

MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF JUSTICE
AND SEBASTIAN COUNTY, ARKANSAS REGARDING
THE SEBASTIAN COUNTY ADULT DETENTION CENTER

I. BACKGROUND PROVISIONS

A. On March 1, 2005, the United States, through the Department of Justice ("DOJ"), notified Sebastian County officials of its intent to investigate conditions of confinement at the Sebastian County Adult Detention Center ("Jail") pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 ("CRIPA").

B. On May 9-12, 2005, the DOJ toured the Jail with consultants in the fields of correctional management and correctional medical and mental health care.

C. Throughout the course of the investigation and inspection of the Jail, the DOJ received complete cooperation from the Sheriff and other Sebastian County officials, and unfettered access to all facilities, documents, and staff.

D. On May 9, 2006, the DOJ issued a Findings Letter, pursuant to 42 U.S.C. § 1997(a)(1).

E. The parties enter into this Settlement Agreement ("Agreement") for the purpose of clearly articulating and further complying with Sebastian County's duties under state and federal law." The parties agree that this Agreement neither constitutes an admission by Sebastian County of the truth of the findings contained in the Findings Letter, nor constitutes an admission of liability by Sebastian County.

F. Sebastian County ("the County") is responsible for providing all support, including financial resources, necessary to fulfill its obligations under this Agreement.

G. This Agreement does not constitute an admission that any of the provisions herein have not been complied with prior to the execution of this Agreement and any such deficiencies, risks, or breach(es) intimated by the language of this Agreement, express or implied, are hereby specifically disclaimed by Sebastian County.

H. The parties to this Agreement are the United States, represented by the United States Department of Justice, and

Sebastian County, Arkansas, represented by the Sebastian County Sheriff in his official capacity as Jailer of the Sebastian County Adult Detention Center, the Sebastian County Judge in his official capacity, and all of their agents, assigns, employees, designees and successors in office, in their official capacities. Sebastian County will use best efforts to ensure that the Jail takes all actions necessary to comply with the provisions of this Agreement.

I. Sebastian County enters into this Agreement because it is firmly committed to providing constitutionally and legally compliant conditions in the Jail by effectuating its duties under the Constitution and other applicable law, and the parties hereby affirm that this Agreement does not constitute a recognition of any deficiencies or risks present in the Jail or breach(es) of constitutional or legal duties by Sebastian County.

J. This Agreement is not intended to have any preclusive effect except between the parties. Should the issue of the preclusive effect of this Agreement be raised in any proceeding other than one to enforce this Agreement, the parties agree to certify that this Agreement was intended to have no such preclusive effect.

K. This Agreement will not be used against Sebastian County in any proceeding other than a proceeding between the United States and Sebastian County.

L. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action. Accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against Sebastian County or its officials, employees, or agents for their conduct; accordingly, this Agreement does not alter legal standards governing any such claims, including those under Arkansas law.

II. DEFINITIONS

A. "County" means Sebastian County, Arkansas, the Sebastian County Sheriff in his official capacity as Jailer of the Sebastian County Adult Detention Center, the County Judge in his official capacity and all of their agents, assigns, employees, designees and successors in office.

B. "DOJ" means the United States Department of Justice, which represents the United States of America in this matter.

C. "Effective date" means the date this Agreement is executed by the parties.

D. "Health services staff" means any and all healthcare staff, who by virtue of license, credentials and/or training, provide health services for inmates confined at the Jail.

E. "Implement" means to give practical effect and to achieve actual fulfillment by concrete measures, including training of relevant staff.

F. "Include" or "including" means include, but not limited to or including, but not limited to.

G. "Inmate" means an individual sentenced to, incarcerated in, detained at, or otherwise confined at the Jail.

H. "Inmates with chronic disease" will include, but are not limited to, those inmates who have been diagnosed with diabetes, hypertension, asthma, cardiac disease, Human Immunodeficiency Virus ("HIV") infection, viral hepatitis, and seizure disorder, and may include inmates with other chronic diseases.

I. "Jail" means the Sebastian County Adult Detention Center, the correctional facility owned by Sebastian County located at 800 South "A" Street in Fort Smith, Arkansas, as well as any facility owned and/or operated by or for Sebastian County that supplements or replaces the Sebastian County Adult Detention Center on a temporary or permanent basis.

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

K. "Nursing Staff" means licensed registered nurses ("RNs") licensed practical nurses ("LPNs"), and licensed nurse practitioners ("NPs"), employed at or contracted by the Jail, currently licensed to the extent required by the State of Arkansas to deliver those health services they have undertaken to provide.

L. "The parties" means Sebastian County and the United States.

M. "Physician" means a physician who is currently licensed by the State of Arkansas.

N. "Psychiatrist" means a psychiatrist who is currently licensed by the State of Arkansas.

O. "Security Staff" means all detention officers, deputies, law enforcement officers, reserve officers, unsworn civilian employees, and volunteers, irrespective of job title, who supervise inmates on a permanent or temporary basis at the Jail.

P. "Special needs inmates" will mean those inmates whose serious medical needs are known to be suicidal, mentally ill, mentally retarded, seriously or chronically ill, physically disabled, or otherwise a danger to themselves.

Q. "Train" means to instruct in the skills addressed, including ongoing assessment of the level of aptitude for instructional material that is required for compliance with the laws of the State of Arkansas.

III. CARE REQUIRED BY THE UNITED STATES CONSTITUTION

The purpose of this Agreement is to protect the constitutional rights of the inmates detained at the Jail. The terms and requirements of this Agreement will be interpreted to be consistent with the measures necessary to protect the constitutional rights of inmates and are not meant to expand or contract the constitutional duties of Sebastian County or the constitutional rights of its inmates.

IV. MEDICAL CARE

A. General Provisions

1. Sebastian County will identify, implement, and maintain procedures to address the serious medical needs of inmates.

a. Sebastian County will retain a physician who will be designated Medical Director of the Jail. The Medical Director will be a licensed physician, will supervise all clinical practices at the Jail, and will communicate problems and resource needs to the detention staff. The medical director will supervise clinical decision-making.

b. Sebastian County will maintain written comprehensive site-specific policies and procedures governing medical, dental and mental health care.

c. The policies and procedures referenced in ¶ IV.A.1.b of this Agreement will govern all aspects of medical and mental health care, including: initial detainee health screening and health assessments; staffing levels and job descriptions; sick call and other access to medical services; follow-up care; specialist referrals; housing of special needs inmates; distribution and management of medications; continuity of medications; chronic care; emergency care; dental care; mental health care; communicable disease testing and control; infection control; medical record-keeping; staff training; quality control/improvement; and medical grievance procedures.

d. Sebastian County will provide access to physician, psychiatric and nursing staff to provide medical care for inmates, including chronic and acute care. Sebastian County will provide access to physician assistants and supervision to the nursing staff.

e. Sebastian County will develop, implement, and maintain quality assurance policies, procedures and practices to evaluate the adequacy of all medical and mental health policies and procedures.

f. Sebastian County will train staff to respond in a timely fashion to any medical emergency at the Jail.

g. Sebastian County shall develop, implement, and maintain policies and procedures requiring that all correctional officers be trained to understand and identify signs and symptoms of urgent medical and mental health needs, including contagious disease, drug or alcohol withdrawals, and potential suicide risk, and to take action to protect the health of the inmate, including referral for medical and mental health attention.

h. Sebastian County will provide training for all health services staff on all medical policies and procedures referenced in this Agreement.

i. Sebastian County will, for each inmate, maintain on-site, confidential, and appropriately organized records of all medical and/or mental health screening, assessments, and/or treatment received within the Jail during the preceding five (5) years. Such records will include, where practicable, information regarding symptoms, the results of physical evaluations, and medical staff progress notes so that medical staff will have such information available when treating inmates.

j. Sebastian County will maintain logs of pending or completed outside medical and mental health referrals and sick call requests or sick call visits.

k. Sebastian County's "fee-for-service" policy will clearly articulate that medical care will be provided regardless of the inmate's ability to pay. No fee-for-service shall be required for health screenings, emergency care, and/or the treatment and care of conditions affecting public health, e.g., Tuberculosis, Methicillin Resistant Staphylococcus Aureus (MRSA), pregnancy, etc.

B. Intake and Health Assessment

1. Sebastian County will maintain an initial medical screening instrument designed to identify the medical needs of incoming inmates. The screening instrument will make specific inquiries into medication history, past serious infectious disease, recent communicable disease symptoms, drug and alcohol withdrawal symptoms, previous suicide attempts, recent history of mental illness, signs and symptoms indicative of potential risk of suicide, and current or recent pregnancy.

2. Sebastian County will establish a medical record for each inmate upon admission, containing the initial medical screening instrument. The screening instrument will be forwarded to the Jail's medical staff within 24 hours of admission.

3. Sebastian County will train all Jail staff who conduct initial inmate intake screening and assessment on how to complete the screening instrument, and how to observe the conduct and appearance of inmates in an effort to determine whether they have an immediate need for medical or mental health attention.

4. Sebastian County will use the instrument provided for in ¶ IV.B.1 above to assist in conducting initial clinical health screenings of all inmates in a timely manner after intake and to make timely and medically appropriate referrals for treatment or evaluation.

5. Sebastian County will provide for the initial health screenings described in ¶ IV.B.4 above for all new inmates and inmates transferring from other correctional institutions within forty-eight (48) hours of each inmate's arrival at the Jail.

The 48-hour screening will consist of review of the instrument referenced in ¶ IV.B.1 above by the Jail's medical staff. For this initial health screening, detention staff will provide and clinical staff will review the inmate's responses to the initial screening instrument (¶ IV.B.1 above), including, where applicable: (1) medical, surgical, and mental health history, including current or recent medications; (2) current injuries, illnesses, evidence of trauma, and vital signs, including recent alcohol and substance use; (3) history of substance abuse and treatment; (4) pregnancy; (5) history and symptoms of communicable disease; (6) suicide risk history; and (7) history of mental health treatment, including medication and hospitalization. When completing the intake medical questionnaire, Jail staff will attempt to obtain information regarding the amount, frequency, and time of the last dosage of medication from every inmate reporting that he or she is currently or recently on medication, including psychotropic medication. This initial health screening information will promptly become part of an inmate's medical record.

6. Jail staff will, where practicable, retrieve all retrievable medical and mental health records from an inmate's previous period of incarceration at the Sebastian County Jail for the preceding five (5) years (where the record can be positively matched to the inmate) prior to the inmate's next medical or mental health encounter after the initial clinical health screening described in ¶¶ IV.B.4 & IV.B.5 above, and will consolidate them with the inmate's current medical record. Sebastian County's records will contain unified medical, dental, and mental health records for each inmate for the preceding five (5) years for all care and treatment received within the Jail. All records will be filed in the inmate's medical charts in as prompt a manner as practicable.

7. Sebastian County will conduct health assessments, including visual examinations, of all inmates who have not otherwise received such an assessment on or about 21 days after an inmate's incarceration and will make referrals for treatment or evaluation as medically indicated. As part of the 21-day health assessment, the Jail's medical staff will review the results of the intake screening, the initial clinical health screening, and the collected medical and mental health history.

8. In the event an inmate refuses to cooperate in the screening and/or health assessment in ¶ IV.B.4, 5, and 7 of this Agreement, after being advised of its importance to the inmate's health needs, then such refusal will be documented by the Jail's medical personnel. In such event, Sebastian County will take steps medically indicated for the health of the individual inmate, other inmates, and staff.

9. Sebastian County will adopt, implement, and maintain provide an incoming inmate's medication for serious medical needs as promptly as practicable when said medication can be can be obtained and verified (e.g., that medication is what it purports to be, was actually prescribed, was actually prescribed for the inmate in question, has not expired, etc.), as medically indicated and when medically necessary.

C. Chronic Care

1. Sebastian County will adopt, implement, and maintain clinical guidelines for chronic diseases including HIV, hypertension, diabetes, asthma, and elevated lipids.

2. Sebastian County will provide inmates with serious medical needs, including chronic illnesses and/or mental illnesses, with medically necessary examination, diagnosis, monitoring, and treatment. Sebastian County will provide and document routine tests and follow-up appointments where practicable and medically indicated.

3. Sebastian County will provide special medical diets when medically required.

4. Sebastian County will maintain an updated log of inmates with chronic illness. Sebastian County will keep records of all care provided to inmates diagnosed with chronic illnesses in the inmate's individual medical record.

D. Acute Care

1. Sebastian County will provide all inmates with serious and/or acute medical needs with medically necessary examination, diagnosis, monitoring, and/or treatment, including referrals to

appropriate outside medical professionals when clinically indicated.

2. Sebastian County will establish and maintain agreements with local medical providers to provide immediate treatment to inmates with serious medical needs, regardless of the inmate's ability to pay.

E. Infection Control

1. Sebastian County will adopt, implement, and maintain infection control policies and procedures to prevent the spread of infections or communicable diseases.

2. Sebastian County will routinely perform on all inmates a tuberculin skin test (i.e., Mantoux "PPD"), unless such test is medically unnecessary (i.e., history of previous positive tests or documentation of previous test no more than three months prior to admission) or medically contra-indicated according to Centers for Disease Control ("CDC") guidelines. Sebastian County will read the PPD forty-eight (48) to seventy-two (72) hours after placement of the PPD. Within 72 hours of determining that an inmate's PPD test is positive, Sebastian County will schedule an appointment for a chest x-ray of the inmate. Sebastian County will transport inmates to the scheduled appointment. Sebastian County will follow CDC guidelines in effect on the effective date of this Agreement for management of inmates with TB infection, including providing a prophylactic medication where medically appropriate. Inmates who exhibit symptoms of contagious TB will be housed in an isolation cell.

F. Administration and Control of Medication

1. Sebastian County will provide inmates with serious medical needs timely access to and verification of medically necessary medications, regardless of their ability to pay.

2. Only qualified medical staff will prescribe medications. When telephone prescriptions are deemed medically appropriate by physicians treating Jail inmates, the reasons for

telephonic prescription (e.g., as opposed to in-person exam) will be documented by the physician.

V. MENTAL HEALTH CARE

1. The Jail's medical staff will review the intake medical questionnaire (referenced in ¶ IV.B.1 of this Agreement) of all inmates for mental health issues within 48 hours after intake and will make any referrals and/or provide any treatment as medically indicated.

2. Sebastian County will promptly perform a comprehensive mental health evaluation of any inmate whose history or responses to initial screening questions indicate a need for such an evaluation. Sebastian County will perform comprehensive mental health evaluations for all other inmates within 30 days of arrival. The comprehensive mental health evaluation will include, if indicated, a recorded diagnosis section. If mental health staff find a serious mental illness, they will treat the same as medically indicated, including timely and appropriate referrals for specialty care where medically necessary.

3. Sebastian County will promptly provide mental health treatment to any inmate whose evaluation indicates a serious mental health condition that requires such treatment. Sebastian County will make timely and medically indicated referrals for specialty care. Where practicable, and where consistent with security concerns, Sebastian County will provide an appropriate confidential environment for psychological testing and counseling.

4. Sebastian County will provide staffing by and/or transport to Qualified Mental Health Professionals to provide mental health care for inmates where medically indicated, including having a psychiatrist or M.D. involved in the prescription of psychotropic medication.

5. Sebastian County will provide psychiatric evaluations by a Qualified Mental Health Professional any time psychotropic medications are prescribed or changed.

6. Sebastian County's Qualified Mental Health Professional, whether employed or contracted, will prepare an individual mental health treatment plan in a timely manner for each inmate requiring treatment for mental illness.

7. Sebastian County will provide training for Jail staff on how to understand symptoms of mental illness and how to respond to such symptoms.

VI. PROTECTION FROM HARM

1. Sebastian County will maintain sufficient detention staff to provide security in the housing units, supervise inmates, and provide for the safety and security of inmates and security staff at all times in accord with their duties under the Constitution.

2. Sebastian County will train all Jail staff regarding the Jail's use of force policy and use of force continuum, including policies regarding appropriate use of OC/pepper spray.

3. Sebastian County will maintain policies and procedures for supervisory and/or management review and investigation of all uses of force, to determine whether force was used in accord with policy, whether remedial training is necessary, or whether the Jail's policies should be revisited.

4. Sebastian County will provide training for all Jail staff on the policies and procedures required to be developed, implemented, and maintained by this Agreement.

VII. ENVIRONMENTAL HEALTH AND SAFETY AND SANITATION

1. Sebastian County will maintain policies and procedures for the handling and disposal of biohazardous materials and potentially contaminated arrestee clothing, including the use of red biohazard bags.

2. Sebastian County will maintain policies that provide that any inmate asked to clean up a biohazard be outfitted with protective materials and trained before cleaning.

3. Sebastian County will maintain a policy for washing and drying of laundry, including procedures for washing contaminated clothing.

4. Sebastian County will use best efforts to enforce the Jail's current policies on control of tools in the Jail and supervision of inmates who have access to tools.

5. Sebastian County will maintain policies and procedures for the control of chemicals in the Jail and supervision of inmates who have access to these chemicals.

VIII. REPORTING REQUIREMENTS

1. Sebastian County will report semi-annually to the DOJ concerning its performance of the terms of this Agreement (the "Semi-annual Report"). The first Semi-annual Report will be due six months from the effective date of this Agreement, and every six months thereafter, until this Agreement is terminated as provided herein. At a minimum, the Semi-annual Report will include the following sections:

- a) a narrative summary of the Sebastian County's compliance with each of the terms of this Agreement;
- b) where applicable, the summary will specifically note when Sebastian County has failed to meet any deadline specified in this Agreement;

2. The Semi-annual Report will include the following documentation and reports:

- a) reports on the current numbers of both medical and mental health staffing;
- b) access to reports on uses of force by Jail staff, including any injuries that occur, medical treatment provided to inmates involved in such uses of force, any investigation conducted by Jail staff, any action by Jail staff as result, and any inmate discipline imposed;

3. Sebastian County will promptly notify the DOJ of any inmate deaths.

IX. COMPLIANCE AND MONITORING

1. During the term of this Agreement, upon reasonable notice, the DOJ and its consultants will have complete access to the Jail, staff, inmates, and to Jail documents and records to monitor compliance with the terms of this Agreement. Upon request, Sebastian County will provide to the DOJ, within a reasonable time, copies of, or access to, Jail documents and/or records as well as documents or records created by any agent or contractor authorized to work or to provide services at the Jail, to the extent permitted by law.

2. The DOJ will have the right to conduct confidential interviews with inmates. Sebastian County will continue to permit inmates to send and to receive confidential legal mail to attorneys of record, courts, and to representatives of the DOJ.

3. Sebastian County will maintain records to document its compliance with all requirements of this Agreement.

4. Nothing in this Agreement will be construed to limit the DOJ's right to request additional documentation and/or conduct inspections in addition to those specified herein.

X. IMPLEMENTATION AND TERMINATION

1. If the DOJ finds that Sebastian County has failed to fulfill a significant obligation under this Agreement, the DOJ will, prior to instituting judicial action to enforce the terms of this Agreement, give written notice of the failure to Sebastian County. Sebastian County will have sixty (60) days from the date of such notice to cure the failure, or such additional time as is reasonable due to the nature of the issue and agreed upon by the parties, and provide the DOJ with sufficient proof of its cure. At the end of the sixty day period, or such additional time as is reasonable due to the nature of the issue and agreed upon by the parties, in the event that the DOJ determines that the failure has not been cured, the DOJ may seek appropriate declaratory and injunctive relief

(including specific performance) without further notice. However, in case of an emergency posing an immediate threat to the health or safety of inmates, the DOJ will notify Sebastian County, and the cure period described herein will be reduced to one week (7 days), before instituting judicial action. The DOJ commits to work in good faith with Sebastian County to avoid enforcement actions.

2. This Agreement resolves the United States' current investigation of the Sebastian County Adult Detention Center pursuant to CRIPA.

3. Failure by a party to enforce this entire Agreement or any provisions thereof with respect to any deadline or any provision herein will not be construed as a waiver of its right to enforce other deadlines and provisions in this Agreement.

4. This Agreement will terminate four (4) years (4) from the effective date. This Agreement may terminate earlier if the parties agree that Sebastian County has been in substantial compliance with each paragraph in this Agreement for at least one (1) year. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, will not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance will not constitute substantial compliance.

5. This Agreement is binding upon the parties, by and through their officials, agents, employees, and successors. This Agreement does not authorize, nor will it be construed to authorize, access to any Sebastian County or United States records and/or documents by persons or entities other than the United States and Sebastian County.

6. No person reporting conditions which may constitute a violation of laws or the Constitution of the United States or this Agreement will be subjected to retaliation in any manner for so reporting in accordance with 42 U.S.C. §1997d.

7. Sebastian County will make the substantive terms of this Agreement available to all inmates by maintaining a

complete copy of this Agreement in the Jail Administrator's office and by providing a complete copy to any inmate upon request.

FOR THE UNITED STATES:

/s Grace Chung Becker

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