

*Rasho v. Jeffreys***Defendants' Response to Plaintiffs' July 8, 2021 Proposal and Questions pertaining to Out-of-Cell Time for Individuals Housed in Residential Treatment Units**

July 29, 2021

I. Introduction

On June 30, 2021 and July 7, 2021, the Department asked plaintiffs' counsel to provide a proposal to resolve plaintiffs' pending motion for a preliminary injunction (ECF 3288) which asks the Court to order the Department to produce a plan for providing the 10 hours of structured and 10 hours of unstructured out-of-cell time for individuals housed in Residential Treatment Units (RTUs), as required under §X(d) of the Settlement Agreement.

On July 8, 2021, plaintiffs' counsel proposed to resolve their motion based on the Department's willingness to commit to proposed actions and answer questions pertaining to out-of-cell time for those in RTUs. The parties also met and conferred on July 15 and July 27, 2021. This document provides the Department's offer to resolve the motion. If this document is agreed to by the parties, Plaintiffs will withdraw their motion (ECF 3288) without prejudice and the Department will agree to the following.

II. Summary

A. Issue: consistently providing 10 hours of structured and 10 hours of unstructured time at the RTUs located at Dixon and Pontiac.¹

B. Impediments at Dixon and Pontiac:

1. Consistent with CDC and other public health guidance, the Department has imposed Covid-19 medical quarantines when required and triggered by positive tests, and has imposed general Covid-19 mitigation measures, including protections that require at least 6-foot spacing between individuals for group activities. These protections have resulted in limitations on out-of-cell group activities.
2. The prison population at Dixon and Pontiac requires maximum security during group activities to ensure the safety of individuals in custody and staff.

¹ The RTUs at Logan and Joliet Treatment Center have resumed providing at least 10 hours of structured and 10 hours of unstructured out-of-cell time. There have been no medical quarantines at Joliet since June 2021.

Assaults by individuals in custody against other individuals in custody and staff at Dixon and Pontiac have resulted in the cancellation of group activities.

3. Dixon and Pontiac have limited space available to safely accommodate group activities. The use of space is also limited by required Covid-19 mitigation measures.
4. Security staff are required to provide safe movement and security to accommodate group activities. Shortages of security staff, particularly on weekends, has resulted in cancellations of group activities.²
5. Plaintiffs report that Dixon has overlapping yard and group,³ forcing RTU patients to choose between the two. Dixon reports this happens infrequently where community meetings and yard overlap; however, significant yard time is provided so individuals do not fall below the required 10 hours of unstructured if they do not attend yard on these rare occasions of overlap.

C. Plan to address reasons/impediments, with timeframes.

1. Plan to balance out-of-cell requirements with Covid-19 mitigation measures.

- a. The Department remains committed to protecting individuals in custody from the risks of Covid-19 and its deadly variants that continue to pose a particular threat to individuals housed in congregate settings.
- b. The Office of Health Services continually monitors public health guidance pertaining to recommended Covid-19 mitigation measures for individuals in custody.

² Plaintiffs report Pontiac cancels yard every Wednesday to perform Covid-19 testing on correctional staff. The Department has investigated and denies the accuracy of this report.

Plaintiffs also report that Pontiac security staff is unaware that RTU patients in general population are also entitled to 10 structured and 10 unstructured hours out of cell, and thus are not providing the hours. Upon investigation, Pontiac administration confirms they are aware of the requirements that RTU patients in general population are entitled to 10 structured and 10 unstructured hours of out of cell time. As much information as possible is shared with staff during roll call, etc., but correctional officers do not have the ability to unilaterally cancel out-of-cell time.

³ Plaintiffs also report that the group schedule at Dixon is haphazard, meaning that patients are given little advance notice that the group will be taking place, and have no time to prepare to go. Upon investigation, Dixon reports that all individuals have notice of their psychoeducational groups during treatment team meetings and the schedules are the same every week. If patients are unsure, they can ask staff.

- c. The Department continually considers whether it can further modify Covid-19 precautions in light of recent CDC guidance, either based on vaccination status of individuals in the RTUs generally, or for all individuals regardless of vaccination status.
 - i. To make this determination, the Department will determine the vaccination rate of RTU patients (for example, to determine whether group numbers could safely be increased because all members have been vaccinated or because of the general RTU rate of vaccination).
 - ii. The Department and Governor's Office will continue to work with the Department of Public Health to assess the ability to increase group size based on vaccination status, adherence to masking requirements, and other information available.
 - iii. By August 15, 2021, the Department will determine whether its Covid-19 mitigation policies related to out-of-cell time in the RTU units at Dixon and Pontiac can be changed. If so, a plan for incremental changes will be created by August 30, 2021.

2. Plans to increase structured out-of-cell time consistent with Covid-19 precautions.

- a. Structured out-of-cell time generally: The Department has asked each facility to determine whether unstructured out-of-cell time can be increased in the event that 10 hours of structured time cannot be provided.
- b. Dixon structured out-of-cell time:
 - i. As of July 5, 2021, Dixon added three groups for patients in Dorms A and D.
 - ii. Since approximately June 1, 2021, Dixon has increased structured hours in the STC to approximately 6 to 7 hours per week and to provide approximately 5 to 6 hours per week at X-house.
 - iii. The schedules have been reviewed and while there is minimal overlap for some individuals, there is significant unstructured time offered allowing for individuals to choose all structured time offered and remain eligible for more than the 10 hours of unstructured time required.

- iv. Structured out-of-cell time at Dixon: In addition to generally considering increasing maximum group attendance numbers if allowed within Covid-19 mitigation guidelines, full-day programming in Building 65 will allow for more hours. Dixon is exploring offering evening programming in Building 65.
- c. Pontiac structured out-of-cell time.⁴
- i. Pontiac will provide a memo to be read at rollcall reminding staff of the requirement to provide 10 hours of both structured and unstructured out of cell time to all RTU patients regardless of restrictive housing status.
 - ii. Pontiac is expected to resume using the movie group room in South Mental Health when security staffing levels allow.
 - iii. Pontiac is continuing to review and maximize space available, including the use of the gym, the use of “restart” chairs, and classroom space.⁵ Schedules are being completed to use all areas when staffing allows.
 - iv. Pontiac will increase sizes of groups (from current 4–5 to 10) when Covid-19 mitigation measures are relaxed per the Department of Public Health and Office of Health Services.
 - v. Additional security staff are part of the current cadet class scheduled to graduate August 2021.
 - vi. East and West cell houses are expected to be closed in approximately mid-September, allowing security staff from those buildings to be redistributed.

⁴ In their July 8 proposal, plaintiffs suggest that Pontiac is misrepresenting the structured hours that are provided to RTU patients by “overenrolling” groups. We have addressed this concern before, but our response bears repeating—while Pontiac’s group schedules do include more patients on each group schedule than the group rooms can currently accommodate, Pontiac *does not* reflect in its scheduled unstructured hours that all members are attending. For example, if 8 patients are listed for a one-hour group that can only accommodate 4 patients, Pontiac reports that for this group, 4 patients (not 8) are provided 1 structured hour each. By listing the additional patients on the schedule, Pontiac is able to move to the next patient on the list in case an inmate refuses or is unable to attend (for example, because they are out on a writ). This approach allows mental health staff to provide care to the maximum number of patients, rather than leaving available seats vacant.

⁵ The dining hall cannot be used for programming at this time because of a leaking roof. The Capital Development Board is currently in the process of replacing the roof. Construction on the North and South Cell Houses’ roofing system began July 12, 2021 and is estimated to be complete within 18 months.

vii. The Department expects fewer cancellations of group activities as security staff numbers are increased and reallocated.

3. Plans to increase **unstructured** out-of-cell time:

a. Dixon is providing more than 10 hours of unstructured out-of-cell time to all RTU patients.

b. Joliet is providing unstructured out of cell time required and the schedule does not indicate any overlap between unstructured and structured time.

c. Unstructured out-of-cell time at Pontiac:

i. Unstructured hours currently provided (assuming no cancellations) is 10-12 hours weekly.

ii. The Department will provide a memo to be read at rollcall reminding staff of the requirement to provide 10 hours of both structured and unstructured out of cell time to all RTU patients regardless of restrictive housing status.

iii. Additional security staff are part of the current cadet class scheduled to graduate August 2021.

iv. East and West cell houses are being closed in approximately mid-September, allowing security staff from those buildings to be redistributed.

v. The Department remains committed to providing the required unstructured out-of-cell time to RTU patients at Pontiac.

D. Plan to address out-of-cell time given the nature of population at Dixon and Pontiac RTUs and need for maximum-security setting.

1. Department will ask the mental health teams at Pontiac and Dixon to consider whether any RTU patients from Dixon and Pontiac are appropriate for a referral to JTC.

2. Upon the opening of Lawrence as a maximum-security facility (approximately September 2021), the Department will transfer some non-RTU individuals in custody from Pontiac to Lawrence.

III. Plans to address need for security staff:

- A. The current cadet class includes security officers for both Pontiac and Dixon. The current class is presently set to graduate in August 2021. Another cadet class is scheduled to begin in August 2021.
- B. The Department endeavors to avoid the need to mandate overtime, both to maintain staff morale and avoid stressing budget with additional costs.
- C. The Department closed the Southeast Cluster and Building 112 at Dixon on June 16, 2021, which reduced overtime mandates for staff.
- D. The Department plans to close East and West cell houses at Pontiac by mid-September. This closure may result in increased ratio of security staff at Pontiac.

IV. Assessment: Assuming the parties reach an agreement on or before July 30, 2021, by August 30, 2021, the Department will assess the status of the following related to structured and unstructured out-of-cell time at Dixon and Pontiac RTUs:

- A. Weekly hours of offered structured and unstructured out-of-cell time, including to RTU patients in general population. This will not require or include an assessment of hours provided to individual patients.
- B. Available security staff to assist with structured and unstructured time.
- C. Physical space used for structured and unstructured time.
- D. A method of tracking whether the scheduled time was provided as scheduled or canceled. This will not require tracking the out-of-cell time provided to RTU patients on an individual basis.

V. Report: By September 30, 2021, or 30 days after the assessment in § IV above, whichever is later, IDOC will provide to plaintiffs' counsel its Report as to:

- A. The status of the Department's compliance with offering 10 hours structured and 10 hours unstructured out-of-cell time to RTU patients at Dixon and Pontiac. This will not include information regarding the provision of out-of-cell time to individual RTU patients;
- B. Documentation relied on by the Department in its assessment of compliance with providing 10 hours structured and 10 hours unstructured out-of-cell time to RTU

patients at Dixon and Pontiac. This will not include information regarding the provision of out-of-cell time to individual patients;

- C. The reasons for offering less than 10 hours structured and 10 hours unstructured out-of-cell time to RTU patients at Dixon and Pontiac, if applicable; and
- D. The Department's plan to achieve compliance with providing 10 hours structured and 10 hours unstructured out-of-cell time to RTU patients at Dixon and Pontiac, if applicable.

VI. Response: Plaintiffs may respond to the Department's Report in § V (above) or the process will be repeated until it is determined that 10 hours of structured and unstructured out-of-cell time are being offered, on average, to RTU patients at Dixon and Pontiac, or as otherwise noted below.

- A. If plaintiffs disagree with the Department's Report outlined in § V, within 14 business days of the date of the Report plaintiffs will provide in writing the reasons for their disagreement, any supporting data or documentation, and any proposed corrective actions.
- B. Within 14 business days of receipt of any letter from plaintiffs' counsel under VI.A., the Department will provide a written response.
- C. Within 14 business days of the Department's response under § VI.B., the parties will meet and confer in an effort to resolve their disputes and avoid litigation.
- D. If plaintiffs do not submit a letter in accordance with § VI.A., the Department will conduct a reassessment in accordance with § IV every 90 days (for example, by November 30, 2021, and continuing thereafter) and provide a report in accordance with § V 30 days thereafter.
- E. If plaintiffs do submit a letter in accordance with § VI.A. and the parties resolve their disputes by agreement anytime thereafter, the Department will conduct a reassessment in accordance with § IV every 90 days following resolution of all disputes and provide a report in accordance with § V 30 days thereafter, unless otherwise agreed to by the parties.

VII. Plaintiffs retain all rights under the Settlement Agreement, including the right to seek a court order and to pursue any available remedies, consistent with the PLRA, to prevent or remedy a violation of federal law.

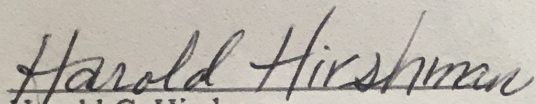
- A. The parties agree and stipulate that the reports and materials supplied by Defendants pursuant to the processes described in §§ IV–VI of this proposal shall be admissible as evidence and may be used in either parties’ case if Plaintiffs move for relief. This stipulation does not include records exchanged by the parties outside of the processes described in §§ IV–VI, including evidence or information regarding a specific individual in custody’s out-of-cell time. The parties agree that, although presumably admissible, the parties retain the right to object to the reports and materials exchanged pursuant to §§ IV–VI on any other basis, such as not being representative of the current provision of out-of-cell time.
- B. The parties agree and stipulate that the Defendants are under no obligation to provide or document the amount of out-of-cell time provided to individual RTU patients either in its Report under § V or through document production, nor do Defendants stipulate to the admissibility of information regarding a specific individual’s out-of-cell time.
- C. The parties agree and stipulate that the Department’s reports regarding the out-of-cell time being provided, as described in § IV.A., are an accurate representation of the out-of-cell time being provided as of the date noted in the Report.

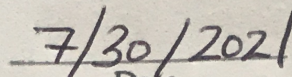
VIII. Termination.

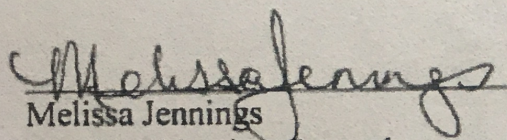
- A. The filing of any motion in court regarding RTU out-of-cell time at Pontiac or Dixon will immediately terminate the Department’s commitments under §§ II-VI herein.
- B. Termination of the Court’s jurisdiction over § X(d) of the Settlement Agreement will immediately terminate the Department’s commitments under §§ II-VI herein.
- C. The Department’s determination, on or after December 31, 2021, through the assessment process in § IV that the required out-of-cell hours have been provided will terminate the Department’s commitments under §§ II-VI herein. The parties agree that non-systemic instances during which less than 10 hours of structured and 10 hours of unstructured out-of-cell time is provided will not prevent the Department from terminating its commitments under §§ II-VI herein.

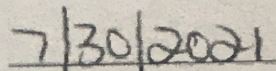
D. The Department's commitments under §§ II-VI herein may be terminated either in their entirety or individually for the institutions addressed herein, Dixon and Pontiac.

AGREED:


Harold C. Hirshman
Counsel for the Plaintiff Class


Date


Melissa Jennings
Special Litigation Counsel
On behalf of the Defendants


Date