

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

EMILY J., ET AL. : NO. 3:93CV1944 (RNC)
V. :
M. JODI RELL ET AL : JUNE 3, 2005

SETTLEMENT AGREEMENT

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I DEFINITION SECTION

As used in this Settlement Agreement (hereinafter “Agreement”), the following terms shall have the following meaning unless specifically stated otherwise:

1. “Alternative Detention Program ” means a staff secure, residential program contracted by the Judicial Branch.
2. “Central Placement Team” means an administrative review process by Department of Children and Families to match children and youth with mental health problems to appropriate residential treatment facilities and group homes.
3. “Community Detention Center” means a physically secure, community-based detention facility contracted for by the Judicial Branch.
4. “DCF” means Department of Children and Families
5. “Defendants” for purposes of this Agreement are the Chief Court Administrator, the Executive Director of the Court Support Services Division, the Supervisors of the Bridgeport, New Haven, and Hartford Juvenile Detention Centers, the Commissioner of the Department of Children and Families, the Governor of the State of Connecticut
6. “CSSD” is the Court Support Services Division of the Judicial Branch.
7. “Flexible Funds” means discretionary funds to obtain needed services and/or goods, as described in DCF Policy Manual
8. “Laws of the State of Connecticut”: consists of state constitutional provisions, statutes, judicial decisions, Rules of Court as promulgated by or issuing from the State of Connecticut judicial, executive or legislative branches, and regulations of administrative agencies other than those agencies party to this lawsuit.

9. Level 1.5 Group Home means an enhanced group home that is a therapeutic, community living program intended to serve adolescents with minimal-to-moderate behavioral health disorders. While these adolescents may likely demonstrate a need for behavioral health intervention, they will not present with serious and persistent psychiatric disorders that require a higher level of care. The group home milieu and services will provide individualized treatment and support for each adolescent's emotional problems, development of interpersonal skills, educational and pre-vocational skills and independent living skills.

10. Multidimensional Treatment Foster Care is foster care for delinquent classmembers placed, either singly or at most with another classmember or non-classmember, in a family setting for approximately 6-9 months. MTFC families will implement a structured, individualized program for each classmember that simultaneously builds on the classmember's strengths, and sets clear rules, expectations, and limits. The MTFC parents will be supported by a multidimensional treatment foster care case manager who will coordinate the classmember's treatment program, and provide weekly supervision and support meetings for the parents. Other components include skill-focused individual treatment for the classmember, weekly family therapy for the biological parents, frequent contact with the biological family, close monitoring of progress in school, and psychiatric consultation/medication management as needed.

11. "State Detention Center" means one of the 3 centers located at the following addresses: 920 Broad St., Hartford, CT; 784 Fairfield Ave., Bridgeport, CT, 239 Whalley Ave., New Haven, CT.

II. BACKGROUND

1. This Agreement is made and entered into by the parties in order to resolve issues raised by the plaintiffs' class in Plaintiffs' Motion for Extension of Time of Supplemental Order and Joint Corrective Action Plan dated July 9, 2004.

2. Plaintiffs filed an Amended Complaint, by and through their next friends, on October 25, 1993 alleging that certain conditions and practices in the Detention Centers were unlawful. The Court certified a class on January 14, 1994 consisting of all youth confined in the Detention Centers at that time and who may in the future be confined in the Detention Centers.

3. A Consent Judgment was approved by this Court on February 6, 1997 and became effective March 8, 1997. On June 24, 2002, in order to acknowledge that defendants had accomplished many of the original objectives of that Consent Judgment, and in order to allow the defendants to focus on improving four main areas of the original Consent Judgment, the plaintiffs and defendants agreed to substitute a Stipulated Agreement for the original Consent Judgment entered into on February 6, 1997. That Stipulated Agreement was approved by the Court after a fairness hearing on August 12, 2002. In addition, on June 24, 2004 the Court entered an Order for Supplemental Relief ordering the parties to, inter alia, implement a Joint Corrective Action Plan (hereinafter "JCAP"). The stated purpose of the JCAP was "...to ensure that the constitutional rights of classmembers to adequate mental health services are safeguarded, and that the Defendants' obligations thereunder are fully satisfied." JCAP at p. 2. Throughout the life of the original Consent Judgment, the Stipulated Agreement and the JCAP, the

parties have worked cooperatively with a court-appointed monitor in an effort to accomplish all of the provisions contained therein. The parties recognize that the defendants have made considerable progress toward achieving the goals of the Consent Judgment, the Stipulated Agreement and the JCAP. The parties further recognize that maintaining and furthering these achievements is desirable. This Settlement Agreement is entered into with the further understanding and cooperation of all parties directed towards further improving the provisions of mental health services to classmembers.

4. The parties to this Agreement agree and represent that this Agreement is fair, reasonable, and adequate to protect the interests of the class in accordance with Rule 23, Fed. R. Civ. P. and also is narrowly drawn and extends no further than what is necessary and the least intrusive means to address the federal constitutional claims of the classmembers.

5. This Agreement is binding on all class members and on the defendants, their successors in office, agents, and employees.

III. GENERAL PROVISIONS

1. Nothing in this Agreement shall require or permit the defendants to violate the laws of the State of Connecticut. If there is any conflict between the defendants' obligations under this Agreement and the laws of the State of Connecticut, then the defendants shall have the option of following the laws of the State of Connecticut. In the event that the defendants choose such option, the plaintiffs may opt to litigate the claims raised in this lawsuit. If the plaintiffs exercise this option, then the defendants are relieved of all obligations under this Agreement and the Agreement entered pursuant hereto shall be vacated.

2. The provisions of this Agreement are the result of lengthy and careful negotiation among all the parties. They have been agreed upon solely as a means to put a reasonable end to the issues raised in the Plaintiffs' Motion for Extension of Time of Supplemental Order and Joint Corrective Action Plan , dated July 9, 2004, and to avoid the costs, time and risks which would be involved for both parties. The Agreement embodies a compromise of the issues involved in this case and, while its provisions are binding on the parties herein, its provisions are not to be construed to be statements, rulings, or precedents with respect to the constitutional and other legal rights of persons who are parties or nonparties to this litigation in this or any other action. Each party acknowledges that it is entering into this Agreement to settle and compromise disputed claims and defenses and that entering into this Agreement should not be construed as statements, rulings, or precedents with respect to the constitutional or other legal rights of person or persons involved in any action other than members of the plaintiff class in this action.

3. The intent of the parties is to provide supplemental services to classmembers to increase the number of classmembers diverted from residential placements. Highest preference will be given to classmembers in detention; any exceptions will require approval of the DCF chief operating officer by the defendants and will be reported to the plaintiffs and the Monitor. 4. Nothing in this Agreement shall be construed so as to affect or limit the authority of Connecticut courts or the Judicial Branch to remand childreh to juvenile detention centers or the authority of DCF to place a child who is in DCF's custody.

5. The parties agree that all rights and obligations created by this Agreement shall terminate and no longer be enforceable without the need for any further order of the Court on September 30, 2007, unless otherwise ordered by the Court, based on the Court's express finding of a constitutional violation resulting from noncompliance with this agreement.

6. Defendants shall notify all relevant staff of the provisions of this Agreement. Counsel for plaintiffs may meet with classmember in each detention center, community detention center, and alternative detention program to describe its terms. Defendants shall make available copies of this Agreement to appropriate probation staff and, upon request, to counsel for any classmember in each detention center community detention center and alternative detention program.

7. The parties agree that, upon the Court's approval, this Agreement replaces the Court's Order for Supplemental Relief entered on June 24, 2002 and that the provisions of that Order (including the Joint Corrective Action Plan) are no longer in effect. Nothing in this Agreement will be construed to prohibit the plaintiffs from bringing a new lawsuit to challenge the conditions covered by those provisions or other matters not covered by this Agreement.

8. Except as otherwise provided, the obligations of the state defendants to perform the terms and conditions of this Agreement shall become operative upon 1) approval by the General Assembly of the State of Connecticut in accordance with Connecticut General Statutes Sec. 3-125a, and 2) approval by this Court pursuant to federal rules pertaining to class actions.

IV. SERVICES

The parties agree that the following new services will be provided to certain classmembers over a two-year period to supplement the current service delivery system available to classmembers:

YEAR 1 October 1, 2005-to September 30, 2006

1. The defendants shall provide supplemental services as specified below for the period October 1, 2005 through September 30, 2006 at an estimated cost not to exceed \$2,538,438.

2. No later than October 1, 2005, defendants, through DCF, shall contract for a minimum of 10-15 multidimensional treatment foster care slots¹ at an estimated cost not to exceed \$433,438 per year. The contract(s) for such service shall define the service as specified in this agreement. These slots shall be used as an alternative to treatment and placement in residential treatment facilities for such classmembers who are identified by the CSSD/DCF case review team, or during the CPT process², as otherwise requiring residential placement.

3. For classmembers from the City of Hartford, no later than October 1, 2005, defendants, through DCF, shall contract for a minimum of 14-20 multidimensional treatment foster care slots, at an estimated cost not to exceed \$520,000 per year. These slots shall be used as an alternative to treatment and placement in residential treatment

¹ A slot is defined as a single placement

² This would include the current review process by Director of Juvenile Justice, Chief of Operations and Director of Behavioral Health.

facilities for such classmembers who are identified by the CSSD/DCF case review team, or during the CPT process, as otherwise requiring residential placement.

4. For classmembers from the City of Hartford, no later than October 1, 2005, defendants, through DCF, shall contract for a level 1.5 group home for four to six classmembers at an estimated cost not to exceed \$675,000 per year. This home shall be for such classmembers who are identified by the CSSD/DCF case review team, or during the CPT process as otherwise needing treatment and placement in a residential treatment facility, and shall be clinically staffed to meet the behavioral health needs of these classmembers.

5. For classmembers from the City of Hartford, no later than October 1, 2005, defendants, through DCF, shall provide identified community-based services/programs, to supplement such services and programs already in existence. The following services shall be available for those classmembers identified by the CSSD/DCF case review team and/or CPT process who would otherwise need treatment and placement in a residential treatment facility but for the access to such services:

- a. Outpatient substance abuse treatment services at a cost not to exceed \$250,000 per year for approximately 25 classmembers;
- b. Flexible Funds at a cost of \$100,000 per year;
- c. Post Multi-Systemic Therapy support and treatment services for 12 months or longer, at a cost not to exceed \$230,000 per year for approximately 30 families who have completed MST;

- d. Wrap-around home-based behavioral health treatment services³ developed pursuant to an individualized plan, including but not limited to trauma-focused gender specific treatment at a cost of \$200,000 per year;
- e. Flexible Funds in the amount of \$100,000 per year to help classmembers achieve educational success.
- f. Therapeutic mentors at a cost not to exceed \$75,000 per year for a minimum of 25 classmembers.

6. By October 1, 2005, the Defendants shall provide joint specialized training on care coordination and applying the wraparound care coordination principles and practices for all DCF workers, parole officers and probation officers assigned to such classmembers from the City of Hartford, who have not already received such training, and no later than October 1, 2006 for such workers and officers in the remaining parts of the state who have not already received such training. For those classmembers who have an assigned DCF welfare social worker, the social worker shall work collaboratively with the classmembers's probation officer or parole officer. When the class member has not been committed previously to DCF as a delinquent, the probation officer shall act as the case manager and the DCF social worker shall be responsible for collaborating on the development of the probation treatment plan, facilitating access to appropriate DCF services and monitoring the classmember's progress in treatment. In such instances when the classmember is committed to DCF as a delinquent, the parole officer shall act as the case manager, and the DCF social worker shall be responsible for collaborating on the

³ The components would include comprehensive assessment, clinical support team, mobile crisis and intensive case management.

developing of the probation or parole treatment plan, facilitating access to appropriate DCF services and monitoring the classmember's progress in treatment.

7. No later than October 1, 2005, defendants shall develop and implement a special pre-adjudication case review protocol for classmembers involved with DCF, designed to develop treatment/service plans and identify options for services and placements with the goal of reducing the number of days such classmembers spend in detention. Plaintiffs and the Monitor shall have the opportunity to comment on such protocol prior to its implementation. The Plaintiffs will meet with the public defenders to review the proposed protocol and coordinate any recommendations. The defendants have the sole discretion to determine the final case review protocol.

8. If there is insufficient demand for the services described above, from the classmembers from the City of Hartford, the defendants may utilize these services for other classmembers served by the Hartford Juvenile Court.

Year 2 October 1, 2006-September 30, 2007

9. No later than April 1, 2006, Defendants shall prepare a specific plan to extend the services listed in sections 2 through 4 above to classmembers throughout the state who would otherwise be placed in residential treatment facilities. The plan will provide for a similar array of services for such classmembers and will have a total cost of not more than an additional \$3.5 million over and above the costs for year 1. The Plaintiffs will be given an opportunity to comment on the plan prior to its implementation.

10. Prior to the implementation of the Year 2 plan, the parties shall meet with the monitor to discuss any concerns with the plan. The parties will use good faith efforts to resolve any problems, provided the total cost of such plan may not exceed \$6, 083,438.⁴

11. The Defendants, through DCF, will implement the plan as expeditiously as possible, with contracts executed by October 1, 2006. The plan may be developed with consideration of related off-sets, savings or reallocations within existing budget resources . In the event the legislature fails to appropriate adequate funding to implement the plan, the Plaintiffs reserve the right to pursue appropriate judicial relief to enforce this agreement.

12. During the two-year period of this agreement, the defendants will periodically review contractor expenditures for the services listed above; if under-expenditure from the \$2,538,438 is identified, and cannot be reasonably spent during the same fiscal year, the defendants will develop a plan to expend those funds for the benefit of classmembers, consistent with this agreement. Plaintiffs and the Monitor shall have the opportunity to comment on such plan prior to its finalization. Implementation of the plan must comply with all state law.

V. MONITORING

The Defendants agree to the following monitoring of its obligations under this agreement:

1. The current monitor, Dr. Robert L. Carl, Jr. , shall monitor compliance with the provisions of this Agreement. In the event that Dr. Carl is unable to continue as monitor, the parties shall mutually select his replacement. If the parties are unable to

⁴ Total costs includes extending Year 1 costs into Year 2, plus additional roll-out funding for Year 2.

agree upon a monitor, the Court shall select a monitor from nominations provided by the parties.

2. The State of Connecticut shall pay the monitor for his services at a rate of \$125 per hour, including travel time, and reasonable costs and expenses pursuant to a budget approved by the Court.

3. In performing his or her duties, the monitor shall have reasonable access to the detainees confined in the state and community detention centers and alternative detention programs, the staff of such facilities, and to files, reports and documents pertaining to such detainees which are relevant to the monitor's responsibilities under this agreement.

4. The monitor's function and responsibility shall be to review the defendants' compliance with the provisions of this Agreement. In so doing, the monitor shall consult with the plaintiffs and the defendants at the monitor's initiative or at the request of any party in order to promote efforts to facilitate compliance. The monitor may not become involved in matters that are not addressed by this Agreement. The parties recognize and agree that the failure to the defendants to implement recommendations on matters under the sole discretion of the defendants or outside the scope of this Agreement shall not constitute non-compliance with the Agreement. The monitor has no authority to add to or to alter the provisions of this Agreement.

5. The monitor's responsibility in determining compliance will be limited to assessing:

- a. whether services listed in this agreement have been contracted for within timeframes listed in this agreement.

- b. whether services provided are as described in this agreement
- c. whether the classmember was in detention when services were provided
- d. whether training has been provided and covered areas specified in this agreement
- e. whether the pre-adjudication protocol cited in the agreement has been implemented
- f. whether the defendants have demonstrated an increase in diversion of classmembers from residential placement
- g. whether defendants are properly tracking class members receiving services in this agreement to determine:
 - 1. what services are being provided to which classmembers,
 - 2. length of time of each service provided for each classmember,
 - 4. costs of service per classmember
- f. whether funding listed in this agreement has been provided to DCF'
- g. whether DCF has developed outcome measures and a quality assurance plan as described in this agreement;
- h. whether the defendants are screening classmembers and providing juvenile justice intermediate evaluations as described in this agreement;
- i. whether defendants have contracted with Christina Crowe and the University of Connecticut Health Center as described in this agreement;
- j. whether the defendants have prepared a plan to extend services to classmembers throughout the state as described in this agreement;

k. whether the defendants have promulgated procedures for case management for classmembers as described in this agreement.

6. In addition, the monitor may offer advice, comments or ideas on any services, initiatives or programs described in this agreement. To the extent the advice, comments or ideas are not within the scope of the monitor's responsibilities, they may not be the basis for any finding of noncompliance.

7. Monitoring will not include a review of the professional judgment or actions of the defendants or their employees on any particular case.

8. The Defendants will prepare monthly status reports to be reviewed by the Plaintiffs and the monitor. The reports will indicate progress in implementation and expenses to date. The Monitor shall file quarterly status reports with the Court, regarding the implementation of the provisions of this Agreement and meet with the parties on a quarterly basis for the first year of the agreement and semiannually thereafter. The parties will meet periodically with the Court, at the Court's request.

9. The State of Connecticut shall continue to pay Christina Crowe, mental health consultant, to complete a review of the alternative detention programs and the community detention centers to determine whether mental health services provided at these facilities are substantially similar to the services provided in the state detention centers. The parties agree that upon completion of this review, neither the consultant nor the Monitor will conduct any further such reviews, except for the purpose of determining whether any non-compliance issues found during the review have been resolved.

The mental health consultant will be paid \$125 per hour, including travel time and reasonable costs and expenses related to this work. The monitor will oversee this work;

in the event the consultant is not able to complete her review within six months of the effective date of this agreement, the monitor may undertake this responsibility and will amend his budget to include the additional expenses anticipated.

VI. MISCELLANEOUS

1. The Plaintiffs agree that the Defendants have substantially complied with the Stipulated Agreement Regarding Non-Mental Health Issues dated June 24, 2002 [Non-Mental Health Agreement] and that such Agreement is no longer be in effect as of August 12, 2005.

2. Beginning January 1, 2006, the defendants shall provide outcome reports for all services provided under Sec. IV, on a quarterly basis and will require all contractors providing such services to submit quarterly implementation reports indicating the number of classmembers receiving the service, the length of time each is in service and the cost of the service per child. Such reports shall be submitted to the monitor and the Plaintiffs.

3. Defendants shall continue to screen classmembers and provide juvenile justice intermediate evaluations utilizing the current screening and evaluation procedures, unless otherwise agreed to by the parties, throughout the period of this agreement. Defendants shall maintain the current level of funding (\$1,398,936) for such juvenile justice intermediate evaluations throughout the period of the agreement.

4. Defendants shall provide ADPs and community detention centers with mental health services substantially similar to the detention centers.

5. The CSSD will continue to contract with the University of Connecticut Health Center to provide audits and quality assurance monitoring of mental health services

provided in the state and community detention centers throughout the period of this agreement.

6. By September 1, 2005, the Defendants will develop outcome measures for use by contractors providing services under section IV of this agreement. The Plaintiffs and the Monitor will have the opportunity to review and comment on the proposed outcome measures prior to the measures being finalized. The Defendants have the sole discretion to determine the final outcome measures. The contracts will contain outcome measures.

7. By January 1, 2006, the defendants will prepare a quality assurance plan, utilizing outcome measures, to assess the efficacy of the services provided under section IV of this agreement. The Plaintiffs and the Monitor will have the opportunity to review and comment on the proposed quality assurance plan prior to the plan being finalized. The Defendants have the discretion to determine the final quality assurance plan.

8. Utilizing the quality assurance plan, the Defendants will assess and prepare reports on the efficacy of the services provided under section IV of this agreement; copies of such reports will be provided to the Plaintiffs and the Monitor. These reports shall not be used to determine compliance with this Agreement; rather the reports will be used for informational purposes and to assist in future funding decisions.

9. Prior to any action to enforce this agreement, the Plaintiffs will submit a notice of noncompliance to the monitor. The monitor will have 30 days to resolve the matter, unless the parties mutually agree on a further extension of time. In the event the matter cannot be resolved, the Plaintiff may pursue further relief through the District Court.

10. Plaintiffs shall have reasonable access to classmembers and their records.

11. This Agreement shall be a complete defense to any claim, suit or action in any forum with regard to any matter covered by this Agreement.

VII. COSTS AND ATTORNEYS' FEES

1. Defendants shall pay to the plaintiffs reasonable costs and attorneys' fees incurred during the period of July 1, 2004 through the date of the parties' signature on this Agreement. The defendants shall not be obligated to pay any additional costs and attorneys' fees unless such fees or costs are related to reasonable activities in ensuring enforcement of this Agreement and are ordered by the Court pursuant to federal law.

Respectfully submitted,

FOR THE PLAINTIFFS

BY: _____
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DEFENDANTS

CONNECTICUT DEPARTMENT OF CHILDREN AND FAMILY SERVICES

BY: _____
Darlene Dunbar, Commissioner

CONNECTICUT JUDICIAL DEPARTMENT

BY: _____
Judge Joseph H. Pellegrino, Chief Court Administrator

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SO ORDERED AND APPROVED after a fairness hearing, this day of June, , 2005.

UNITED STATES DISTRICT JUDGE