

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

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U.S. DISTRICT COURT  
INDIANAPOLIS DIVISION  
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SOUTHERN DISTRICT  
OF INDIANA  
LAURA A. BRIGGS  
CLERK

INDIANA PROTECTION AND ADVOCACY )  
SERVICES COMMISSION, )

Plaintiff, )

v. )

COMMISSIONER, INDIANA DEPARTMENT )  
OF CORRECTION, )

Defendant. )

No.

**1 : 08 -cv-1317-DFH-JMS**

**Complaint for Declaratory and Injunctive Relief**

**Introduction**

1. A significant number of prisoners committed to the care and custody of the Indiana Department of Correction have serious mental illnesses that significantly impede their ability to function within the prison environment. The Indiana Department of Correction provides insufficient programs and placements to treat these prisoners and many are confined in segregation or excessively isolated and harsh conditions which exacerbate their illnesses and conditions where they fail to receive adequate mental health care. The failure of the Indiana Department of Correction and its agents to adequately treat the prisoners in non-segregated and therapeutic environments violates the Eighth Amendment to the United States Constitution, as well as the Americans with Disabilities Act, 42 U.S.C. § 12132, and the Rehabilitation Act, 29 U.S.C. § 794. This action for injunctive and declaratory relief is brought by Indiana Protection and Advocacy Services Commission ("IPAS") which is empowered and charged by federal law to protect the rights of mentally ill and developmentally disabled individuals in Indiana and has

standing to bring this action on behalf of its numerous clients and constituents who are mentally ill prisoners affected by defendant's unlawful actions and inactions

**Jurisdiction, venue, cause of action**

2. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331.
3. Declaratory relief is authorized by 28 U.S.C. § 2201.
4. Venue lies in this district pursuant to 28 U.S.C. § 1391.
5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States, as well as being brought pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12132, and the Rehabilitation Act, 20 U.S.C. § 794.

**Parties**

6. Indiana Protection and Advocacy Services (IPAS) is an agency, created under State law (Indiana Code § 12-28-1-1, *et. seq.*) pursuant to Federal mandate, which agency is funded through eight separate federal programs to advocate for and protect the rights and interests of developmentally disabled individuals, individuals with mental illness, and other persons with disabilities.

7. Defendant Commissioner is the duly appointed head of the Indiana Department of Correction ("DOC"), a state agency which receives federal financial assistance and is a public entity as defined under 42 U.S.C. § 12131(1)(B).

**Factual allegations**

*Facts concerning IPAS*

8. The Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. § 10801, *et seq.*, provides for the establishment and funding of systems within each state

which are designed to protect and advocate the rights of individuals with mental illness as well as to investigate incidents of abuse and neglect of those with mental illness.

9. The federal funding is to be given to independent agencies or organizations which have the capacity to protect and advocate the rights of individuals with mental illness. 42 U.S.C. §§ 10804, 10805.

10. The system established by each State to protect and advocate the rights of mentally ill individuals must have the authority to “pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness who are receiving care or treatment in the State.” 42 U.S.C. § 10805(a)(1)(B).

11. Pursuant to Indiana law, Indiana Code § 12-28-1-1, *et seq.*, IPAS has been designated as the protection and advocacy agency under both the Protection and Advocacy for Individuals with Mental Illness Act and the Developmental Disabilities Assistance and Bill of Rights Act.

12. IPAS receives absolutely no State funding.

13. IPAS has the legal authority to “[p]rovide legal and other advocacy services throughout Indiana to individuals or organizations on matters related to the protection of the legal and human rights of individuals with a developmental disability . . . [and] individuals with a mental illness.” IND. CODE §12-28-1-12(3).

14. IPAS has the legal authority to “sue and be sued” in its own name. IND. CODE § 12-28-1-12(4).

15. IPAS has the legal authority to enter into contractual relationships in its own name. *Id.*

16. IPAS has the legal authority to “apply for, solicit, and accept contributions or grants of money, property, or services made by gift, devise, bequest, grant or other means from any source.” IND. CODE § 12-28-1-12(5).

17. One of IPAS’ primary legal responsibilities is to investigate allegations of abuse and neglect involving individuals with mental illness and to advocate for appropriate treatment and programs for such individuals. IPAS’ legal role is to ensure that their legal and civil rights are provided for and protected; that they are treated with dignity and respect; and that they receive appropriate services to address their needs.

18. IPAS brings this action on behalf of prisoners within the DOC, who are currently clients and constituents of IPAS, and who are mentally ill and are confined in segregation or other isolated confinement or seclusion settings, and who are not receiving adequate treatment programs.

19. The prisoner clients and constituents of IPAS in this action, confined within the DOC, are confined to “facilities” rendering care and treatment for the mentally ill as that term is defined in 42 U.S.C. § 10802(3).

*Facts concerning the levels of confinement within the DOC*

20. Prisoners who are committed to the Indiana Department of Correction may be placed in, among other places, an array of state institutions which range from minimally restrictive to high security institutions.

21. These state institutions are owned, managed and operated by the State of Indiana with the exception of the New Castle Correctional Facility which, although owned by the State of Indiana, is operated and managed by the GEO Corporation, a private, for-profit,

company through a contract with the DOC and the DOC is ultimately in control of the care and custody of its prisoners confined there.

22. The lower security institutions feature dormitory-style housing and tend to house prisoners with less violent crimes and shorter criminal histories than those in the higher security-level prisons.

23. The higher security prisons, including Wabash Valley Correctional Facility, Indiana State Prison (also known as Michigan City), and Pendleton Correctional Facility, house many prisoners in cells and have prisoners who, because of their committing offense and criminal history, require closer supervision and restrictive security measures.

24. The higher security prisons contain segregation units where prisoners may be placed either for disciplinary reasons for a specific period of time or for indeterminate periods of time if the prisoners are on administrative segregation.

25. The DOC also maintains, at the Westville Correctional Facility and the Wabash Valley Correctional Facility, secure confinement units which are long-term segregation units.

26. The DOC has specific policies and administrative procedures that govern both administrative and disciplinary segregation of prisoners.

27. By policy and procedure, prisoners who are in segregation will be placed in solitary cells generally for 23 hours each day.

28. They are released from their cells for a minimum of three solitary showers a week and for one hour of daily recreation. Some segregated prisoners receive recreation only 5 days a week.

29. The recreation may be solitary although outdoor recreation may take place in contiguous cages housing other prisoners engaged in outdoor recreation.

*General facts concerning the treatment of mentally ill prisoners within the DOC system*

30. All medical care, including mental health care, within the DOC, has been contracted to a private, for-profit, company, Correctional Medical Services.

31. The DOC has a Mental Health Services Plan for Adult Offenders that provides, among other things, for services for prisoners who are diagnosed with "mental illness," "serious mental illness," or a "developmental disability."

32. The above terms are defined as follows by the DOC:

-mental illness: "Axis I disorder, exclusive of Substance Abuse/Dependence of Paraphilia, with a GAF score above 40."

-serious mental illness: "Axis I disorder, exclusive of Substance Abuse/Dependency of Paraphilia, with a GAF score of 40 or below."

33. An Axis I disorder refers to the listing of mental disorders maintained in the DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, a handbook used by mental health professionals.

34. The GAF score is the global assessment of functioning scale, a subjective measure of the patient's overall level of psychological, social, and occupational functioning on a hypothetical continuum from 0 (the lowest) to 100 (the highest).

35. Because the GAF score is a subjective impression of the person's functioning at the moment he is seen by a clinician, it has no direct bearing on the severity of a mental impairment. In fact, the Commissioner of the Social Security Administration has specifically indicated that the GAF score has no direct correlation to the mental disorder

listings utilized to evaluate a person's disability. 65 Fed. Reg. 50746, 50764-65 (Aug. 21, 2000).

36. The GAF score is of limited use in a prison setting inasmuch as it is supposed to measure, among other things, social and occupational functioning, both of which are severely restricted or nonexistent in the prison setting.

*The residential treatment and chronic care units at Michigan City*

37. Pursuant to a private settlement agreement entered into in the case of *Mast v. Donahue*, No. 2:05-CV-037 LJM/WGH (U.S. Dist. Ct. – So. Dist. of Ind.), the DOC has agreed not to house any prisoner with an Axis I diagnosis within the secure confinement unit at Wabash Valley Correctional Facility.

38. In 2007 the DOC opened up two units at Michigan City to house mentally ill prisoners.

39. One of these is called the RTU or Residential Treatment Unit and is designed to house up to 66 prisoners in a program designed to transition them to regular housing.

40. On information and belief, prisoners in the RTU have infrequent individual contact with mental health professionals, although they are allowed out of their cells for three hours each day.

41. Prisoners in the RTU have reported that there have been two suicides by prisoners confined there.

42. The other unit at Michigan City is the Chronic Care Unit, which is a long-term unit for mentally ill prisoners who are not expected to return to general population within the DOC.

43. Prisoners confined to the Chronic Care Unit report that they have infrequent contact with mental health staff, although they are allowed out of their cells multiple hours each day.

*The secure mental health treatment unit at New Castle*

44. In the summer of 2008 the DOC opened a new unit at New Castle Correctional Facility, the Secure Mental Health Treatment Unit (SMHTU), for prisoners who fall within the DOC's definition of Seriously Mentally Ill and who are subject to segregation in the DOC.

45. There are 96 beds available at the SMHTU, but at the current time the DOC is planning only to fill 67 of them.

46. Prisoners at the SMHTU are housed in individual cells behind solid doors.

47. Although the DOC does not consider SMHTU to be a segregation unit, prisoners are left in their cells 23 hours a day, with one hour individual recreation. Three times a week the prisoners are also released for a solitary shower.

48. The doors to the cells in the SMHTU are solid doors with a small window and a cuff port that is locked from the outside except when it is opened to slide in meals or for the prisoner to extend his wrists so they can be cuffed from behind before he leaves the cell.

49. The prisoners are fed in their cells.

50. Because the doors are solid the prisoners have no way of seeing other prisoners.

51. Recreation either takes place indoors in a small barred area that has been constructed for the prisoners in a day room that prisoners formerly had access to or in one of a number of cages constructed outside.



52. If a prisoner elects to take a shower he is cuffed and then escorted to the shower where he may be left for an extended period of time.

53. When prisoners are removed from their cells they wear leg chains and their hands are cuffed. A leash is connected to the leg chains and they are escorted by guards.

54. The large majority of interactions between the mentally ill prisoners and mental health professionals on the SMHTU take place in short discussions at cell fronts which require the prisoner and professional to yell at each other through the solid cell door. This is an unsatisfactory and inappropriate mental health intervention inasmuch as there is absolutely no privacy. Because of the lack of confidentiality, it is extremely difficult to accurately assess the prisoner's mental health functioning, and prisoners do not disclose necessary information concerning their mental conditions.

55. The major programming planned for prisoners in the SMHTU is the ACT program, present in other locations within the DOC, which is a behavior modification program where the prisoner, in his cell, views recordings broadcast via closed circuit television and completes worksheets which he returns, not to a mental health professional, but to his correctional counselor. As the person progresses through the program he will earn first some, and then more, commissary privileges. It is not a program that will adequately and effectively treat mental illness.

56. Confinement in virtual isolation exacerbates the illnesses of those who are mentally ill and is extremely deleterious to the mental health of mentally ill prisoners.

*The continued segregation of mentally ill prisoners*

57. After all the prisoners who the DOC plans to move out of segregation units into the SMHTU are moved, there will still be more than 230 prisoners who have Axis I diagnoses who will be confined in segregation units within the DOC.

58. In these units they will be subjected to severe isolation and lack of environmental stimulation. This isolation is extremely detrimental and harmful to the mental health of mentally ill persons.

59. In these units the primary, if not sole, contact the prisoners will have with mental health staff will be brief conversations at their cell doors which, for the reasons indicated above, is wholly inadequate.

60. An example of the segregation units to which mentally ill persons are being confined is the Custody and Control Unit which is located at the Wabash Valley Correctional Facility.

61. There are a significant number of prisoners on this unit who are mentally ill.

62. As in all segregation units, those imprisoned in this unit are held in isolation for 23 hours a day. They are released for solitary recreation and showers.

63. The prisoners are held behind solid doors which only increases their isolation and the mental health problems flowing from the isolation.

64. Mentally ill prisoners on this segregation unit report that they are frequently and violently extracted from their cells by armored correctional officers.

65. These violent encounters are often caused by the prisoners' mental illness when, for example, they engage in such irrational behavior as refusing to "cuff up" so they can leave their cells.

66. Prisoners, including mentally ill prisoners, who are deemed to have misbehaved in the Custody and Control Unit are punished by being placed in strip cells for 21 days. The prisoners are stripped of most of their clothing but have it returned to them over time if their behavior improves.

67. However, during the entire 21 day period the prisoners are fed "nutraloaf," which is a food substance made by cooking vegetables together so they form a block. All the prisoners receive for their meals is a portion of nutraloaf and two pieces of bread.

68. On information and belief there have, recently, been a number of attempted suicides in this unit.

69. Mentally ill prisoners confined in other segregation units throughout the DOC do not see mental health staff with any frequency.

*General factual allegations*

70. IPAS represents as clients and constituents severely mentally ill prisoners who are placed in segregation throughout the DOC as well as in the SMHTU.

71. The segregation units as well as the SMHTU into which the DOC has placed the more than 300 prisoners, including IPAS' clients and constituents, who have Axis I diagnoses or are otherwise seriously mentally ill, feature severe social isolation, lack of environmental stimulation, and lack of frequent contact with mental health staff and cause psychological deterioration of the prisoners confined there.

72. These conditions create a substantial risk of serious harm to the mentally ill prisoners who are confined there, including IPAS' clients and constituents, and in fact cause them ongoing and severe harm.

73. These conditions deprive mentally ill prisoners, including IPAS' clients and constituents, of the minimal civilized measure of life's necessities.

74. The psychological and mental health needs of these prisoners, including IPAS' clients and constituents, represent a serious medical need and the exacerbation of their illnesses and conditions due to the conditions of their confinement also constitutes a serious medical need.

75. Despite prior litigation which highlighted the danger of confining mentally ill prisoners in 23 hour-a-day isolation, the defendant continues to do so and has failed to provide adequate mental health care for persons so confined, including IPAS' clients and constituents.

76. The defendant is aware of the risk of harm caused by this form of confinement and is deliberately indifferent to it.

77. The prolonged isolated confinement of mentally ill persons, including IPAS' clients and constituents, causes severe harm and defendant, at all times, has been aware of this fact.

78. The defendant has not reasonably accommodated the mentally ill prisoners in segregated and isolated conditions, including IPAS' clients and constituents, by providing appropriate treatment in non-segregated and non-isolated environments.

79. The continued confinement of mentally ill prisoners, including IPAS' clients and constituents, in the segregated and isolated conditions noted above, and without appropriate treatment, is causing them irreparable harm for which there is no adequate remedy at law.

80. The mentally ill prisoners confined within the DOC, including IPAS' clients and constituents, are qualified individuals as defined in the Americans with Disabilities Act, 42 U.S.C. §§ 12102(2), 12131(2), and the Rehabilitation Act, 29 U.S.C. § 794. Specifically, they have mental impairments that substantially limit one or more of the major life activities, as well as having records of having such impairments and further are regarded as having such impairments.

81. As qualified individuals with disabilities, the mentally ill prisoners within the DOC, including IPAS' clients and constituents, meet the essential eligibility requirements for the receipt of services or the participation in activities provided by defendant.

82. At all times defendant has acted under color of state law.

**Legal claims**

83. The continued confinement of mentally ill prisoners, including IPAS' clients and constituents, in the segregated and isolated conditions noted above, and without adequate and appropriate mental health care and treatment, violates the rights of the prisoners to be free from cruel and unusual punishment as guaranteed by the Eighth Amendment to the United States Constitution as made applicable to the State of Indiana by the Fourteenth Amendment to the United States Constitution.

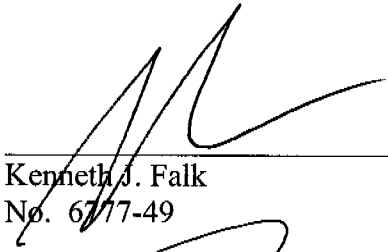
84. Defendant has discriminated against the mentally ill prisoners, including IPAS' clients and constituents, in segregated and isolated confinement throughout the DOC by failing to provide non-segregated and non-isolated housing and increased treatment as a reasonable accommodation to prevent confinement conditions which exacerbate the prisoners' mental illnesses. This represents discrimination against these prisoners in

violation of both the Rehabilitation Act and the Americans with Disabilities Act. 29  
U.S.C. § 794, 42 U.S.C. § 12132.

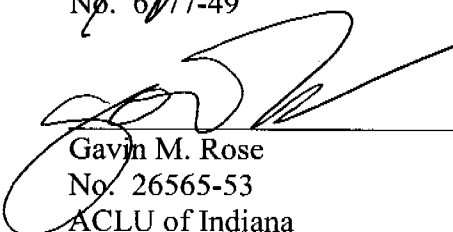
**Request for relief**

WHEREFORE, plaintiff, on behalf of the mentally ill prisoners who are its clients  
and constituents, requests that this Court:

- a. Accept jurisdiction of this case and set it for hearing at the earliest opportunity.
- b. Declare that the actions and inactions of defendant are unlawful and unconstitutional for the reasons specified above.
- c. Enter a preliminary injunction, later to be made permanent, enjoining defendant from continuing to violate the constitutional and statutory rights of the mentally ill prisoners noted above and enjoining it to provide adequate treatment to the prisoners in appropriate and therapeutic settings.
- d. Award plaintiff its costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and 42 U.S.C. § 12205.
- e. Award all other proper relief.



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