the American Association of Medical Colleges and is either certified by the American Board of Psychiatry and Neurology or is eligible to take the exam for such board certification.

“Psychiatric Evaluation” – An evaluation by a psychiatrist or psychiatric practitioner.

“Psychotropic Medication” – Any medication prescribed by a psychiatrist or psychiatric practitioner that is used in the treatment of mental illness which exerts an effect on the brain and is capable of modifying mental activity or behavior.

“Q-5 Inquiry” – This refers to question 5 of the Ask Suicide-Screening Questions (“ASQ”) suicide risk screening tool, which question reads, “Are you having thoughts of killing yourself right now?” Question 5 is an acuity question to be asked if the answer to any of the preceding questions 1 through 4 are answered in the affirmative.

“Qualified Health Care Practitioner” – A physician, physician assistant, nurse practitioner, registered nurse, licensed practical nurse, or others who by virtue of education, credentials, and experience are legally permitted to evaluate and provide health care. A Qualified Health Care Practitioner must be currently licensed by the Commonwealth of Massachusetts, registered, and certified as appropriate to their qualifications to practice.

“Qualified Mental Health Professional” or “QMHP” – A psychiatrist, psychologist, master’s level social worker, licensed professional counselor, licensed nurse, or others who by virtue of education, credentials, and experience are legally permitted to evaluate and provide mental health care. A Qualified Mental Health Professional must be currently licensed by the Commonwealth of Massachusetts, registered, and certified as appropriate to their qualifications to practice.

“Restrictive Housing” – A housing placement where a prisoner is confined to a cell for more than 22 hours per day; provided, however, that observation for purposes of mental health assessment or evaluation shall not be considered restrictive housing.

“Serious Mental Illness” or “SMI” – Consistent with G.L. c. 127, § 1, a prisoner is determined to have an SMI if the prisoner has a current or recent diagnosis by a qualified mental health professional of one or more of the following disorders described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders: (i) schizophrenia and other psychotic disorders; (ii) major depressive disorders; (iii) all types of bipolar disorders; (iv) a neurodevelopmental disorder, dementia or other cognitive disorder; (v) any disorder commonly characterized by breaks with reality or perceptions of reality; (vi) all types of anxiety disorders; (vii) trauma and stressor related disorders; or (viii) severe personality disorders; or a finding by a Qualified Mental Health Professional that the prisoner is at serious risk of substantially deteriorating mentally or emotionally while confined in restrictive housing, or already has so deteriorated while confined in restrictive housing, such that diversion or removal is deemed to be clinically appropriate by a Qualified Mental Health Professional.

“Settlement Agreement” – This refers to the Settlement Agreement entered into on April \_\_, 2023, by and between the parties to the lawsuit captioned Danyel Battle, et al., v. the Bristol County Sheriff’s Office, et al., C.A. No. 1873-CV-00020 (Bristol County Superior Court).

“Significant Mental Health Findings” – This refers to observations illustrating a decline, deterioration, or change of a patient’s mental health.

“Suicidal Ideation” – Thoughts involving the thinking about, considering, or planning for suicide.

## **II. OPERATIONAL POLICY**

### **A. RESTRICTIVE HOUSING, THE DARTMOUTH BEHAVIORAL UNIT (DBU), AND THE UNIT FOR PERSONS WITH SERIOUS MENTAL ILLNESS (SMI)**

#### **Criteria for Restrictive Housing.**

1. BCSO shall not hold prisoners in Restrictive Housing unless they are serving a disciplinary sanction, or if the prisoner’s presence in the general population would pose an unacceptable risk (1) to the safety of others; (2) of damage or destruction of property; or (3) to the operation of a correctional facility, as set forth in G.L. c. 127, § 39 (a).

**Reviews of prisoners in Restrictive Housing, the DBU, and the SMI unit.**

2. The Bristol County Sheriff's Office (BCSO) shall conduct placement reviews, as defined in G.L. c. 127, § 1, in the manner and with at minimum the frequency described by G.L. c. 127, § 39B, in order to determine whether each prisoner in Restrictive Housing poses an unacceptable risk of a type listed in paragraph 1.
3. Consistent with G.L. c. 127, § 39A (d), a prisoner who is housed in the DBU or SMI unit following an allegation or finding of a disciplinary breach shall receive placement reviews at intervals no less frequently than if the prisoner were confined to Restrictive Housing.
4. Three days per week, the Bristol House of Correction (BHOC) Superintendent or his designee shall convene a meeting to review the status of all prisoners held in Restrictive Housing, the DBU or the SMI unit. Facility administrator(s); unit administrator(s); Correctional Staff; and mental health staff shall attend these meetings. At such meetings, these staff shall review and discuss any concerns about the mental health or behavior of each prisoner in each such unit in order to determine if continued placement in the unit is necessary, and to devise appropriate non-punitive responses to any mental health or behavioral concerns. BCSO staff shall record the substance of these discussions in meeting minutes.

**Exclusion from Restrictive Housing of prisoners with SMI or who are otherwise clinically contraindicated.**

5. BCSO shall not hold prisoners with SMI in Restrictive Housing, except as permitted in paragraph 7.
6. BCSO shall maintain a list of prisoners identified as having SMI. Before BCSO staff may place any prisoner in Restrictive Housing, BCSO staff shall check the list to verify whether the prisoner has been so identified.
7. In accordance with G.L. c. 127, § 39A (a), a prisoner with SMI may not be held in Restrictive Housing longer than 72 hours, unless the Sheriff or a designee of the Sheriff certifies in writing: (i) the reason why the prisoner may not be safely held in the general population; (ii) that there is no available placement in the DBU and/or the SMI Unit; (iii) that efforts are being undertaken to find appropriate housing and the status of the efforts; and (iv) the anticipated time frame for resolution. A copy of the written certification shall be provided to the prisoner and maintained in the prisoner's record.
8. The Sheriff or designee shall make every effort to remove the prisoner from Restrictive Housing and find appropriate housing. So long as the prisoner is housed in Restrictive Housing, the Sheriff or designee shall also continue to make the certification every 72 hours as required by G.L. c. 127, § 39A (a). These

certifications shall not simply recite the requirements of § 39A (a) in conclusory fashion but shall state with specificity why the prisoner may not be safely held in the general population and describe with specificity the efforts being undertaken to find appropriate housing and the anticipated time frame for resolution.

9. Prisoners with SMI who would otherwise be held in Restrictive Housing due to a disciplinary violation, shall be housed in general population with alternate sanctions and with an appropriate Mental Health Treatment Plan, unless the prisoner requires transfer to the SMI unit or the DBU for clinical reasons or BCSO determines that the prisoner would pose an unacceptable risk in general population as specified in paragraphs 1 and 2.
10. A prisoner with SMI who is not under disciplinary sanction but would otherwise be held in Restrictive Housing because it has been determined that they pose an unacceptable risk in the general population shall not be housed in a Restrictive Housing unit but shall instead be housed in the DBU or SMI unit, as appropriate. However, if, pursuant to paragraph 7, if a prisoner with SMI is housed in Restrictive Housing, they shall be afforded the same group program participation, recreation, and individual mental health therapy as prisoners in the DBU or SMI unit where they would otherwise be housed.

#### **SMI Units.**

11. BCSO shall maintain two units for prisoners who have SMI and are under disciplinary sanction or who otherwise would be held in Restrictive Housing because they have been found to pose an unacceptable risk, as specified in paragraphs 1 and 2. One unit shall be for men and the other for women. The male unit shall have at least 30 beds and the female unit shall have at least 16 beds.
12. On each day from Monday to Friday, inclusive, each prisoner in these units shall be offered at least two hours of staffed group mental health and behavioral programming and two hours of out-of-cell recreation. Each such group shall be facilitated by a Qualified Mental Health Professional.
13. A clinically appropriate number of Masters-level mental health clinicians shall be assigned to the SMI units. Each prisoner in an SMI unit shall have a Masters-level practitioner as their Primary Care Clinician. These clinicians shall create and manage individualized treatment plans for prisoners in the SMI unit and assist in discharge planning ensuring continuity of care after each prisoner leaves the SMI unit.
14. Each prisoner in these units shall also be offered one individual therapy session each week with their Primary Care Clinician, unless clinically contraindicated.

15. If BCSO does not at any point have the funding to offer formal programming on weekends and holidays in the SMI units, it shall offer each prisoner in these units at least two hours per day of volunteer-led programming, video programming, or group activities such as games in a common space, in addition to the two hours of recreation. BCSO shall make all reasonable efforts to secure such funding.
16. If Exigent Circumstances prevent the SMI daily programming from occurring, the inmates at a minimum will get video programming or suitable in-cell materials.
17. Prisoners in the SMI unit who have completed a disciplinary sanction shall return to general population unless it is determined, pursuant to paragraphs 1 and 2, that this would pose an unacceptable risk (1) to the safety of others; (2) of damage or destruction of property; or (3) to the operation of a correctional facility, or unless the prisoner is permitted by mental health to voluntarily remain in the SMI unit for a specified additional period of time as memorialized in writing.

**Dartmouth Behavioral Unit.**

18. In addition to the SMI units, BCSO shall maintain a DBU unit for male prisoners who engage in repeated disruptive and self-harming behaviors and therefore cannot be safely housed in general population or the SMI unit. BCSO shall provide prisoners housed in this unit with enhanced mental health treatment and behavioral interventions to prepare them for return to the general population and eventual release to the community.
19. The DBU shall operate a three-phase system in which prisoners may receive additional privileges beyond those required in G.L. c. 127, § 39 (b) and paragraph 20 of this Settlement Agreement. BCSO shall provide prisoners in the DBU with a list of the additional privileges for each phase within 24 hours.
20. Prisoners designated as having SMI who are housed in the DBU shall have the same amount of out-of-cell recreation and programming as is ensured in the SMI Units.
21. Prisoners in each DBU phase may gain additional privileges by earning "points" through participation in clinical group programs. They may use these points to gain extra recreation, telephone calls, reading material, stamped envelopes, canteen purchases, property in their cell, television or film entertainment, and other privileges beyond those to which they are entitled.
22. A prisoner in the DBU may be placed on Accountability Status if they pose an unacceptable risk (1) to the safety of others; (2) of damage or destruction of property; or (3) to the operation of the unit. Within 48 hours of placement on Accountability Status, a multidisciplinary team consisting of the DBU Coordinator, DBU Unit Officer, the Superintendent, and the Director of Health

Services shall meet to determine whether the prisoner's Accountability Status remains necessary or should be discontinued. The team shall continue to review the status daily as long as the prisoner remains on Accountability Status.

23. Prisoners on Accountability Status shall continue to have two hours of recreation and one hour of group programming each day as well as their weekly individual session with their Primary Care Clinician, unless clinically contraindicated. The prisoner shall not lose points accumulated before the prisoner went on Accountability Status. Any decision to move a prisoner on Accountability Status to a lower phase shall be made by the prisoner's multidisciplinary team, on an individualized basis, and must be documented.

**Staff selection, training, and communication.**

24. Each unit's program coordinator shall select Correctional Staff and other staff for the SMI units and the DBU based on experience and demonstrated ability to communicate and work with prisoners that have severe behavioral issues or mental illness. Before being assigned to these units, all staff shall have completed eight hours of training on the signs and symptoms of mental illness, effective communication with prisoners that have mental illness, conflict de-escalation, and related topics, and shall subsequently receive eight hours of refresher training every year, with additional training and resources as necessary.

**Privileges in Restrictive Housing, SMI, and DBU Units.**

25. Consistent with G.L. c. 127, § 39 (b), in addition to meeting all standards established by the regulations of the Department of Public Health, all non-general population units, including Restrictive Housing units, the SMI Unit and the DBU shall provide:
  - a. Meals that meet the same standards as for general population prisoners;
  - b. Access to showers no less than 3 days per week;
  - c. Rights of visitation and communication by those properly authorized; provided, however, that the authorization may be diminished for the enforcement of discipline for a period not to exceed 10 days for each offense;
  - d. Access to reading and writing materials;
  - e. Access to a radio or television if confinement exceeds 30 days;
  - f. Periodic mental and Psychiatric Evaluations;
  - g. Medical and psychiatric treatment as clinically indicated;

- h. The same access to canteen purchases and privileges to retain property in a prisoner's cell as prisoners in the general population at the same facility; provided, however, that such access and privileges may be diminished for the enforcement of discipline for a period not to exceed 10 days for each offense, or where inconsistent with the security of the unit. The same access to disability accommodations as prisoners in general population, except where inconsistent with the security of the unit; and
  - i. Other rights and privileges as may be established or recognized by the Commissioner of the Department of Correction.
26. Unless serving a disciplinary sanction, prisoners in non-general population units shall have the same visiting, telephone, and mail privileges as prisoners in general population. Those serving a disciplinary sanction shall be permitted at least one personal visit and one personal phone call per week and shall be permitted calls and visits with attorneys on the same basis as other BCSO prisoners. Prisoners who are indigent shall receive at least three stamped envelopes per week.

## **B. MENTAL HEALTH CARE**

### **Booking.**

27. On entry into BCSO custody, a Qualified Health Care Practitioner or, if one is not immediately available, the Booking Officer, shall administer a standard suicide screening tool which includes questions (1) Have you ever considered suicide; (2) Have you recently experienced a significant loss (relationship, death of family member/close friend, job, etc.)? ;(3) Has a family member/close friend ever attempted or committed suicide? ; and (4) Do you feel there is nothing to look forward to in the immediate future (inmate expressing helplessness and/or hopelessness)? In addition,, as part of the booking process, BCSO classification staff shall conduct a Q-5 Inquiry through the Massachusetts Department of Criminal Justice Information Services (DCJIS) to determine whether the subject individual had previously threatened or attempted suicide while in the custody of a correctional and/or law enforcement agency within Massachusetts. An affirmative response from the DCJIS inquiry shall result in an immediate mental health referral.

### **Initial Mental Health Screening.**

28. A Qualified Health Care Practitioner shall conduct a mental health screening of each new prisoner in private as part of the prisoner's initial health care screening. The mental health screening shall take place within a reasonable time period not to exceed 12 hours following Admission.

The initial screening shall include inquiry into:

- a. Present suicidal ideation;
  - b. History of suicidal behavior;
  - c. Present prescribed Psychotropic Medication;
  - d. Current mental health complaint;
  - e. History of SMI;
  - f. If currently being treated for mental health problems;
  - g. History of inpatient or outpatient psychiatric treatment;
  - h. History of substance use;
  - i. History of treatment for substance use;
  - j. History of abuse and/or trauma, including sexual victimization;
  - k. History of symptoms of psychosis, depression, anxiety;
  - l. History of self-harm;
  - m. History of aggression.
29. All Initial Mental Health Screenings shall be fully documented and available to medical staff in each prisoner's medical file.

**Mental Health Assessment.**

30. If, after the prisoner's initial screening, the Qualified Health Care Practitioner has reason to believe that the prisoner may have a history or current manifestation of SMI, suicidality, or self-injurious behavior, the practitioner shall refer the prisoner for a comprehensive Mental Health Assessment. A Qualified Mental Health Professional must review each prisoner's Initial Mental Health Screening as soon as possible but within 14 days of the screening.
31. The Qualified Health Care Practitioner who conducted the mental health screening and/or the Qualified Mental Health Professional who reviewed the screening shall submit an immediate referral for a Mental Health Assessment if the mental health screening indicates that the prisoner may be suffering from SMI, Suicidal Ideation or other suicidal behavior or thoughts, self-injurious behavior or a history of such behavior, acute symptomatology, or have a history of or be at risk for sexual victimization.

32. If a prisoner is referred for a Mental Health Assessment after an initial screening, the assessment must be initiated as soon as possible and must be completed within 14 calendar days of Admission. In an emergency, including but not limited to psychotic symptoms, serious mood symptoms, or active suicidality, Suicidal Ideation, and/or present danger to others due to untreated mental illness, the Mental Health Assessment must be initiated as soon as possible and completed within 48 hours.
33. A BCSO staff member or BCSO Medical Provider employee, other than the Qualified Health Care Practitioner, may also refer a prisoner for a Mental Health Assessment.
34. All Mental Health Assessments shall be conducted in an area that provides reasonable sight and sound privacy and confidentiality. If Correctional Staff is present, the officer should be positioned in a place that allows for observation of the prisoner but maintains sound privacy.
35. A Mental Health Assessment shall be conducted by a Masters-level clinician or higher. If the clinician is not independently licensed, the assessment shall be reviewed and co-signed by a clinician acting in a supervisory capacity to the clinician who conducted the assessment.
36. A Mental Health Assessment must include structured interviews, record reviews (when records are available), and inquiries about the following topics, and the findings on each must be documented:
  - a. Mental status;
  - b. Current symptoms;
  - c. Suicide potential;
  - d. Self-injury potential;
  - e. Violence potential;
  - f. History of inpatient and outpatient mental health treatment;
  - g. History of or current enrollment in state agency or other residential services;
  - h. History of prescription and use of Psychotropic Medication;
  - i. History of drug and alcohol use, addiction, withdrawal, and treatment;
  - j. History of victimization, predatory behavior, and sex offenses;

- k. History of emotional response to incarceration;
  - l. History of and ongoing need for special education;
  - m. History of diagnosis of intellectual disability, developmental disability, neurodevelopment disorder;
  - n. History of housing supports, services, and situations;
  - o. History of state custody;
  - p. History of employment; and
  - q. History of participation in jail programming.
37. The clinician conducting the Mental Health Assessment shall review any available records of mental health services, including those from the following entities:
- a. Bridgewater State Hospital;
  - b. Any Massachusetts Department of Correction facility (other than Bridgewater State Hospital), Massachusetts county correctional facility, or analogous facility in another state or country, if the prisoner was previously on the Mental Health Caseload at any of these types of facilities;
  - c. Any psychiatric hospital or unit;
  - d. Any outpatient mental health or substance use treatment program;
  - e. The Massachusetts Department of Mental Health, the Department of Children and Families, or the Department of Youth Services or any analogous agency in another state or country.
38. If the clinician decides to ask the prisoner to sign releases to authorize the provision of medical information, BCSO shall send the signed releases to providers within 10 days of the date of the release. The assessment shall not be delayed by such records requests but shall be updated upon receipt of any additional information obtained pursuant to record requests within 10 days of receipt of that information.
39. The assessment shall result in a determination as to whether the prisoner has an SMI.

**Assessment outcomes.**

40. A Mental Health Assessment must include a diagnosis if a present mental illness is identified.
41. The person conducting the assessment shall not defer or change a current diagnosis that falls within the SMI definition contained in the prisoner's mental health record without providing a clear explanation in the assessment as to why such diagnosis is inaccurate or not appropriate. If a diagnosis is altered, the person conducting the assessment shall document evidence of the absence of symptoms for one year.
42. On-going mental health treatment is indicated if the individual meets one or more of the following criteria:
  - a. Has a substantial disorder of thought/mood/perception/orientation which grossly impairs their judgment, behavior, capacity to recognize reality or meet the ordinary demands of life;
  - b. Has a condition for which psychiatric medications are indicated;
  - c. Is Functionally Impaired in the correctional setting;
  - d. Has made a suicide attempt in the past which the individual currently indicates was intended to be lethal;
  - e. Was returned to the custody of the Bristol County Sheriff's Office pursuant to G.L. c. 123 with a recommendation for treatment;
  - f. Meets the definition of SMI.
43. If ongoing mental health treatment is indicated, the prisoner shall be placed on the caseload of a Qualified Mental Health Professional.
44. All prisoners identified in a Mental Health Assessment as requiring mental health services shall be entitled to a Mental Health Treatment Plan and shall indicate whether any reasonable accommodations are necessary with respect to any BCSO service, including housing, employment and program participation. BCSO shall ensure that all services on the plan are provided.

**Referral for a Psychiatric Evaluation to be conducted by a practitioner licensed to prescribe.**

45. BCSO shall timely attempt to verify a prisoner's reports made during a mental health screening of any active prescription for Psychotropic Medications. Verification shall involve outreach to pharmacies and community providers to request prescriptions and other health care records relating to ongoing treatment.

If BCSO verifies any active prescription for Psychotropic Medication, BCSO shall order the medication or a clinically appropriate alternative within 24 hours of the intake screening.

46. If a Mental Health Assessment indicates a need for Psychotropic Medication, the evaluator shall immediately make a referral for a Psychiatric Evaluation and the prisoner shall be seen by a psychiatrist as soon as clinically indicated but in all cases within 14 days of the assessment.

**Mental Health Treatment Plan.**

47. The prisoner shall participate fully in the development of the Mental Health Treatment Plan and shall have the right to refuse any proposed mental health service.
48. With the prisoner's informed consent, the Mental Health Treatment Plan shall include, at a minimum: the frequency of follow-up for mental health evaluation and adjustment of mental health services, the type and frequency of diagnostic testing and therapeutic regimens (which may include clinical contacts more frequent than the minimum intervals described herein), and services necessary to adaptation to the correctional environment. The prisoner's consent shall be indicated in a written acknowledgement attached to the Mental Health Treatment Plan.
49. The Mental Health Treatment Plan for sentenced prisoners shall include, when recommended by mental health, in consultation with BCSO re-entry staff, referral to treatment after release from BCSO custody. Correctional Staff shall be informed of a prisoner's Mental Health Treatment Plan when appropriate to ensure coordination and cooperation in the ongoing care of the prisoner.

**Mental health therapy.**

50. If group and/or individual counseling sessions are required by a prisoner's Mental Health Treatment Plan, access to such therapy shall be routine and shall not require the prisoner to submit a sick slip. The frequency of group and/or individual counseling sessions shall be as as indicated in the prisoners' treatment plan but for those with SMI shall be no less than every 30 days or as clinically indicated. Individual therapy shall be conducted privately.
51. Group and/or individual counseling sessions must be offered to any prisoner being treated with Psychotropic Medication.

**Psychotropic Medication.**

52. Psychotropic Medication shall be considered only one component of a prisoner's Mental Health Treatment Plan.

53. Only a psychiatrist may prescribe Psychotropic Medication. A psychiatrist shall conduct an in-person consultation with a prisoner prior to changing or initiating medications. However, in the event that the prescriber is not on site, a QMHP may conduct the consultation in person or by telehealth or telephone, so long as the QMHP contacts the psychiatrist by telehealth or telephone and documents (i) the interaction between the QMHP and subject prisoner; (ii) the QMHP's consultation with the psychiatrist; and (iii) any resulting medication orders.
54. Initial doses of prescribed medications shall be delivered to prisoners as soon as possible, and in no event more than 24 hours after it is received by the facility.
55. Qualified Health Care Practitioners who administer medications to prisoners shall document administration in the prisoner's Medical Administration Record, including (1) name and dosage of each dispensed medication, (2) each date and time medication is administered, and (3) the date and time for any refusal of medication.
56. All prisoners receiving Psychotropic Medication must be seen by a psychiatrist every 30 days or, after stability has been observed and documented in the medical record, at least every 90 days.
57. In Restrictive Housing, prisoners who receive Psychotropic Medication shall be seen by a QMHP every 30 days for an evaluation that will include whether or not the prisoner should be referred to a psychiatrist to determine whether there needs to be a medication adjustment.
58. A psychiatric visit shall include a mental status examination, review of diagnosis, a suicide screening, and shall include, when clinically indicated, an evaluation of overall efficacy of treatment, including medication management.
59. Medication management shall include the monitoring of: levels of medication where appropriate, adverse impacts, discomforting, painful, and/or life-threatening side effects, and efficacy.
60. Psychiatrists shall use treatment protocols specific to the Psychotropic Medication prescribed. Such protocols shall include appropriate requirements for monitoring and testing, including laboratory and neurological testing consistent with the standard of care.
61. Psychiatrists shall avoid disruption of Psychotropic Medication where there is any potential for decompensation, exacerbation of symptoms, or worsening of the underlying condition. Psychiatrists shall conduct all weaning from Psychotropic Medication consistent with professional standards.
62. Psychiatrists must record all assessments, treatment provided, and recommendations using individualized notations in the prisoner's medical record.

63. If psychiatric treatment is provided by a PMHNP, that PMHNP must operate under the supervision of a supervising clinician pursuant to G.L. c. 112, § 80E. Such supervision shall be documented.
64. A psychiatrist shall be on call for the BCSO correctional facilities 24 hours per day, 7 days per week.

**Sick slips.**

65. A Qualified Health Care Practitioner shall review the requests and determine the appropriate course of action: either providing immediate attention or scheduling a nursing sick call or evaluation by a Qualified Mental Health Professional. All requests shall be collected, triaged, and responded to within 24 hours.

**Mental health screening prior to placement in Restrictive Housing.**

66. A Qualified Mental Health Professional shall screen each prisoner before they are placed in Restrictive Housing to determine if the prisoner has SMI. When clinical standards are as established in G.L. c. 127, §§ 39 (c) & (e), such standards shall be used in the screening.
67. Such screening shall take place in a space that allows for confidential communications between the Qualified Mental Health Professional and the prisoner and shall be documented in the prisoner's medical record.

**Mental health rounds in Restrictive Housing.**

68. A Qualified Mental Health Professional shall make mental health rounds in Restrictive Housing and assess each prisoner, noting clinical symptoms.
69. Prisoners housed in Restrictive Housing shall receive rounds at least daily by a Qualified Health Care Practitioner. The purpose of these daily rounds includes inquiring about inmate health complaints. These rounds shall not be conducted during the medication administration round. It may be conducted either before or after such a round. The Qualified Health Care Practitioner shall go to each cell to inquire if the occupant(s) has any medical or mental health issues that require further action. Prisoners housed in Restrictive Housing shall also receive at least weekly mental health rounds by a Qualified Mental Health Professional. The Qualified Mental Health Professional shall go to each cell to inquire if the occupant(s) has any mental health issues that require further action.
70. If, in the clinician's professional judgment, it would be appropriate, or if the prisoner so requests, the prisoner shall be brought out of the cell for a confidential interview.

71. Such out-of-cell interviews shall be held in a space that allows for confidential and meaningful communications between the Qualified Mental Health Practitioner and the prisoner.
72. The Qualified Mental Health Professional shall evaluate prisoners in Restrictive Housing in accordance with any clinical standards adopted pursuant to G.L. c. 127, §39 (c) and with the Qualified Mental Health Practitioner's clinical judgment, in order to determine whether the prisoner has an SMI.
73. The Qualified Mental Health Professional shall, during rounds, attempt to engage each prisoner in verbal meaningful interaction sufficient to determine if the prisoner's mental health is deteriorating and to observe and note the physical condition of the prisoner and the cell.
74. The Qualified Mental Health Professional must document any Significant Mental Health Findings in the prisoner's mental health records and inform Correctional Staff of any prisoners whose mental health is deteriorating.

**Mental health treatment in Restrictive Housing.**

75. Prisoners receiving mental health services shall continue with the same level of services in Restrictive Housing as they received in general population and, if they suffer from SMI, shall receive enhanced services.
76. In order to ameliorate the effects of restricted housing, all inmates housed in Restrictive Housing, including those housed in the EE unit, EC unit, and EA unit, whether or not they carry an SMI designation, will receive in cell programming on a weekly basis, 2.5 hours of recreation daily, and access to their tablets.

**Suicide prevention measures.**

77. Prisoners who are considered a suicide risk shall receive preventative supervision and treatment.
78. BCSO shall devise and implement a comprehensive plan designed to detect suicidality in prisoners. There shall be employed at BCSO a risk assessment clinician whose sole function is to specifically address and monitor those prisoners at risk for suicide.
79. A Qualified Mental Health Professional shall place any prisoner at imminent risk of suicide under observation in a suicide-resistant cell. At the time of placement, the Qualified Mental Health Professional shall determine, on an individualized basis, whether any restrictions shall be placed on the prisoner with respect to possession of one's clothing and other property. The Qualified Mental Health Practitioner shall consult with Correctional Staff in reaching such decisions.

80. Prisoners held in observation for suicidal risk shall have access to legal visits and legal telephone calls. They shall have access to showers, clothing and reading and writing materials unless individualized clinical assessment determines otherwise. They shall have access to personal visits and telephone calls unless individual clinical assessment or security considerations determine otherwise.
81. The Qualified Mental Health Practitioner shall document in the prisoner's mental health record any such restrictions along with the clinical justification for such restrictions. The Qualified Mental Health Practitioner shall reevaluate and potentially adjust such restrictions daily, Monday through Saturday or more frequently if clinically indicated. Telehealth Services may be requested if on Sundays. The restrictions shall be no more austere than necessary to ensure the prisoner's safety so as not to discourage prisoners from reporting suicidality.
82. Should the Qualified Mental Health Practitioner determine that a prisoner cannot have access to regular clothing, the Qualified Mental Health Practitioner shall order the facility to issue the prisoner a safety smock and safety blanket. The Qualified Mental Health Practitioner shall re-evaluate any prisoner in a safety smock at least daily Monday through Saturday, to determine if continued use is justified. Telehealth Services may be requested if on Sundays. If continued use is justified, the Qualified Mental Health Practitioner shall document the basis for such ongoing use. As soon as the risk of suicide has abated, the facility shall restore regular clothing to the prisoner.
83. Safety smocks shall not be used as a tool for behavior management or punishment.
84. Prisoners held in observation for suicidality shall maintain access to mental health treatment, including out of cell clinical contacts unless clinically contraindicated.
85. Qualified Mental Health Professionals shall conduct confidential assessments to evaluate prisoners held in observation for suicidality and supplemental supportive clinical intervention at least daily, Monday through Saturday. Telehealth services may be requested if warranted on Sundays. If clinically indicated, a Qualified Mental Health Professional shall offer out-of-cell contact as appropriate.

### **C. DISCIPLINARY PRACTICES FOR PRISONERS WITH MENTAL HEALTH CONCERNS**

#### **Scope.**

86. Paragraphs 87 to 97, below, govern disciplinary processes for any prisoner who:
  - a. Has been placed on the Mental Health Caseload at BCSO;
  - b. Was prescribed Psychotropic Medication within the prior 180 days;

- c. Has been designated as having SMI;
  - d. Has a history of self-injury, suicide threats or attempts, or psychiatric hospitalization;
  - e. Has been a client of the Department of Mental Health; or
  - f. Exhibited behavior at the time of the alleged rules violation that could reasonably be described as unusual, aberrant, or indicative of mental illness.
87. Disciplinary reports or sanctions, formal or informal, for any of the following reasons are prohibited:
- a. Self-injurious behavior;
  - b. Behavior directly related to self-injurious behavior, such as destruction of state property;
  - c. Reporting feelings or intentions of self-injury or suicide to BCSO or BCSO Medical Provider staff; or
  - d. Attempting suicide.

**Disciplinary Process.**

88. BCSO must offer all necessary reasonable accommodations to allow prisoners meaningful participation in the disciplinary process. When necessary, reasonable accommodations may include the provision of assistance from a BCSO staff member. Reasonable accommodations shall include those designed to ensure:
- a. Effective communication with the prisoner;
  - b. That the prisoner fully understands the charges and their consequences so that decision making is informed; and
  - c. That the prisoner has the ability to effectively participate in the proceedings.
89. Prior to acting on a disciplinary report against a prisoner described in paragraph 86, a clinician who is not the prisoner's caseload clinician shall review the prisoner's mental health, housing, and disciplinary record, conduct a private interview of the prisoner, and complete a Rules Violation Mental Health Review form. A copy of the Rules Violation Mental Health Review form shall be provided to the prisoner 24 hours in advance of the hearing unless such notice would unduly delay the hearing. But in all cases a copy of the form shall be provided in advance of the hearing. If it is determined that the hearing will not go

forward, a copy of the form shall be provided to the prisoner within 24 hours of that determination. The form shall indicate:

- a. The date and description of the rule violation;
- b. The mental illness of the prisoner described in the prisoner's mental health and medical record and history;
- c. The nexus, if any, between the behavior alleged to be a rules violation and the prisoner's mental condition as enumerated in paragraph 92;
- d. If disciplinary proceedings should not proceed against the prisoner because the prisoner cannot understand the nature of the proceeding or potential consequence or is incapable of meaningfully participating in the process;
- e. Whether accommodations are required for the disciplinary process to go forward and, if so, what the necessary accommodations are;
- f. An assessment of how the prisoner's mental health mitigates culpability; and
- g. An assessment of how the prisoner's mental health should affect possible sanctions.

#### **Disciplinary Hearing.**

90. Before a disciplinary hearing is conducted of a prisoner described in paragraph 86, the Disciplinary Officer (DO) shall review and consider the Rules Violation Mental Health Review form. If, after consulting with the Mental Health Director, the DO disagrees with the determination of the forensic clinician that a reasonable accommodation is required for the prisoner to participate meaningfully in the discipline process, and/or that the accommodation(s) identified by the forensic clinician is/are feasible or necessary, the DO shall state so in a written statement of disagreement with the reasoning of the forensic clinician. If the DO disagrees that a listed accommodation is necessary, the DO may suggest other accommodations that would be sufficient to allow the prisoner to meaningfully participate.
91. Should the forensic clinician find that the prisoner, due to mental illness, is incapable of participating in a disciplinary proceeding, the disciplinary proceedings shall be suspended until such time as the forensic clinician determines that the prisoner is capable of participating in disciplinary proceeding.
92. If a hearing on a disciplinary charge against a prisoner described in paragraph 87 results in a guilty finding and a sentence to Restrictive Housing, the DO shall set

forth in a written decision addressing the extent to which the prisoner's mental health was considered in the:

- a. Determination of culpability;
  - b. Adjudication of guilt; and
  - c. Determination of punishment.
  - d. If the disciplinary process went forward without reasonable accommodations, despite recommendations by the forensic clinician, the written decision should also address whether the reasons articulated in the written statement of disagreement by the DO were validated by the evidence submitted at the hearing and the prisoner's conduct and demeanor.
93. The DO shall submit the written decision to the BCSO Superintendent or Deputy Superintendent for approval, reversal, or modification in advance of the imposition of any punishment, regardless of whether the prisoner appeals the DO's decision. In order to evaluate the written decision, the BCSO Superintendent or Deputy Superintendent shall consult the Director of Mental Health and consider whether the written decision:
- a. Is consistent with this Settlement Agreement and G.L. c. 127, § 39A;
  - b. Reflects adequate consideration of alternatives to the disciplinary process;
  - c. Fails to reflect adequate consideration of the bearing of the prisoner's disability status on the determination of guilt;
  - d. Did not give adequate consideration to the impact of Restrictive Housing or other punishment on the prisoner's mental health condition; and/or
  - e. If there is a less restrictive alternative to restrictive confinement that would adequately address and deter the misconduct cited in the disciplinary report.

**Appeal.**

94. A prisoner may appeal the decision of the DO to the Superintendent or Deputy Superintendent. The prisoner may file an appeal for any reason, including on the basis that the DO did not adequately consider the prisoner's mental health condition, that the DO failed to review all the evidence, or that the DO reached the wrong conclusion.

**Time served in Restrictive Housing.**

95. No prisoner shall be denied credit against any such sentence ultimately imposed as punishment for time served in Restrictive Housing while disciplinary charges are pending.
96. The implementation of this Settlement Agreement shall follow the requirements of the relevant law, including G.L. c. 127.

#### **D. EXIGENT CIRCUMSTANCES**

97. The parties acknowledge that Exigent Circumstances could arise that may impact the ability of BCSO to comply with one or more provisions of this Settlement Agreement at any given time. Whenever an act otherwise required by this Settlement Agreement is excused or delayed on account of Exigent Circumstances, the BCSO will attempt to resolve the Exigent Circumstances as soon as possible, and the act will be performed whenever possible after the Exigent Circumstances cease to exist. BCSO will document any instances where Exigent Circumstances have impacted BCSO's ability to comply with any provision of this Settlement Agreement.

#### **E. AMENDMENT**

98. 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.
99. During the time this Settlement Agreement is in effect, the BCSO may from time to time need to make changes to the policy or policies implementing, regulating, and monitoring the actual operating terms of this Settlement Agreement. The parties agree that under such circumstances the BCSO will give the Plaintiffs advance notice of any intended changes and will provide a draft copy of the proposed changes in policy. Thereafter, Plaintiffs will have 15 days to comment and give input and suggestions. If security or operational necessity makes it impracticable to give the Plaintiffs such 15-day notice, the BCSO shall not finalize any such change to said policies until the Plaintiffs have been given 15 days to review and comment.
100. Without prior agreement of the parties and Court approval, no BCSO policy provision may be amended to conflict with the terms of this Settlement Agreement while the Settlement Agreement remains in effect. Moreover, during the term of this Settlement Agreement, the BCSO shall not approve any changes to any policy or policies maintained by its mental health provider that conflicts with the terms of this Settlement Agreement.

#### **F. DESCRIPTIVE HEADINGS**

101. The descriptive headings contained in this Settlement Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Settlement Agreement. The parties have participated jointly in the negotiation and drafting of this Settlement Agreement. In the event an ambiguity or question of intent or interpretation arises, this Settlement Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Settlement Agreement.

### **III. MONITORING**

#### **A. MONITORING EXPERT AND MONITORING EXPERT'S REPORTS**

##### **The Monitoring Expert.**

102. A Monitoring Expert shall be retained to assess compliance with this Settlement Agreement during the period that the Settlement Agreement remains in effect.
103. The BCSO will contract with the Monitoring Expert and, in connection with this his or her duties as described in this Settlement Agreement (i) pay all fees for services rendered, and (ii) compensate or reimburse the Monitoring Expert for all expenses incurred.
104. Both parties shall have the right to provide information to, and receive feedback from, the Monitoring Expert on a confidential *ex parte* basis.
105. The parties shall agree upon a Monitoring Expert. For purposes of this Settlement Agreement, a Monitoring Expert's qualifications are to be considered based on: (a) experience and training in a mental health discipline (b) professional qualifications (including licensing and certification); (c) potential biases that would affect his or her independence; (d) proposed monitoring plan; and (e) experience in, or familiarity with, the provision of mental health care in a correctional setting. These factors shall be considered in combination.
106. Defendants and Plaintiffs shall each identify the names of at least two qualified Monitoring Expert candidates. If the parties are unable to agree on a candidate, the Court shall select the Monitoring Expert from the list of candidates proposed by the parties. If, however, the Court finds none of the proposed candidates qualified, the Court shall make whatever further orders it deems necessary to identify an appropriate Monitoring Expert. Should the Monitoring Expert be unable to perform that function, resign, or be removed during the three-year settlement period, the same process will be followed to select a successor.

##### **Information Gathering and Access.**

107. Pursuant to the schedule described herein, the Monitoring Expert shall have access to all housing units within the BCSO facilities, to conduct site visits to assess BCSO's compliance with this Settlement Agreement. There shall be two site visits in each of the three (3) years that this Settlement Agreement is in effect. Each of these visits may take up to three (3) consecutive days. Up to two Plaintiffs' representatives may participate in each site visit
108. The BCSO shall submit semi-annual reports to the Monitoring Expert and Plaintiffs for the term of this agreement. These semi-annual reports shall outline significant activities in the areas covered by the Settlement Agreement, including but not limited to comment on the related performance measures, and if applicable, declare the BCSO to be in substantial compliance with the Settlement Agreement for the period in question.
109. The above-mentioned semi-annual reports shall be submitted by July 31st of each year to cover the first half of the calendar year, and by January 31st of each year covering the second half of the prior calendar year, so that site visits may be conducted within a reasonable period after such reports are submitted, on a date and time agreed to by the parties. Defendants will also produce the documents listed in Appendix A to the Monitor and Plaintiffs' Counsel at the same time as the semi-annual reports.
110. During each site visit, the Monitoring Expert shall have access to meet with and interview personnel employed by BCSO and BCSO's contracted medical and mental health care provider whose duties pertain to the provision of mental health services and/or who work with inmates, accompanied at the Monitor's discretion by counsel for both parties. The Monitoring Expert and Plaintiffs' representatives may ask BCSO, through its counsel, to provide written responses to questions related to the implementation of the Settlement Agreement that arise during site visits which shall be provided by BCSO within fourteen (14) days or, if agreed to in writing, a longer period.
111. During each site visit, the Monitoring Expert shall have a reasonable opportunity to conduct confidential interviews of individual prisoners, or groups of prisoners (if a group setting does not present a safety or security concern), with Plaintiffs' counsel present, to assess whether they are receiving the protections and services called for by the Settlement Agreement. Conditions and/or times or dates for such meetings may be modified by the Superintendent of BCSO if the Superintendent determines in good faith that the requested meeting presents a safety and/or a security concern.
112. After each site visit, the Monitoring Expert shall conduct an exit meeting with the parties to discuss any immediate concerns or observations that require further information.

113. Upon request, the Monitoring Expert shall have access to any other relevant records or documents to assess compliance with this Settlement Agreement, except documents protected by attorney-client or work product privileges. If these documents are requested in conjunction with a site visit, the BCSO will provide these documents to the extent feasible at least fourteen (14) days prior to the visit.
114. During the site visits, the Monitoring Expert and Plaintiffs' representatives shall have reasonable access to current prisoner records (subject to the prisoner's written consent), including prisoner correctional and medical records. If Plaintiffs' representatives request copies of any prisoner's records, the BCSO shall provide copies within fourteen (14) business days of the request. These records shall be treated as confidential, pursuant to the terms of the protective order entered on June 3, 2022, by the Court in this case.
115. BCSO shall also provide the Monitoring Expert and Plaintiffs' representatives on request with copies of audits and or statutory committee reports pertaining to the implementation and conformance of the BCSO SMI policies, practices, and provisions.
116. During site visits, in addition to in-person interviews, the Monitoring Expert may receive calls and correspondence from members of the Plaintiff class during regular hours when inmates have access to phones. Such communications shall not be recorded, shall be treated as confidential, and will be protected from discovery by BCSO. The Monitoring Expert shall disclose significant issues that may arise between site visits to the parties while maintaining the confidentiality of such inmate communications.

#### **Monitoring Expert's Reports.**

117. The Monitoring Expert shall prepare bi-annual written reports on BCSO's efforts to meet the terms of the Settlement Agreement, and may also include additional advice, suggestions, or proposals regarding quality assurance or quality improvement as he or she deems appropriate. The Monitoring Expert shall make his or her written report available to the BCSO and Plaintiffs within thirty (30) days from the completion of his or her site visit and the delivery by BCSO of any documents requested by the Monitoring Expert at the site visit, whichever is later, unless the time for submission is extended by agreement of the parties. No less than seven (7) days prior to finalizing any such report, the Monitoring Expert shall provide BCSO and the Plaintiffs with a draft of the report for review and comment, and in the final report the Monitoring Expert will incorporate or respond to input from the parties as the Monitoring Expert deems appropriate.
118. Although BCSO will give full consideration to advice, suggestions, and proposals offered by the Monitoring Expert, all decisions related to implementation of the Settlement Agreement will be made by BCSO in accordance with the terms of the Settlement Agreement, as well as statutory and other legal responsibilities. If the

Monitoring Expert reports that BCSO has not met the terms of any provision or provisions of the Settlement Agreement, the Monitoring Expert shall make recommendations as to actions he or she believe to be necessary to meet the terms of the provision(s). If BCSO does not accept any recommendations made by the Monitoring Expert, it will explain its reasons to the Monitoring Expert and Plaintiffs.

119. Within six (6) months from the Effective Date of this Settlement Agreement, the Monitoring Expert shall develop an inspection checklist that canvasses all the issues subject to the Settlement Agreement and shall circulate same to Plaintiffs and BCSO. The inspection checklist should serve as an aid for BCSO to use as a self-audit instrument.

#### **IV. DISPUTE RESOLUTION, ENFORCEMENT, AND TERMINATION**

120. If Plaintiffs believe BCSO is not in substantial compliance, i.e., is in substantial non-compliance, with any provision of the Settlement Agreement, they shall provide BCSO, in writing, specific reasons why they believe that BCSO is not in substantial compliance with such provision or provisions, referencing the specific provision or provisions. Plaintiffs may not allege BCSO is not in substantial compliance without evidence of a pattern of substantial non-compliance concerning the relevant provision or provisions. If the Plaintiffs rely on observations or opinions of the Monitoring Expert to support an allegation that BCSO is not in compliance, the Plaintiffs must identify and make reference to the specific reports, documents, information, or performance measure which supports the Plaintiffs' belief. Minor or isolated delays in compliance shall not constitute substantial noncompliance.
121. If Plaintiffs make an allegation of substantial noncompliance, BCSO shall have the opportunity to request an in-person or videoconference meeting within ten (10) days, or any further time the parties may agree, to discuss the allegation. If the parties cannot resolve the issue, the following procedure shall apply: 1) BCSO shall provide Plaintiffs with a written response to the notification within thirty (30) days of its receipt or after the above meeting has convened, whichever is longer. BCSO's response shall contain a description of the steps it took to investigate the issues raised in Plaintiffs' notice, the results of the investigation, and, where BCSO proposes corrective action, a specific plan for addressing the described issues. 2) If BCSO proposes no corrective action due to funding constraints or if the issue results from a lack of funding (including the unavailability of appropriated funds), legal considerations, or for other reasons, BCSO's response shall specifically state those reasons and any statutes, regulations, expert opinion, or technical basis upon which it is relying in reaching such conclusion. 3) Plaintiffs will advise BCSO of its acceptance or rejection of BCSO's response within seven (7) business days of its receipt. If BCSO and Plaintiffs are unsuccessful 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.

122. The Court's jurisdiction shall terminate by operation of law at the end of the three (3) year settlement period with respect to any provision or provisions of the Settlement Agreement for which there is no outstanding determination that BCSO is not in substantial compliance, i.e., is in substantial non-compliance. If the Court determines, after motion by Plaintiffs, that BCSO is not in substantial compliance, i.e., in substantial non-compliance, with a provision or provisions of the 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 BCSO is not in substantial compliance.
123. If the Court finds that BCSO is not in substantial compliance, i.e., is in substantial non-compliance, with a provision or provisions of the Settlement Agreement, it may enter an order consistent with equitable principles and applicable law that is designed to achieve compliance.
124. If Plaintiffs contend that BCSO has not complied with an order entered under the preceding paragraph, they may, after reasonable notice to BCSO, 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, consistent with applicable law.

## **V. GENERAL TERMS**

125. 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.
126. By mutual agreement, the parties may change the terms of the 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.
127. During the term of the Settlement Agreement, BCSO shall not make any changes to any policy provision implementing the provisions of the Settlement Agreement without providing Plaintiffs with a written draft of such policy or policies, for their review and comment. Plaintiffs shall have fifteen (15) days to review and comment. Without prior agreement of the parties, no BCSO policy provision may be amended to conflict with the terms of the Settlement Agreement while the

Settlement Agreement remains in effect. BCSO shall not approve any changes to a policy maintained by its contracted medical provider that conflicts with the terms of the Settlement Agreement.

## **VI. FINAL APPROVAL**

128. This Settlement Agreement shall be subject to the Final Approval of the Court and the effective date of this Settlement Agreement shall be not more than sixty (60) days after the date of such Final Approval. The Parties shall cooperate in presenting this Settlement Agreement to the Court for Final Approval and/or at any hearing under Mass. R. Civ. P. 23(e). If the Court grants Final Approval, the Parties stipulate that this Settlement Agreement shall not be construed as a consent decree or its equivalent. If the Court does not grant Final Approval, this Settlement Agreement shall be null and void and of no force and effect, and nothing in shall be deemed to prejudice the position of any party with respect to the underlying case or otherwise, and neither the existence of the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be admissible in evidence, referred to for any purpose in the underlying case or in any other litigation or proceeding, or construed as an admission, presumption, or concession by BCSO of any liability or the truth of any of the allegations of the underlying case.

## **VII. RELEASES AND ATTORNEYS' FEES AND COSTS**

129. In consideration of the representations, promises, and agreements set forth herein, and the payment of three hundred and fifteen thousand dollars (\$315,000) to cover the reasonable fees and costs of Plaintiffs' attorneys, the sufficiency of which is hereby acknowledged, the individual Plaintiffs, on behalf of themselves and all others similarly situated, and their attorneys hereby release, acquit, and forever discharge Defendants the Bristol County Sheriff's Office (BCSO), Bristol County Sheriff Paul Heroux, BCSO Superintendent Steven Souza, and BCSO Director of Medical Services Judith Borges, and their respective agents, affiliates, parents, subsidiaries, divisions, servants, predecessors, successors, assigns, officers, directors, attorneys, and employees or any one of them, separately or jointly, from any and all claims for attorney's fees, and any and all claims or causes of action for all known and unknown injuries, losses, and/or damages allegedly sustained by the Plaintiffs, arising from, or in any way connected with, the incidents and facts alleged in the complaint filed in this action.
130. Notwithstanding the above, nothing in this Settlement Agreement shall constitute a waiver by any individual class member other than the named Plaintiffs of any individual claim against the Defendants or against any individual Defendant in a court of competent jurisdiction for monetary damages.
131. Notwithstanding the above, the parties further agree that (i) the Court's failure to approve such fees and costs shall not be grounds for terminating this Settlement

Agreement; and (ii) Plaintiffs' attorneys reserve all rights to seek reasonable attorneys' fees and costs for successful enforcement of this Settlement Agreement and Defendants reserve all rights to oppose any such petition for fees and costs.

**For Prisoner Legal Services**



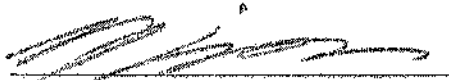
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**For the Bristol County Sheriff's Office**



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Bristol County Sheriff's Office  
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**For Mental Health Legal Advisors Committee**



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COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT  
CIVIL ACTION NO. 1873CV00020

DANYEL BATTLE *et al.*, on Behalf of Themselves

and All Others Similarly Situated,

Plaintiffs,

v.

THOMAS M. HODGSON, Sheriff, Bristol County, et al.,

Defendants.

**MEMORANDUM IN SUPPORT OF THE  
JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT**

The Parties in this matter jointly submit this memorandum in support of their Joint Motion to Approve the Settlement Agreement, filed herewith. The Settlement Agreement (“Agreement”) is attached to the parties’ motion for approval as Exhibit 1. The Parties request that this Court approve the Agreement and retain jurisdiction over this case for three years, as discussed below. The parties have reached this Agreement after extensive, arms-length negotiations over the course of several years. This memorandum is being submitted solely for the purpose of seeking the Court’s approval of the Agreement and is not intended by the parties to alter or supersede any provision of the Agreement, nor to be used to interpret any provision of the Agreement; rather, the Agreement’s provisions shall stand on their own.

**I. PROCEDURAL HISTORY AND BACKGROUND FACTS**

The instant lawsuit was filed as a putative class action by Plaintiffs on January 9, 2018. The Plaintiffs alleged that Defendants held people with mental illness in the custody of the Bristol County Sheriff’s Office (“BCSO”) in segregation for extended periods of time and failed to provide them with adequate mental health care in violation of their state and federal statutory and constitutional rights. Defendants include BCSO and three individual BCSO

officials, all sued in their official capacities only. The individual Defendants include former Bristol County Sheriff Thomas Hodgson,<sup>1</sup> BCSO Superintendent Steven Souza, and BCSO Director of Medical Services Judith Borges. The complaint sought declaratory and injunctive relief only.

On January 1, 2019, the Massachusetts Criminal Justice Reform Act (“CJRA”), st. 2018, c. 69, became effective. The CJRA imposes certain requirements on the use of segregation (called “Restrictive Housing” in the statute and defined as confinement in a cell for more than 22 hours per day, unless for mental health assessment) as well as concerning the provision of mental health services in Massachusetts prisons and jails.

On January 3, 2019, a proposed amended complaint was filed, seeking to substitute two new named plaintiffs for two of the original named plaintiffs who had been released from custody. The claims alleged in the proposed Amended Complaint were otherwise substantively identical to those asserted in the original complaint.

On April 24, 2019, the Court certified the class of inmates in the custody of the Bristol County Sheriff who have a serious mental illness, as defined in G. L. c. 127, § 1, and who may be housed in Restrictive Housing or disciplinary housing, as defined in G. L. c. 127, § 1, while serving a sentence or otherwise held in the custody of the Bristol County Sheriff. Dkt. 38 at 13. The Court found that Plaintiff Danyel Battle, the only named plaintiff in both the original and amended complaints (and who remains in BCSO custody), was an adequate class representative. *Id.* at 11. The Court also rejected Defendants’ contention that the passage of the CJRA rendered Plaintiffs’ claims in the case moot. *Id.* at 7.

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<sup>1</sup> In January 2023, Paul Heroux succeed Thomas Hodgson as Sheriff of Bristol County. By operation of law, upon his ascension to office, Mr. Heroux was substituted as a defendant in this suit. Mass. R. Civ. P. 25(d)(1) (“When a public officer is a party to an action in his official capacity and during its pendency . . . ceases to hold office, the action does not abate and his successor is automatically substituted as a party.”).

After class certification, the parties began a lengthy process of arms-length settlement negotiations, which involved counsel for Plaintiffs, counsel for Defendants, BCSO administration and staff, and administrators of the BCSO medical and mental health contractor, as well as extensive consultation between the Plaintiffs and their expert, a psychiatrist with extensive experience in carceral settings. By July 2021, the parties had reached general agreement on all substantive issues, as well as compliance and monitoring procedures. However, counsel for then-Sheriff Thomas Hodgson refused to enter into an agreement without resolving payment for the third-party settlement monitor or attorney fees.

Accordingly, the Plaintiffs made a written demand on July 9, 2021, but were rebuffed several months later, when opposing counsel informed them that BCSO refused to pay any sum for monitoring costs or attorney fees. As such, settlement talks were scuttled, and the Parties resumed discovery after a lengthy hiatus. After Plaintiffs produced over 14,500 pages of documents and issued renewed document and other discovery requests (concerning which they filed a motion to compel in August 2022), the parties held several lengthy discovery conferences in September through November 2022. During these conferences, Defendants agreed to produce an array of documents responsive to numerous outstanding document requests—but such documents were never produced, in part due to the upheaval caused by the election of a new sheriff in November (see below). However, earlier in 2022, Defendants produced 838 pages of documents, which supplemented 819 pages of documents produced in 2019 and a considerable volume of documents produced informally during the parties' settlement talks in 2020 and 2021.

In November 2022, Paul Heroux defeated Thomas Hodgson in the race for Bristol County Sheriff. In January 2023, Mr. Heroux thus succeeded Mr. Hodgson as Bristol County Sheriff, and the parties restarted settlement discussions. After several months and multiple

rounds of further arms-length negotiations, the parties reached the Agreement for which they now seek the Court's approval.

## **II. SUMMARY OF THE SETTLEMENT AGREEMENT.**

The proposed Agreement resolves all claims alleged or that could have been alleged in this action, and those claims only. Defendants deny any violations of federal or state constitutional, statutory, or regulatory rights or provisions. In general, the Agreement provides as follows:

### **A. Restrictive Housing**

#### **a. Criteria for Restrictive Housing**

The Agreement prohibits BCSO from holding any person in Restrictive Housing unless that person is serving a disciplinary sanction or their presence in the general population would pose an unacceptable risk.

#### **b. Reviews of Restrictive Housing Placements.**

The Defendants shall review the status of each inmate in Restrictive Housing or in alternative non-Restrictive Housing units for people with serious mental illness three days per week. The superintendent (or designee), the facility administrator(s), unit administrator(s), correctional staff, and mental health staff shall attend the meetings, where they shall discuss any mental health or behavioural concerns, whether there are any non-punitive responses to these concerns, and whether continued placement in the units is necessary. The substance of the discussions shall also be recorded in meeting minutes.

#### **c. Exclusion from Restrictive Housing Due to Mental Health**

No person with a serious mental illness shall be held in Restrictive Housing for more than 72 hours unless the sheriff (or his designee) certifies in writing that the person cannot be held in general population or in alternative non-Restrictive Housing units. While such person remains in Restrictive Housing, the Defendants will make every effort to find appropriate

non-Restrictive Housing, they and shall describe and certify the status of their efforts, including expected time to resolution, every 72 hours until the person is removed from Restrictive Housing. The certification shall also include that efforts are being undertaken to find appropriate housing and the anticipated time frame for resolution.

**d. Alternatives to Restrictive Housing**

The Defendants shall maintain units for housing people with serious mental illness who would otherwise be in Restrictive Housing or who cannot safely be housed in general population due to self-injurious behaviours. The Agreement guarantees people in these units minimum amounts of mental health and behavioural programming (two hours daily), individual therapy sessions (weekly), and out-of-cell recreation (two hours daily).

**c. Privileges**

The Agreement also guarantees that people in Restrictive Housing and other non-general population units receive a set of minimum privileges including meals to the same standards as those served in general population; access to showers at least three times a week; reading and writing materials; radio or television if confined for more than 30 days; medical and psychiatric evaluations and treatment; and rights to visitation, telephone, mail, and canteen access (subject to restriction for disciplinary sanctions of not more than 10 days per offense).

**B. Mental Health Care**

The Agreement details a number of requirements for the provision of mental health care, which were developed in consultation with Plaintiffs' expert and Defendants' staff and medical/mental health vendor, as described above in Section I. These requirements include initial suicide screenings and mental health assessments upon intake, diagnosis of any serious mental illness, and on-going mental health treatment as clinically indicated. The Agreement also requires prompt attempts to verify and continue providing any psychotropic medication

that was prescribed prior to intake, psychiatric evaluation if the initial mental health assessment indicates a possible need for psychotropic medication, and regular evaluation by a psychiatrist of all prisoners receiving psychotropic medication.

People in BCSO custody are also guaranteed the ability to participate in development of their mental health treatment plans, including frequency and type of evaluations, services, and therapies. A psychiatrist is required to be always on call for BCSO facilities, and people in custody shall have the ability to submit sick slips, which must be reviewed and responded to by a qualified health care practitioner within 24 hours.

Prior to placement of anyone in Restrictive Housing, that person must be screened by a qualified mental health professional to determine if he or she has a serious mental illness. People in Restrictive Housing are guaranteed daily rounds from a qualified health care practitioner, and at least weekly from a qualified mental health professional, which may be done out-of-cell at the patient's request. Mental health services cannot be diminished for people placed in Restrictive Housing or one of the Restrictive Housing alternative units.

The Agreement also requires the Defendants to implement several suicide prevention measures, including preventative supervision and treatment, implementation of a comprehensive plan to detect suicidality in prisoners, and housing of people at imminent risk of suicide in suicide-resistant cells under observation. People in held in observation are guaranteed the right to showers, clothing, reading, and writing materials, personal visits, and telephone calls, and mental health treatment including out-of-cell clinical contacts unless clinically contraindicated. Any restrictions must be individualized, clinically justified, documented, and re-evaluated daily Monday through Saturday.

### **C. Disciplinary Practices for People with Mental Health Concerns**

The Agreement prohibits disciplinary reports or sanctions for self-injuring, attempting suicide, or reporting intentions of self-injury or suicide. It also mandates that people with

mental health concerns receive all accommodations necessary to meaningfully participate in the disciplinary process, including effective communication and, if needed, assistance from a BCSO staff member. Prior to disciplining someone with mental health issues, the Agreement requires that a clinician who is not the person's primary care clinician review the person's mental health, housing, and disciplinary record, conduct a private interview of the person, and complete a report that must be provided to the person and disciplinary officer in advance of the disciplinary hearing. If a disciplinary hearing results in a person with mental health concerns being sentenced to Restrictive Housing, the disciplinary officer must set forth in a written decision the extent to which the person's mental health was considered, and the decision must be submitted to the BCSO superintendent or assistant superintendent for review.

#### **D. Monitoring and Enforcement**

The Agreement contains provisions for an independent monitor to assess compliance with its provisions, based on biannual site visits of three days each, with an extensive list of documents to be provided to the monitor and Plaintiffs' counsel. The agreement includes procedures for the parties to confer and attempt to resolve allegations of substantial non-compliance and, if necessary, to seek court resolution. It includes provisions for termination after three years unless substantial non-compliance has been shown or is pending before the Court.

#### **E. Monitoring Expenses and Attorneys' Fees and Costs.**

In the spirit of compromise and settlement, and separately from the substantive terms of the agreement, the parties have successfully negotiated attorneys' fees and costs. The Defendants have agreed to pay reasonable attorneys' fees to class counsel, in the total amount of \$315,000.00 (three hundred and fifteen thousand dollars), to settle the claim for attorneys' fees and costs. They have also agreed to pay the cost of the independent monitor.

### III. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE.

#### A. Standard for approval of the settlement.

Mass. R. Civ. P. 23(c) provides, in part, that a class action “shall not be dismissed or compromised without the approval of the court.” The approval of a class action settlement is a matter within the sound discretion of the trial court. *Sniffin v. Prudential Ins. Co. of America*, 395 Mass. 415 (1985). To grant approval of a settlement, the court must determine that it is “fair, reasonable, and adequate.” *Id.*; see also 4 Newberg on Class Actions § 11:41 (reviewing cases applying Fed. R. Civ. P. 23[e]); 2 McLaughlin on Class Actions § 6:7 (same).<sup>2</sup>

The Court’s review is conducted against the backdrop of a strong judicial policy favoring settlement of class actions. See, e.g., *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 68 (D. Mass. 2005); *In re Lupron Mktg. and Sales Practices Litig.*, 228 F.R.D. 75, 88 (D. Mass. 2005); *U.S. v. Cannons Engineering Corp.*, 899 F.2d 79, 84 (1st Cir. 1990) (“there is an overriding public interest in settling and quieting litigation,” and this is “particularly true in class action suits.”). See also, *Disability Law Center v. Massachusetts Department of Correction*, 960 F. Supp. 2d 271, 273 (D. Mass. 2012) (“This court has long believed that the settlement of cases involving the constitutionality of the conduct of public officials is important in our democracy. . . . [J]udges should realize that they may often best serve constitutional interests by encouraging the responsible public officials and their constituents to settle constitutional controversies on proper terms, rather than by deciding the questions such controversies present.”).

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<sup>2</sup> Other Massachusetts courts have noted additional relevant factors -- all of which indicate settlement to be appropriate here -- in determining the fairness, reasonableness, and adequacy of a settlement. See, e.g., *Fortin v. Ajinomoto U.S.A., Inc.*, No. 022345C, 2005 WL 3739852, at \*2 (Mass. Super. Dec. 15, 2005) (including “(1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of the proposed settlement outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the proposed settlement is fair and reasonable.”).

## **B. The Settlement Resulted from Arm's Length Negotiations.**

There is an initial presumption that a proposed settlement is fair and reasonable when it is the result of arm's length negotiations by experienced counsel after discovery. *See M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp, 819, 822 (D. Mass. 1987) ("Where, as here, a proposed class settlement has been reached after meaningful discovery, after arm's length negotiation, conducted by capable counsel, it is presumptively fair.") (footnote omitted); *In re Minolta Camera Products Antitrust Litig.*, 668 F.Supp. 456, 460 (D. Md. 1987); *see also* 4 Newberg § 11:41. The judgment of experienced and informed counsel in supporting a settlement is entitled to considerable weight. The Supreme Judicial Court has delineated the court's role in relation to counsel's role when evaluating a negotiated class action settlement:

[T]he essence of a settlement is compromise... . Because settlement of a class action, like settlement of any litigation, is basically a bargained exchange between the litigants, the judiciary's role is properly limited to the minimum necessary to protect the interests of the class and the public. Judges should not substitute their own judgment as to optimal settlement terms for the judgment of the litigants and their counsel.

*Sniffin*, 395 Mass. at 421 (citations omitted).

Here, the Plaintiffs and Defendants have engaged in extensive discovery and settlement negotiations, as described above. The Parties also conducted substantial informal discovery as part of their initial settlement negotiations in 2020-21, which included several document productions from both the Defendants and their contracted medical and mental health services provider, Correctional Psychiatric Services (CPS). The Parties engaged in numerous rounds of arm's-length negotiation, first with the prior Sheriff and then with the current one, ultimately culminating in a lengthy and detailed Agreement designed to obtain optimal results for all Parties. Over the course of negotiations, class counsel sought and obtained the opinions of their clients, particularly Plaintiff Danyel Battle, who remains in BCSO custody. As set forth in the memorandum in support of class certification, class

counsel are experienced and have extensive background in prison civil rights class actions in general—and in Restrictive Housing (segregation) litigation in particular. Similarly, Defendants' counsel sought and obtained the opinions of their clients throughout the course of negotiations. Defendants' current counsel was instrumental in drafting much of the language in the Criminal Justice Reform Act—the statute governing the use of Restrictive Housing in Massachusetts prisons and jails—in her prior role as Chief Legal Counsel for the Joint Committee on the Judiciary. Her most recent predecessor counsel also had an extensive background in corrections and constitutional law, both as a public official—including as the commissioner of the City of Philadelphia prison system and a deputy commissioner responsible for overseeing five jails in Baltimore—and as a civil rights attorney.

**C. The Settlement Provides a Significant Benefit to the Class.**

The Agreement provides a substantial benefit to people in BCSO custody with mental illness where, among other things, BCSO has committed to minimizing the use of Restrictive Housing for people with mental illness, regular reviews of people in Restrictive Housing, guaranteed minimal privileges and access to mental health care, and suicide prevention procedures, including by agreeing to the following:

- Use of Restrictive Housing for people with mental illness only if they are serving a disciplinary sanction or present a risk to the safety of other, of damage or destruction of property, or to operation of the facility.
- Reviews every 72 hours of people held in Restrictive Housing or alternative non-restrictive units for people with serious mental illness.
- Maintenance of alternative units for men and women with serious mental illness who would otherwise be held in Restrictive Housing.
- Guarantees of minimal privileges—including showers three times a week, access to reading and writing materials, access to the canteen, visitation, and telephone and mail access—regardless of housing unit subject only to limited restriction for disciplinary infractions.
- Enhanced mental health screening and assessments upon intake into the BCSO.
- Mental health treatment, including group and individual therapy as clinically indicated, provided in accordance with a written plan developed with each prisoner's full participation and consent.
- Access to psychotropic medication as prescribed by a psychiatrist, who shall be on call for BCSO at all times.

- Daily mental health rounds for all people held in Restrictive Housing.
- A comprehensive plan to detect suicidality in people in BCSO custody, as well as a clinician whose sole function is to monitor and address prisoners at risk for suicide.
- Not disciplining people for self-harm, attempted suicide, or expressing intentions to self-harm or commit suicide.
- Incorporating of mental health assessments into the disciplinary process.

These provisions both enshrine and go beyond the requirements of the CJRA in the conditions, mental health care, and disciplinary accommodations they require. The Defendants additionally commit to initiate the process to implement policies, if it has not already done so by then, as of the effective date of the Agreement, or within sixty (60) days of the Court's approval of the Agreement. Critically, the settlement also includes robust monitoring provisions, with an experienced, neutral third party reviewing BCSO's compliance through regular visits, interviews, and reviews of documentation throughout the three-year term of the Agreement.

**D. The Attorneys' Fees and Costs Agreed to Are Reasonable.**

The Defendants have agreed to pay counsel for Plaintiffs' reasonable attorneys' fees and costs in the total amount of \$315,000 (three hundred and fifteen thousand dollars) in full settlement of the attorneys' fees and costs after good-faith, arms-length, negotiations between the parties. The Parties negotiated this amount only after the primary operational terms of the settlement were reached. Both law offices representing the class provided partial billing estimates from over 5 years spent on the case, which were reviewed by counsel for Defendants and negotiated down to less than half of the lodestar to reflect discounts for the exercise of billing judgment, the risk to potential recovery from proceeding to trial, the Defendants' agreement to pay monitoring costs of the settlement, and in the interest of compromise.

### **E. This Court has Authority to Retain Jurisdiction.**

The Court may, in its discretion, retain jurisdiction to enforce a settlement agreement. *Kokkonen v. Guardian Life Ins., Co.*, 511 U.S. 375, 381–82 (1994). Whether or not a court decides to retain ancillary jurisdiction over the settlement agreement is discretionary. *See Wright v. Prudential Ins. Co. of Am.*, 285 F.Supp.2d 515, 522 n. 17 (D.N.J. 2003) (“The exercise of [ancillary] jurisdiction to enforce its own order [of dismissal] is discretionary; the court [is] under no obligation to reserve [jurisdiction] in the first place.”) (citing *Kokkonen*, 511 U.S. at 381). “If the parties *wish* to provide for the court's enforcement of a dismissal-producing settlement agreement, they can seek to do so.” *Kokkonen*, 511 U.S. at 381 (emphasis in original). *Brass Smith, LLC v. RPI Indus., Inc.*, 837 F.Supp.2d 377 (D.N.J. 2011) (citations, alterations, and emphasis in original).

A key factor that courts consider in deciding whether to approve settlements and to retain jurisdiction is the public interest at stake. Thus, in public system reform litigation, such as this case, it is not unusual for courts to approve settlement agreements and, in the court's discretion, to retain limited jurisdiction. “Such continuing power may also arise in the context of orders and decrees issued in institutional reform litigation, where the public interest is significantly implicated ‘because such decrees reach beyond the parties involved directly in the suit and impact on the public's right to the sound and efficient operation of its institutions.’” *Perry-Bey v. City of Norfolk, Va.*, 678 F. Supp. 2d 348, 380-81 (E.D. Va. 2009) quoting *Thompson v. United States Dept. of Hous. and Urban Dev.*, 404 F.3d 821, 826 (4th Cir.2005). *See also Hutchinson ex rel. Julien v. Patrick*, 636 F.3d 1, 7 (1<sup>st</sup> Cir. 2011) (approval of settlement agreement did not create consent decree even though court retained jurisdiction).

For these reasons, it is common for Massachusetts state courts to retain jurisdiction to enforce settlement agreements in class action cases involving prison conditions. *See e.g.*

*Minich v. O'Brien*, Norfolk Superior Ct., C.A. 2014-00448-A (retaining jurisdiction to enforce settlement agreement in class action concerning seclusion and restraint practices at Bridgewater State Hospital); *Bentley v Sheriff of Essex County*, Essex CA No. 2011-01907 (retaining jurisdiction to enforce court approved settlement agreement in class action concerning medical care); *Souza v. Sheriff of Bristol County*, Bristol CA No. 2002-00870 (retaining jurisdiction to enforce court approved agreement in class action concerning incarceration fees). Nevertheless, as Judge Wolf stated in approving the settlement agreement in the *Disability Law Center* case, “judges should become involved in the administration of prisons only as a last resort and then only to the most limited extent necessary.” 960 F.Supp. 2d at 273 and 282.

As in the *Disability Law Center* case, the parties here have agreed to a settlement that is compatible with these principles. The Court is asked to retain jurisdiction for only three years, a period that counsel for the Parties believe is reasonable for this case, unless a dispute is pending at three years or unless the Court has found a substantial violation. Further, the Agreement does not require the issuance of a consent decree, nor is it enforceable by contempt, unless the Defendants fail to comply with a remedial order that might be issued by the Court in the event of substantial non-compliance, and then only after dispute resolution efforts have failed. Specifically, the Agreement includes a process for the parties to attempt to resolve any disputes regarding the implementation of the Settlement Agreement. The parties are required to identify, discuss and, if appropriate, remedy any compliance issues, and they may resort to the Court only after the mandatory negotiated resolution process has been exhausted.

## CONCLUSION

For all the foregoing reasons, the Court should allow the Parties' Joint Motion for Approval of Settlement Agreement and should retain jurisdiction as provided in the Agreement.

Respectfully submitted on behalf of the  
Plaintiffs, by their attorneys,

Respectfully submitted on behalf of the  
Defendants, by their attorney,

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COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT  
CIVIL ACTION NO. 1873CV00020

DANYEL BATTLE *et al.*, on Behalf of Themselves  
and All Others Similarly Situated,  
Plaintiffs,

v.

THOMAS M. HODGSON, Sheriff, Bristol County, et al.,  
Defendants

**JOINT MOTION TO POSTPONE PRETRIAL CONFERENCE AND  
DEADLINE FOR JOINT PRETRIAL MEMORANDUM**

Pursuant to Mass. R. Civ. P. 16, the Parties hereby move this Court to postpone the final pretrial conference currently scheduled for May 22, 2023, as well as the May 19, 2023, deadline to file a joint pretrial memorandum. *See* Dkt. 62. As reasons therefore, the Parties state that they have executed a comprehensive settlement agreement that, pending the Court's approval, will obviate the need for a trial in this matter. A motion to approve the settlement agreement has been submitted concurrently with this motion and the Parties remain available for hearing on May 22, 2023, to discuss the motion and proposed settlement in person should the Court have any questions.

Respectfully submitted,

Respectfully submitted,

/s/ Bonita Tenneriello

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Dated: May 15, 2023

**CERTIFICATE OF SERVICE**

I, Gretchen Bennett, certify that on May 15, 2023, I served a copy of the foregoing *Joint Motion* on counsel for all parties by email.

/s/ Gretchen Bennett  
Gretchen Bennett, Esq.

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT  
CIVIL ACTION NO. 1873CV00020

DANYEL BATTLE *et al.*, on Behalf of Themselves

and All Others Similarly Situated,

Plaintiffs,

v.

THOMAS M. HODGSON, Sheriff, Bristol County, et al.,

Defendants.

**[PROPOSED] ORDER APPROVING SETTLEMENT AGREEMENT**

WHEREAS, the parties submitted a Settlement Agreement of this class action and have moved for approval of this Settlement Agreement; and

WHEREAS, the Court finds the Settlement Agreement was reached after extensive, arms-length negotiations, and is fair, reasonable, and adequate to ensure the rights of the class members and all other parties; and

WHEREAS, the Defendants have requested, with the assent of the Plaintiffs, that the effective date of the Settlement Agreement be not more than 60 days after Court approval of the Settlement Agreement.

Therefore, the Court hereby orders:

1. The Settlement Agreement is approved;
2. The effective date of the Settlement Agreement will be no more than 60 days after the date of this Order; and
3. The Court shall retain jurisdiction to resolve disputes in this case, as provided in Section IV of the Settlement Agreement.

Dated:

\_\_\_\_\_  
, J.