

**PROTECTION AND
ADVOCACY FOR
PEOPLE WITH
DISABILITIES, INC.**

The Protection & Advocacy System for South Carolina

October 10, 2011

Dear Recipient:

In June 2005, three individuals in the custody of the South Carolina Department of Corrections filed a lawsuit on behalf of over 2,500 inmates with serious mental illness. The plaintiffs allege that the agency has failed to provide services to such an extent that it violates their constitutional rights to be protected from cruel and unusual punishment.

Protection and Advocacy for People with Disabilities is also a Plaintiff in this lawsuit. The case is scheduled to be tried in the Richland County Courthouse beginning on February 6, 2012. It is expected to last at least a month. Please put the date on your calendar.

I am writing to provide information to you about the case that the presiding judge has authorized us to release. I am attaching a document that summarizes the reports and opinions of three nationally recognized experts – two psychiatrists and one correction security consultant – the plaintiffs have retained. Their reports are based on over five years of inmate interviews, record reviews, and inspections of SCDC institutions and programs designed to treat individuals with mental illness. Copies of the expert's opinions and reports are attached to the summary or can be obtained through the law firm representing the Plaintiffs. Contact Tammie Pope at tammie.pope@nelsonmullins.com to request a set of those materials.

Protection and Advocacy for Peoples with Disabilities is a statewide not-for-profit organization established by federal and state law to advocate for the rights of South Carolina with disabilities. We believe it is important for leaders through South Carolina to be aware of the conditions under which individuals in the care and custody of the State are being confined. Here are a few examples of what you can learn more about in the attached report:

- Inmates at risk of suicide are routinely stripped and placed in solitary confinement, for days, often without a gown or any covering. In one institution, they were placed for more than 24 hours in narrow shower stalls and interview booths without toilets where they were forced to relieve themselves.
- An inmate with mental illness described by correctional officers as "psychotic" was sprayed with a chemical agent for putting her head in the toilet.

CENTRAL OFFICE
SUITE 208
3710 LANDMARK DRIVE
COLUMBIA, SC 29204
(803) 782-0639
(Voice and TTY)
FAX (803) 790-3946

PIEDMONT OFFICE
SUITE 106
545 N. Pleasantburg Drive
GREENVILLE, SC 29607
(864) 235-0273
1-800-758-5212
(Voice and TTY)
FAX (864) 235-7962

INFORMATION AND REFERRAL
Toll Free:
1-866-275-7273
(Voice)
1-866-232-4525
(TTY)
Email:
info@pandasc.org

PEE DEE OFFICE
2137 B HOFFMEYER ROAD
FLORENCE, SC 29501
1-866-275-7273
(Voice and TTY)
FAX (843) 662-0786

LOW COUNTRY OFFICE
1569 SAM RITTENBERG BLVD.
CHARLESTON, SC 29407
(843) 763-8571
1-800-743-2553
(Voice and TTY)
FAX (843) 571-0880

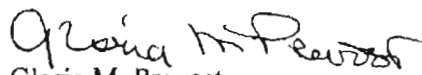
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- Crowd control contaminants were used on asthmatic mentally ill inmate who refused to give up his inhaler.
- A mentally ill inmate was placed in solitary confinement for 8 years, mostly for charges of masturbating alone in his cell behind a door with limited visibility.

The conditions individuals with mental illness endure in South Carolina prisons are a well-kept secret. We hope you will want to learn more about them. We also hope you will work with us to change them.

Sincerely,


Gloria M. Prevost
Executive Director

**LAWSUIT ALLEGES PRISON CONDITIONS
CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT FOR
OVER 2,500 INMATES WITH SERIOUS MENTAL ILLNESS**

The problems that led to the filing of the lawsuit on behalf of people with serious mental illness in the custody of the South Carolina Department of Corrections are not new. For more than a decade, mental health advocates have been concerned about the quality of mental health services SCDC provides to individuals in the agency's custody.

Past SCDC Studies

In a 2000 study funded by the National Institute of Corrections and requested by the Department itself, Raymond Patterson, M.D., a nationally recognized expert in the field of correctional mental health services, made the following finding about the condition of the SCDC mental health services program:

- The system is currently in crisis and immediate efforts to rectify the inadequate resource provision to the mental health system must be undertaken.

In October 2000, a blue ribbon panel appointed by the General Assembly confirmed Dr. Patterson's finding. The results of this study, known as the Joint Legislative Proviso Committee Report, included the following conclusions about the public safety implications of the Department's failure to provide adequate care:

- First and foremost, inmates with mental illnesses are not receiving adequate treatment for their illnesses and often times leave prison worse off than when they entered.
- Second, the public is being short-changed because these inmates are eventually released, only to return to their local communities and commit more crimes secondary to inadequately treated mental illnesses.

In May and July 2003, the South Carolina Department of Mental Health also produced reports evaluating SCDC's mental health program. The observations included the following:

- Mental health services were grossly understaffed.
- Lack of psychiatric coverage resulted in a critical situation, with extremes of poor care, inhumane treatment and dangerousness for staff and inmates.
- Psychiatric and psychiatric nursing services were in disarray due to the shortage of psychiatrists and lack of psychiatric oversight of prescription, administration, and monitoring of psychotropic medications.

- Numerous inmates with psychiatric disorders are on 23-hour lock-up because of behaviors attributable to untreated mental illness.

Current Status

Unfortunately, not much has changed in the past decade. When the lawsuit was filed in 2005, SCDC had one full-time psychiatrist on its staff and no treating or supervising psychologists. While the agency now employs two full-time psychiatrists and contracts with a number of part-time psychiatrists, it still falls well below the staffing necessary to serve over 2,500 inmates with serious mental illness.

Since the filing of this lawsuit, the plaintiffs, who have been represented on a *pro bono* basis by Nelson Mullins Riley & Scarborough, have retained three nationally recognized correctional experts to assess the quality of SCDC's mental health services and related security systems. Two of these experts - Jeffrey Metzner, M.D. and Raymond Patterson, M.D. (the same individual who evaluated the program in 2000) - are psychiatrists. The third - Steve J. Martin - is a corrections security consultant. For the past 30 years, these individuals have worked throughout the country for local jails, state prison systems, the United States Department of Justice, and federal courts to assess many of the same issues that are present in South Carolina's prisons.

Staffing and Services

To investigate the conditions here, our experts participated in court-ordered inspections of the four institutions designated as SCDC's area mental health centers as well as Gilliam Psychiatric Hospital and the Intermediate Care Services (ICS) program, which are designed to serve inmates with higher levels of need. During these inspections, the psychiatrists toured the facilities, reviewed medical and disciplinary records, and interviewed inmates. Based on their inspections, Dr. Metzner and Dr. Patterson consistently found the following at each institution:

- Inadequate staffing, particularly in the number of psychiatrists, psychologists, social workers, and appropriately trained counselors.
- Inadequate medication management.
- Inappropriate policies, practices, and conditions for crisis intervention and solitary confinement.
- Inadequate quality improvement program.

Crisis Intervention

Like most prison systems, SCDC has a policy that provides for "crisis intervention" with inmates who pose a risk to themselves or others. Crisis intervention is intended to create a

therapeutic environment, something like a mental health infirmary. It is not designed to be a punitive placement. Under SCDC's operation, unfortunately, that is just what it is.

Inmates are placed in crisis intervention cells routinely when they threaten to hurt themselves or others. The cells are located in each institution's administrative segregation unit, the prison within the prison, where an inmate on crisis intervention will generally remain on lock-up for a minimum of several days without being permitted to leave the cell. During this time, the inmate is "stripped out," where she or he will be confined in the cell without any clothing. No hygiene materials are provided. No showers are permitted.

In many cases, the inmates are completely naked, with paper gowns and suicide blankets withheld or not made available because of a shortage of supplies. Inmates in these circumstances typically sleep without a mattress on a concrete floor or steel bunks in cells so cold that one inmate reported putting his hands and feet in the toilet to try to get warm.

The actual length of time an inmate endures these conditions depends more on what the inmate tells a counselor about how she or he feels than on any other consideration. Inmates who convey they are over the suicidal or self-abusive feelings will often be released from crisis intervention. On the other hand, inmates who indicate they may be continuing to suffer from impulses to hurt themselves can remain in crisis intervention up to 14 days. During these periods, rarely do the inmates receive therapeutic services to help them work through their crises. Psychiatrists, even if they are seeing inmates at the institution, rarely visit inmates in crisis intervention. Not surprisingly, Dr. Metzner and Dr. Patterson found these practices caused inmates to withhold, not disclose, clinically significant information about their conditions.

Alternative Crisis Intervention Placements

Plaintiffs discovered that during a period from 2008 to 2010 crisis intervention got even worse for many inmates at Lieber Correctional Institution, one of SCDC's three area mental health facilities for men. When cells designated for crisis intervention use were occupied, inmates needing crisis intervention were placed in makeshift holding cells without toilets for extended periods where, in numerous cases, they reported having to urinate and defecate on the floors in their holding cells. These alternative crisis cells included individual shower stalls, interview booths, and recreational cages. Here are excerpts from what some inmates reported:

- Overnight in an individual shower stall. Naked. No blanket or covering. Cold and cramped space. No room to lie down. (Inmate 1)
- After having to urinate on the floor in an interview booth used for crisis intervention, inmate had to clean it up with paper towels he had been given to use to sit on the stool. Naked, he was humiliated by being escorted down the hallway in front of other inmates to defecate in a toilet. (Inmate 3)

- Inmate in holding cell without a toilet. Naked and without any type of covering for 40 hours. Forced to urinate and defecate on cell floor. There was a hole in the ceiling of the cell where he reported other inmates had thrown their feces up in the ceiling to get rid of it. Food was offered but he did not eat because he was not given utensils and his hands were very dirty due to conditions of confinement. He was interviewed naked at his cell front by a female counselor. (Inmate 4)
- Inmate placed naked without covering for two days in interview booth because he told staff he wanted to kill himself. No toilet or waste bin in small booth, which was one side of cubicle used by visitors with glass partition between inmate and visitors. He beat on door to get officers' attention but because the booth was in an area not staffed at night, he was forced to relieve himself in booth. He was fed in the booth after relieving himself there. (Inmate 7)
- Inmate was stripped out and placed in a holding cell with another naked inmate. Placement was particularly distressing experience because he had been previously assaulted while in crisis intervention at another SCDC institution. (Inmate 11)

Based on their inspection, including record reviews and inmate interviews, Dr. Patterson and Dr. Metzner found that the use of the alternative housing placements for crisis intervention programs were "clearly below the standard of care."

Excessive Use of Force

Although force may be a necessary part of prison life, SCDC officials routinely use excessive force against inmates with mental illness. After reviewing well over 1,000 internal disciplinary reports, however, Steve Martin the plaintiffs' correctional security consultant, found substantial evidence that SCDC's correctional staff systematically uses force against mentally ill inmates in ways that violate the agency's own policies as well as sound correctional practices. Here are some of his findings and examples of use of force on inmates with mental illness.

1. SCDC Staff Uses Force Disproportionate to Inmate Resistance.

- Inmate lying on cell floor "unresponsive." After shaking him several times, inmate was still unresponsive. The officer deployed a burst of pepper spray "four to six inches from his face while he was on the floor." Inmate remained unresponsive until he "began moving his head" two minutes later. Bates 6875-PP-003
- A female inmate was observed "sticking her head in the toilet" for which she was sprayed with a chemical agent. The reporting officer noted the inmate

was "psychotic, and was transported to Just Care hospital." Bates 6875-000-4404

- Female inmate asked repeatedly for the time and was told "to be quiet and lay down." When she refused to do so, she was subjected to two bursts of pepper spray. Bates 6875-000-4379
- Inmate in maximum security cell was cuffed and lying down in a fetal position on the floor of his cell when he was subjected to "several bursts of chemical munitions." Bates 6875-000-0015
- Inmate was observed through window of his segregation cell standing "completely naked and masturbating." The female officer "unholstered her Top Cop and administered a burst to his facial area, mouth, and penis." Bates 6875-PP-022
- Pepper spray deployed on inmate in segregation cell for "complaining about not receiving his evening meal." Bates 6875-EE-641

2. Use of Excessive and Dangerous Levels of Chemical Agents.

It is a well-recognized correctional principle that a greater level of resistance justifies the use of a greater level of force. SCDC's own use of force policies recognize this basic concept. Staff practice, however, does not. Mr. Martin found that SCDC officials routinely use crowd control chemical agents (MK-9, 14-16 oz.) when they could use equally effective personal-size canisters (MK-4, 3 oz.). In his report, Mr. Martin stated that "there is clear evidence that the [crowd control agent] is used in indiscriminate, excessive, and dangerous amounts that far exceed those necessary to achieve a valid tactical objective."

- Inmate in segregation cell who refused to give up his jumpsuit for a paper gown and suicide blanket subjected to burst of chemical agent from MK-9 crowd control fogger. Bates 6875-EE-854
- When asthmatic inmate in a segregation cell refused to return his inhaler, he was subjected to multiple applications from an MK-9 canister. Inmate was later observed in the shower "balled up," complaining of chest pain. Bates 6875-EE-936
- Inmate refused to return his food tray. The supervisor responded with a burst from an MK-9 canister. He waited three minutes and then administered another application, using over half of the crowd control canister in these two bursts. Bates 6875-QQ-849

3. Use of Restraint Chairs Violates Correctional Standards, SCDC Policies, and Manufacturers' Recommendations.

American Correctional Association standards state that "instruments of restraint" should be used only under limited circumstances, including when necessary to prevent self-injury, injury to others, or property damage. These standards caution that restraints should never be used as punishment and "*should not be used for more time than is absolutely necessary.*" (emphasis in original).

SCDC policy also provides that restraint chairs are "to be used for control purposes only and *will not* be used for any longer than the condition warrants." (emphasis in original). In violation of its own policy, however, SCDC's uniform practice is to place inmates in restraint chairs for a minimum of 4 hours and often of lengths up to 8 and even 12 hours.

- Inmate was placed in a restraint chair in the nude for self-harm for 12 hours. Allowed out after four hours for an evening meal. Returned even though compliant with officers. After the first four-hour interval, noted by on-site personnel that his "behavior was under control" having earlier taken his medication. Bates 6875-QQ-856
- Inmate was placed in a restraint chair in the nude in the spread-eagle position for self-harm. Prior to his placement, he had been on CI status and spent several hours in an interview booth. Video clearly shows the awkward, if not painful positioning of the inmate's arms as they are stretched in order to be cuffed to the bed posts of the cell. Video reflects that during a hygiene break, he was compliant and in self-control but was nonetheless returned to the chair, still in the nude and in the spread-eagle position. Bates 6875-QQ-951

4. Extended Solitary Confinement of Mentally Ill Inmates is Inhumane.

A disproportionately high percentage of mentally ill inmates are placed in segregation for extended periods of time. One of the three class representatives who filed this lawsuit suffers from paranoid schizophrenia. The complaint describes him this way:

[T.R.] has a history of bizarre behavior, including drinking his own urine. His illogical thought processes make it difficult for him to converse in a meaningful way. Like most persons with schizophrenia, he suffers from hallucinations and delusions. For example, he believes at night, while he is sleeping, doctors come into his cell and perform surgery on him. He complains of loud banging noises from the adjacent cell, even when it is empty.

When the lawsuit was filed in 2005, T.R. had spent the prior fourteen years in solitary confinement. Within two weeks after the lawsuit was filed, T.R. was released from solitary assignment and transferred to the ICS. There had been no change in his condition or behavior precipitating this event – only the filing of the lawsuit.

Hundreds of mentally ill inmates are in solitary confinement. Many remain there for years. According to SCDC policy, inmates in segregation may be permitted one hour of out-of-cell time five days per week and showers three times per week. They are otherwise confined to their individual cells. If an inmate fails to stand for "count," which occurs several times a day, he or she automatically forfeits the next regularly scheduled exercise period. Many of the inmates are not permitted visits by family or friends, personal telephone calls, or canteen visits. If they are considered disruptive, they may be placed in "control cells" for up to 72 hours. During these episodes, they may be stripped out or permitted to retain their underwear or are given a paper gown or security blanket.

Punitive segregation is recognized by most correctional experts as being an appropriate means of controlling serious inmate misbehavior. Because of the substantial deprivations associated with solitary confinement, however, the American Correctional Association (ACA) has recognized the potentially harmful effects of punitive segregation:

Perhaps we have been too dependent on isolation or solitary confinement as the principle method of handling the violators of institutional rules. Isolation may bring short-term conformity for some, but brings increased disturbances and deeper ingrained hostility to more. (*ACA Manual of Correctional Standards*, 3rd Edition, 1966, p. 413.)

Because of these concerns, the ACA has recommended that punitive segregation should be "for the shortest period that would accomplish the desired result of a favorable adjustment, and *in any event not over thirty days . . . Excessively long period of punishment defeat treatment goals by embittering and demoralizing the inmates.*" ACA Manual, 3rd Edition at 418 (emphasis added).

SCDC does not make any effort to adhere to this American Correctional Association segregation standard. Inmates found guilty of disciplinary offenses may be placed in solitary confinement with no upper limit as to the length of time. Mentally ill inmates represent a large percentage of SCDC inmates in solitary confinement. Based on a review of 110 disciplinary records for mentally ill inmates at two SCDC area mental health centers, nearly all the inmates were sentenced through SCDC's own process to periods of solitary confinement greater than one year. One out of five received sentences greater than five years. Here is a breakdown of the length of disciplinary sentences handed out to inmates with mental illnesses:

- 98% solitary confinement more than 1 year
- 39% solitary confinement more than 3 years
- 20% solitary confinement more than 5 years
- 8% solitary confinement more than 10 years

The following are examples of sentences handed out by SCDC disciplinary hearing officers:

- Mentally ill inmate found guilty of ten disciplinary infractions for which he received the following cumulative sanctions: disciplinary sentence-8 years; loss of contact visitation-9 years; loss of canteen-6 years; loss of phone-6 years. Six of these infractions were for sexual misconduct (masturbation).
- From 2006-2008, mentally ill inmate accumulated 17 years of disciplinary sentences, which exceeds his prison sentence by 7 years. For one two week period in November 2006, he was found guilty on 7 separate charges for a non-assaultive offenses (threatening harm), accumulating the following sanctions: disciplinary sentence-5 years; visiting/phone/canteen-8.5 years. He has also been the subject of at least fifteen applications of force, a number of which involved the use of chemical agents for self-harm and masturbation.
- From 2005-2008, a 51-year-old mentally ill inmate accumulated 19 years of disciplinary sentences, which exceeds his prison sentence by 9 years. In November 2006, he was found guilty of a non-assaultive offense (threatening harm), for which he received the following sanctions: disciplinary sentence-999 days; loss of property/phone/canteen-999 days and contact visits for 3 years. He has been subjected to numerous applications of force including one in which he was subjected to three applications of chemical spray for self-harm, while observed removing pills from his anal cavity. During the interview with this inmate, he was distressed that he was being denied "400 million dollars in his bank" and was set to appear on the television program the "Rich and Famous."
- In one twelve-month period, mentally ill female inmate accumulated disciplinary sentences of 6.5 years and 8 years loss of visits, canteen, and phone. All violations were non-assaultive with most charges prompted by verbal or profane threats to staff or other inmates. One of these charges was prompted when she threatened two inmates who were making derogatory remarks about a medical condition that required her to wear diapers.

Our correctional security expert offered this opinion about these and similar disciplinary sentences:

Sanctions are so indiscriminately and mindlessly applied that inmates have no incentive to abide by SCDC rules and regulations. Based on my extensive review of the documents and materials noted above, and the inmate interviews I conducted, it is my opinion that a stark and consistent pattern of ill-treatment exists that is directed at this population. This collective information is strong evidence of a system which operates to the detriment of inmates with mental illness. Most disturbingly, it operates to needlessly aggravate rather than ameliorate conditions associated with mentally ill offenders.

Source Materials

This report is a summary of the following materials, which are either attached or can be obtained by contacting Tammie Pope by email at tammie.pope@nelsonmullins.com.

- Report of Steve J. Martin, March 11, 2011.
- Alternative Crisis Intervention Housing Placement, Lieber Correctional Institution, Report of Jeffrey Metzner, M.D. and Raymond Patterson, M.D., December 30, 2010.
- Camille Graham Correctional Institution, Report of Jeffrey Metzner, M.D. and Raymond Patterson, M.D., December 30, 2010.
- Lee Correctional Institution, Report of Jeffrey Metzner, M.D. and Raymond Patterson, M.D., October 15, 2008.
- Opinions of Jeffrey Metzner, M.D., Raymond Patterson, M.D., Joy Jay, guardian *ad litem*, and Linda Dunlap, former SCDC director of nursing and director of mental health services.
- Fifth Amended Complaint, *T.R., P.R., K.W., and A.M. on behalf of themselves and others similarly situated; and Protection and Advocacy for People with Disabilities, Inc. v. South Carolina Department of Corrections; and William R. Byars, Jr., as Agency Director of the South Carolina Department of Corrections.*
- Technical Assistance Report, TA #00P1052, Raymond F. Patterson, M.D., 2000.
- Joint Legislative Proviso Committee Report on Mental Health Care for Prison Inmates in South Carolina, October 2000.
- Observations and Recommendations Regarding Department of Corrections Mental Health Services, Diane Cavanaugh, May 23, 2003.
- SCDC Mental Health Program Description, Diane Cavanaugh, July 11, 2003.