

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**J.H., by and through his next friend,
Flo Messier; L.C., by and through her
next friend, Flo Messier; R.J.A., by and
through his next friend, J.A.; Jane Doe,
by and through her next friend Julia
Dekovich; A.B., by and through his next
friend J.B.; S.S., by and through his
next friend, Marion Damick; G.C., by
and through his next friend, Luna
Pattela; R.M., by and through his next
friend, Flo Messier; P.S., by and
through his next friend M.A.S.; T.S., by
and through his next friend Emily
McNally; M.S., by and through his next
friend Emily McNally; and all others
similarly situated;**

Plaintiffs,

v.

**Theodore Dallas in his official capacity
as Secretary of the Pennsylvania
Department of Human Services; Edna I.
McCutcheon in her official capacity as
the Chief Executive Officer of
Norristown State Hospital; Robert
Snyder in his official capacity as the
Chief Executive Officer of Torrance
State Hospital;**

Defendants.

Civil Action No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF --**

CLASS ACTION

I. INTRODUCTION

1. Plaintiffs bring this case to challenge the consistent and continuing failure of Defendant officials from the Pennsylvania Department of Human Services (“DHS”) to provide timely and adequate mental health care for persons who have been found incompetent to stand trial on criminal charges. DHS’ failure to allocate sufficient resources to provide “competency restoration treatment” has resulted in what are believed to be the longest delays in the country, causing very sick people to spend time in jail, often in extended solitary confinement, making them even sicker. Federal courts have ruled that delays of more than seven days from the court’s commitment order to hospitalization for treatment are unconstitutional, yet in Pennsylvania many patients wait over a year. And wait times for admission to treatment continue to grow even longer. The last 25 patients from Philadelphia waited an average of 391 days, with one patient waiting as long as 589 days.

2. Plaintiffs seek to represent two classes. Class A consists of individuals who languish in jails for months and even years, in a punitive environment, without treatment or adequate mental health care, and often in long-term segregation, while they wait for an opening at one of DHS’s two forensic hospitals, Norristown State Hospital (“Norristown”) in the East and Torrance State Hospital (“Torrance”) in the West. Between the two hospitals, DHS provides only about 200 beds for competency restoration treatment and those are perpetually full. The waiting lists for admission to a forensic hospital bed have now grown to about

200 patients. The delays in gaining admission to one of the two hospitals have caused Plaintiffs' and the class members' mental health to deteriorate, relegated many of them to extended stays in solitary confinement, and in some cases forced them to spend more time in jail than they would have spent if they had pled or been found guilty. At least two people have died in jail while awaiting a transfer.

3. Class B consists of individuals committed for restoration treatment who have already been transferred to Norristown or Torrance and as to whom clinicians have found either (a) that additional treatment is unlikely to render them competent in the foreseeable future, or (b) that they are no longer making progress towards competency. Class B Members remain in maximally restrictive and expensive forensic hospitals instead of being treated in the most community-integrated settings appropriate to their needs. In Norristown and Torrance, many Class B Members now wait years for transfer out of forensic units and into civil units or more integrated community placements. Class B Plaintiffs are not being adequately and systematically assessed for their ability to be treated in community-based settings. Class B Plaintiffs are also not being provided with appropriate community-based placements and support.

4. Defendants' denial of timely and appropriate treatment, and their ongoing failure to address the growing delays, violates Plaintiffs' and the Class Members' rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12131, *et seq.*, Section 504 of the Rehabilitation Act ("RA"), 29 U.S.C. § 794, *et seq.*, the regulations promulgated

under both the ADA and the RA, and court orders. Plaintiffs seek declaratory and injunctive relief, preliminary and permanent thereafter, to remedy the ongoing and serious irreparable harm Defendants are causing them.

II. JURISDICTION AND VENUE

5. This action is brought pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 12132.

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1343 (civil rights jurisdiction).

7. Venue is properly set within this district pursuant to 28 U.S.C. § 1391.

III. PARTIES

A. Plaintiffs

8. Plaintiff J.H. (a pseudonym to protect his identity) is a homeless African-American man in his late 50's from Philadelphia who suffers from schizophrenia. The Philadelphia Court of Common Pleas found him incompetent to stand trial on retail theft charges and committed him to Norristown for competency restoration treatment on November 13, 2014. J.H. has been detained for more than eleven months (over 340 days) in the Philadelphia Detention Center since the court's commitment order, awaiting an opening for treatment at Norristown. Based on the length of the waiting list and recent history, J.H. can expect to wait approximately 400 days before transfer to Norristown.

9. The Commonwealth of Pennsylvania has found J.H. incompetent. As a result, J.H. cannot appear on his own behalf to pursue this action. J.H. could not identify any family with whom he maintains a relationship who could fill this role. Due to the unavailability of personal contacts to assist J.H. and protect his interests, Flo Messier, J.H.'s public defender, has volunteered to serve and is serving as J.H.'s next friend in this action. Ms. Messier brings this action on J.H.'s behalf pursuant to Fed R. Civ. P. 17(c)(2). She is dedicated to the best interests of J.H. and will advocate for those best interests in this action. Attached as Exhibit A is the Declaration of Ms. Messier concerning J.H. ("Messier J.H. Decl.").

10. Plaintiff L.C. (a pseudonym to protect her identity) is an African-American woman in her mid-20's from Philadelphia who suffers a mental impairment. While she was serving a probation-violation sentence, she was charged with aggravated assault for reportedly spitting on a correctional officer. The court found her incompetent to stand trial for this charge in July 2014, and released L.C. on conditions of bail. While out on bail, L.C. was arrested on October 17, 2014 for allegedly violating conditions of her release, and she faced new charges regarding attempted robbery and harassment. The court again found L.C. incompetent to stand trial on November 13, 2014 and, after L.C. did not become competent at the Philadelphia Detention Center, the court committed L.C. to Norristown for competency restoration treatment on February 12, 2015. L.C. has been detained for more than eight months (over 250 days) in the Philadelphia Detention Center since the order, awaiting an opening for treatment at Norristown.

Based on the length of the waiting list and recent history, L.C. can expect to wait approximately 400 days before transfer to Norristown.

11. The Commonwealth of Pennsylvania has found L.C. incompetent. As a result, L.C. cannot appear on her own behalf to pursue this action. L.C. could not identify any family with whom she maintains a relationship who could fill this role. Due to the unavailability of personal contacts to assist L.C. and protect her interests, Flo Messier, L.C.'s public defender, has volunteered to serve and is serving as L.C.'s next friend in this action. Ms. Messier brings this action on L.C.'s behalf pursuant to Fed R. Civ. P. 17(c)(2). She is dedicated to the best interests of L.C. and will advocate for those best interests in this action. Attached as Exhibit B is the Declaration of Ms. Messier concerning L.C.

12. Plaintiff R.J.A. (a pseudonym to protect his identity) is an African-American man in his late 40's from Philadelphia who has been diagnosed with paranoid schizophrenia. He was arrested on January 27, 2015 on aggravated assault and other charges after his father called police to have him civilly committed to a hospital and R.J.A. reportedly fired a weapon into the air when police arrived. The court found R.J.A. incompetent to stand trial on the criminal charges and committed him for competency restoration treatment to Norristown on February 11, 2015. He has been detained for more than eight months (over 250 days) in the Philadelphia Detention Center since the order, awaiting an opening for treatment at Norristown. Based on the length of the waiting list and recent history, R.J.A. can expect to wait approximately 400 days before transfer to Norristown.

13. The Commonwealth of Pennsylvania has found R.J.A. incompetent. As a result, R.J.A. cannot appear on his own behalf to pursue this action. J.A. (a pseudonym to protect his son's identity), is R.J.A.'s father, and is R.J.A.'s next friend in this action. J.A. brings this action on R.J.A.'s behalf pursuant to Fed R. Civ. P. 17(c)(2). J.A. is dedicated to the best interests of R.J.A. and will advocate for those best interests in this action. Attached as Exhibit C is the Declaration of J.A. concerning R.J.A.

14. Plaintiff Jane Doe (a pseudonym to protect her identity) is an African-American woman in her early 40's who was found incompetent to stand trial on assault charges and committed to Norristown on June 26, 2014. She has now been sitting in the Philadelphia Detention Center for nearly 16 months (over 480 days) awaiting transfer to Norristown.

15. The Commonwealth of Pennsylvania has found Jane Doe incompetent. As a result, she cannot appear on her own behalf to pursue this action. Jane Doe could not identify any family with whom she maintains a relationship who could fill this role. Due to the unavailability of personal contacts to assist Jane Doe and protect her interests, Julia Dekovich, Jane Doe's appointed attorney, has volunteered to serve and is serving as Jane Doe's next friend in this action. Ms. Dekovich brings this action on Jane Doe's behalf pursuant to Fed R. Civ. P. 17(c)(2). She is dedicated to the best interests of Jane Doe and will advocate for those best interests in this action. Attached as Exhibit D is the Declaration of Ms. Dekovich concerning Jane Doe.

16. Plaintiff A.B. (a pseudonym to protect his identity) is an African-American male in his late 30's from Beaver County who suffers from paranoid schizophrenia. He was found incompetent to stand trial on charges of simple assault, aggravated assault, and tampering with property that stem from an altercation he allegedly had at a psychiatric hospital in late August 2015 while acutely psychotic. Despite being committed for competency restoration, A.B. has been detained in Beaver County Jail—most recently in solitary confinement—for over a month.

17. The Commonwealth of Pennsylvania has found A.B. incompetent. As a result, he cannot appear on his own behalf to pursue this action. J.B. (a pseudonym to protect her brother's identity), is A.B.'s sister, and is A.B.'s next friend in this action. J.B. brings this action on A.B.'s behalf pursuant to Fed R. Civ. P. 17(c)(2). She is dedicated to the best interests of A.B. and will advocate for those best interests in this action. Attached as Exhibit E is the Declaration of J.B. concerning A.B.

18. Plaintiff S.S. (a pseudonym to protect his identity) is a Caucasian man in his mid-20's from Erie who suffers from a mental impairment. He was found incompetent to stand trial on defiant trespass, simple assault, and possession of a weapon charges, and was court committed to Torrance for competency restoration treatment on September 3, 2015. He has been detained in solitary confinement for more than six weeks in the Allegheny County Jail since the order, awaiting an opening for treatment at Torrance.

19. The Commonwealth of Pennsylvania has found S.S. incompetent. As a result, he cannot appear on his own behalf to pursue this action. A next friend is, therefore, necessary to represent his interests. S.S. could not identify any family with whom he maintains a relationship who could fill this role. Due to the unavailability of personal contacts to assist S.S. and protect his interests, Marion Damick, a long-time “official visitor” of the Philadelphia Prison Society, has volunteered to serve and is serving as S.S.’s next friend in this action. Ms. Damick brings this action on S.S.’s behalf pursuant to Fed R. Civ. P. 17(c)(2). She is dedicated to the best interests of S.S. and will advocate for those best interests in this action. Attached as Exhibit F is the Declaration of Ms. Damick concerning S.S.

20. Plaintiff G.C. (a pseudonym to protect his identity) is an African-American man in his mid-60’s from Philadelphia who suffers a mental impairment. After the court found him incompetent to stand trial on a burglary and related charges stemming from an incident where G.C. reportedly tried to enter the apartment unit of a neighbor living one floor directly below his own apartment unit in September 2011, G.C. was committed to Norristown for competency restoration treatment in November 2011. G.C. was eventually transferred there on November 29, 2012. On December 11, 2013, the court committed G.C. to Norristown’s civil unit based on a determination by the court that G.C. was unlikely to become competent. G.C. has, however, remained in detention at Norristown’s forensic unit for nearly two years (more than 675 days) awaiting an opening at one of Norristown’s two civil units.

21. The Commonwealth of Pennsylvania has found G.C. incompetent. As a result, he cannot appear on his own behalf to pursue this action. A next friend is, therefore, necessary to represent his interests. G.C. could not identify any family with whom he maintains a relationship who could fill this role. Due to the unavailability of personal contacts to assist G.C. and protect his interests, Luna Pattela, G.C.'s public defender, has volunteered to serve and is serving as G.C.'s next friend in this action. Ms. Pattela brings this action on G.C.'s behalf pursuant to Fed R. Civ. P. 17(c)(2). She is dedicated to the best interests of G.C. and will advocate for those best interests in this action. Attached as Exhibit G is the Declaration of Ms. Pattela concerning G.C.

22. Plaintiff R.M. (a pseudonym to protect his identity) is a homeless Latino man in his mid-40's who was living in Philadelphia and who suffers a mental impairment from traumatic brain injury. The court found R.M. incompetent to stand trial for a simple assault, aggravated assault, and possession of an instrument of crime charges on May 13, 2012. He was eventually transferred for treatment to Norristown on October 6, 2012. On February 28, 2013, the court committed R.M. to Norristown's civil unit based on a determination by clinicians that R.M. was unlikely to become competent. R.M. has remained, however, in detention at Norristown's forensic unit for more than two and a half years (more than 960 days) awaiting an opening at one of Norristown's two civil units.

23. The Commonwealth of Pennsylvania has found R.M. incompetent. As a result, he cannot appear on his own behalf to pursue this action. A next friend is, therefore, necessary to represent his interests. R.M. could not

identify any family with whom he maintains a relationship who could fill this role. Due to the unavailability of personal contacts to assist R.M. and protect his interests, Ms. Messier, his public defender, has volunteered to serve and is serving as R.M.'s next friend in this action. Ms. Messier brings this action on R.M.'s behalf pursuant to Fed R. Civ. P. 17(c)(2). She is dedicated to the best interests of R.M. and will advocate for those best interests in this action. Attached as Exhibit H is the Declaration of Ms. Messier concerning R.M.

24. Plaintiff P.S. (a pseudonym to protect his identity) is a Caucasian man in his late 50's from Philadelphia who suffers from a long history of mental illness. The court found P.S. incompetent to stand trial for burglary, criminal trespass, criminal mischief, theft, and receiving stolen property charges in early April 2011, and he was eventually transferred to Norristown for treatment on April 4, 2012. A year later, in early April 2013, the court committed P.S. to Norristown's civil unit based on a determination that P.S. was unlikely to become competent. P.S. has remained, however, in detention at Norristown's forensic unit for more than two and a half years (more than 900 days) since that order, awaiting an opening at one of Norristown's two civil units.

25. The Commonwealth of Pennsylvania has found P.S. incompetent. As a result, he cannot appear on his own behalf to pursue this action. A next friend is, therefore, necessary to represent his interests. M.A.S. (a pseudonym to protect her brother's identity), is P.S.'s sister, and is his next friend in this action. M.A.S. brings this action on P.S.'s behalf pursuant to Fed R. Civ. P. 17(c)(2). She is dedicated to the best interests of P.S. and will advocate for those

best interests in this action. Attached as Exhibit I is the Declaration of M.A.S. concerning P.S.

26. Plaintiff T.S. (a pseudonym to protect his identity) is a Caucasian man in his mid-50's from Beaver County who is deaf and who suffers from paranoid schizophrenia. In October 2005, the court found T.S. incompetent to stand trial on charges of murder, and committed him to Mayview State Hospital. T.S. was then transferred to Torrance, most likely in 2008 when Mayview closed, or otherwise in February 2012 at the latest, as supported by a criminal court docket entry copying Torrance on a commitment order. The joint forensic psychiatric expert at T.S.'s initial competency hearing testified that she could not be certain that psychiatric treatment could ever render T.S. competent. For the past ten years, it has not. After spending a decade involuntarily committed for competency restoration treatment, including at least 20 months at Torrance, T.S. is still experiencing auditory and visual hallucinations that are strikingly similar in content to those that he reportedly experienced ten years ago, and expresses grave concern over similar delusions. Despite all failures to render T.S. competent over the past ten years, T.S. remains detained at Torrance's forensic unit.

27. The Commonwealth of Pennsylvania has found T.S. incompetent. As a result, he cannot appear on his own behalf to pursue this action. A next friend is, therefore, necessary to represent his interests. T.S. could not identify any family with whom he maintains a relationship who could fill this role. Due to the unavailability of personal contacts to assist T.S. and protect his interests, Emily McNally, a former Assistant Public Defender in Allegheny County

who has met with T.S. and researched and reviewed his case, has volunteered to serve and is serving as T.S.'s next friend in this action. Ms. McNally brings this action on T.S.'s behalf pursuant to Fed R. Civ. P. 17(c)(2). She is dedicated to the best interests of T.S. and will advocate for those best interests in this action. Attached as Exhibit J is the Declaration of Ms. McNally concerning T.S.

28. Plaintiff M.S. (a pseudonym to protect his identity) is an African-American man in his mid-50's from Allegheny County who suffers from schizophrenia and also appears to be substantially mentally disabled with very low motor functioning. The court found M.S. incompetent to stand trial on charges of simple assault, disorderly conduct, public drunkenness, and obstruction of highways in October 2014 stemming from an incident in late December 2013 where he was reportedly found intoxicated and laying on a sidewalk, and then reportedly briefly struggled while being strapped into an ambulance. M.S. was committed to Torrance for competency restoration treatment at that time. He still remains at Torrance's forensic unit, now a full year later, despite his apparent lack of progress towards becoming competent and his willingness and ability to be treated in a more integrated setting.

29. The Commonwealth of Pennsylvania has found M.S. incompetent. As a result, he cannot appear on his own behalf to pursue this action. A next friend is, therefore, necessary to represent his interests. M.S. could not identify any family with whom he maintains a relationship who could fill this role. Due to the unavailability of personal contacts to assist M.S. and protect his interests, Ms. McNally, who has met with M.S. and researched and reviewed his

case, has volunteered to serve and is serving as M.S.'s next friend in this action. Ms. McNally brings this action on M.S.'s behalf pursuant to Fed R. Civ. P. 17(c)(2). She is dedicated to the best interests of M.S. and will advocate for those best interests in this action. Attached as Exhibit K is the Declaration of Ms. McNally concerning M.S.

B. Defendants

30. Defendant Ted Dallas is Secretary of the Pennsylvania Department of Human Services (“DHS”), which is the state agency designated to administer or supervise the administration of competency restoration treatment in Pennsylvania.¹ In his capacity as Secretary, Defendant Dallas is responsible for the administration of DHS, which operates the only two facilities in Pennsylvania that provide competency restoration treatment. These are Norristown, which is in Montgomery County; and Torrance, which is in Derry, Westmoreland County. Defendant Dallas is obligated to ensure that patients committed to the care of Norristown or Torrance are treated in accordance with the Constitution and laws of the United States. Defendant Dallas has at all relevant times hereinafter mentioned acted under color of state law. He is sued in his official capacity.

31. Defendant Edna I. McCutcheon is the Chief Executive Officer of Norristown, a state psychiatric hospital operated by DHS that is charged with, *inter alia*, providing services to individuals committed to Norristown by

¹ DHS receives federal monies. *See, e.g.*, Budget Information, Pennsylvania DHS, <http://www.dhs.state.pa.us/publications/budgetinformation/> (last visited Oct. 22, 2015) (“The Department of Human Services budget is a mixture of both state and federal funding”).

Pennsylvania courts for competency restoration treatment. As Chief Executive Officer, Defendant McCutcheon is responsible for oversight, operation, and management of Norristown, including but not limited to the provision of competency restoration services to individuals committed to Norristown by the Pennsylvania criminal courts. Defendant McCutcheon has at all relevant times hereinafter mentioned acted under color of state law. She is sued in her official capacity.

32. Defendant Robert Snyder is the Chief Executive Officer of Torrance, a state psychiatric hospital operated by DHS that is charged with, *inter alia*, providing services to individuals committed to Torrance by Pennsylvania courts for competency restoration treatment. As Chief Executive Officer, Defendant Snyder is responsible for oversight, operation, and management of Torrance, including but not limited to the provision of competency restoration services to individuals committed to Torrance by the Pennsylvania criminal courts. Defendant Snyder has at all relevant times hereinafter mentioned acted under color of state law. He is sued in his official capacity.

IV. FACTS ENTITLING PLAINTIFFS TO RELIEF

A. Incompetency Proceedings in Pennsylvania

33. All Plaintiffs, and the class members they seek to represent, have been (a) examined and deemed incompetent by a psychiatrist to stand trial on pending criminal charges; and (b) ordered by a Pennsylvania state court judge to undergo competency restoration treatment in either Norristown or Torrance.

34. To commit a criminal defendant to competency restoration treatment under Pennsylvania’s Mental Health Procedures Act, 50 Pa. Cons. Stat. Ann. §§ 7101, *et seq.* (“MHPA”), the court must find that the person is “substantially unable to understand the nature or object of the proceedings against him or to participate and assist in his defense” *and* that it is “reasonably certain that the involuntary treatment will provide the defendant with the capacity to stand trial.” 50 Pa. Cons. Stat. Ann. § 7402(a) and (b).

35. Individuals who are declared incompetent to stand trial suffer from a range of mental status issues, including intellectual and cognitive disabilities, traumatic brain injury, and mental illness, including serious mental illness and even dementia.

36. Plaintiffs and class members share several other characteristics. Most incompetent individuals have trouble communicating effectively. Their mental statuses range from brief periods of lucidity to complete incomprehensibility to a catatonic state wherein they cannot respond at all.

37. Most incompetent individuals have few, if any, friends or family members to support them. Indeed, many of the people declared incompetent are estranged from their families.

38. Finally, most of the individuals adjudicated incompetent to stand trial have difficulty understanding why they are imprisoned, what it means to be charged with a crime, or how to assist their attorney in defending them against the criminal charges.

39. Plaintiffs and class members qualify as persons with disabilities under the Americans with Disabilities Act. 42 U.S.C. § 12131, *et seq.*

40. A court ruling that an individual is incompetent to proceed causes the criminal proceedings to be stayed. *See* 50 Pa. Cons. Stat. Ann. § 7403(b). If, at some point, the individual becomes competent, the criminal charges may be reinstated. *Id.*

41. Once a court issues an order for competency restoration treatment, the MHPA requires that the person “shall be transferred, for this purpose, to a mental health facility.” *Id.* § 7401(b).

42. Upon issuance of the court order, the individual becomes a patient of DHS immediately. *See* Ex. L (Aff. of Philip Mader ¶¶ 40, 49, *Wu v. Dep’t of Human Servs.*, OOR Docket No. AP 2015-0405) [hereinafter Mader Aff.].

B. Defendants Provide Fewer Than 237 Beds for Competency Restoration Treatment Patients for the Entire Commonwealth of Pennsylvania.

43. Pennsylvania has only two forensic hospitals that are licensed to provide competency restoration treatment. Ex. L (Mader Aff. ¶ 13). DHS administers and operates both hospitals, under the direction of Defendant Dallas.

44. One of the two forensic hospitals is the Norristown State Hospital, administered by Defendant McCutcheon, which is located approximately 15 miles northeast of Philadelphia, in Norristown, Montgomery County. Norristown is supposed to serve all patients ordered into competency restoration

treatment by judges in approximately the eastern third of Pennsylvania, including Philadelphia.

45. The only other forensic hospital in all of Pennsylvania that provides competency restoration treatment is Torrance State Hospital, administered by Defendant Snyder. Torrance is located approximately 40 miles east of Pittsburgh, in Derry, Westmoreland County. Torrance is supposed to serve all patients ordered into treatment by judges from counties in the western two-thirds of the state, including Allegheny County.

46. Norristown and Torrance have a combined total of 237 beds in their respective forensic hospitals, with 137 in the former and 100 in the latter. Ex. L (Mader Aff. ¶18).

47. DHS, however, makes fewer than 237 beds in the forensic hospitals available for competency restoration treatment. The 237 beds are used for other purposes, too, such as (a) competency evaluations; (b) treatment of criminal defendants found not guilty by reason of insanity and in need of mental health treatment; (c) treatment of criminal defendants found guilty but mentally ill and in need of treatment; and (d) criminal defendants with severe mental disabilities who are charged with certain serious crimes but are incompetent to proceed. Ex. L (Mader Aff. ¶25).

48. Moreover, as will be discussed *infra*, a sizeable number of the 237 forensic hospital beds at Norristown and Torrance are occupied by patients committed for competency restoration treatment who have been deemed unlikely

to become competent, but who nonetheless remain in the forensic unit awaiting a suitable placement in a civil unit or in the community.

49. Plaintiffs have been unable to ascertain exactly how many beds DHS makes available for competency restoration treatment at Norristown and Torrance, but because the different categories of patients identified in the foregoing two paragraphs occupy some of the beds, it is believed to be far fewer than 237.

50. DHS will not admit new patients when Norristown and Torrance forensic hospitals are at capacity. Ex. L (Mader Aff. ¶19).

51. When Torrance or Norristown forensic units are at capacity, patients committed by courts for competency restoration treatment are placed, depending on which county refers the patient, on Norristown's or Torrance's "Admissions Waiting List." Ex. L (Mader Aff. ¶20).

C. Class A Plaintiffs and Members Wait Excessively Long Times for Admission to Norristown and Torrance.

52. Both Norristown and Torrance forensic units have been at capacity for many years, and thus both have maintained, and currently maintain, admissions waiting lists for new patients committed for competency restoration treatment.

53. Current wait times at both Norristown and Torrance far exceed any constitutionally permitted delay.

54. Upon information and belief, counties are allotted a certain number of beds at the respective forensic hospitals, which means that wait times vary by county.

55. Data provided to Plaintiffs' counsel in response to a Right-to-Know Law request indicates that between January 2014 and January 2015, wait times for Class A Plaintiffs and Members to gain admission to Norristown following a court's commitment order were as high as follows:

**NORRISTOWN FORENSIC ADMISSION WAIT TIMES —
BY COUNTY**

County	Longest Wait Times (Jan 2014 to Jan 2015) <i>from the first available weekly DHS list of each month</i>
Berks	233
Bucks	349
Carbon	42
Chester	366
Delaware	386
Lackawanna	183
Lancaster	>394
Lebanon	>333
Lehigh	231
Luzerne	296
Monroe	>360
Montgomery	>429
Northampton	>218
Philadelphia	>420

Pike	>351
Schuylkill	>116
Susquehanna	196
Wayne	184
Wyoming	no data
">": Our last available relevant DHS list is dated 1/2/2015, at which point these individuals were still awaiting admission.	

56. The following counties had at least one person waiting in jail for over a year: Delaware County (386 days), Philadelphia County (over 420 days), Montgomery County (over 429 days), Lancaster County (over 394 days), and Chester County (366).

57. According to data from Right-to-Know Law requests and declarants, the wait times across counties in Norristown's catchment area have continued to increase in recent months. In 2014, maximum monthly wait times across counties -- based on a snapshot for each month -- averaged 308 days with a high of 401 days. By just January of 2015 (the last month for which counsel has comprehensive data), those numbers had increased to 436 and 443 days, respectively. Norristown forensic wait times continued to rise throughout 2015, as Philadelphia's Class A Plaintiffs have sustained average monthly maximum wait times of 477 days with the longest wait time being 589 days.

58. In addition to wait times increasing, the length of the Norristown waiting list has also increased significantly. In 2014, the largest waiting list was 122 patients. On August 21, 2015, the list was 121 patients, but as of the date of this filing, the list has grown to 174 patients awaiting admission.

59. Competency restoration treatment patients from Philadelphia, which supplies by far the largest number of patients for treatment to DHS, now routinely wait over a year. In late 2012, wait times rose to two to three months. Over the next few years, those wait times increased substantially. The average wait time for all Philadelphia patients sent to Norristown in 2015—23 patients between January and September—was 397 days. Three patients waited in the Philadelphia Detention Center for more than 500 days, with the longest being 589 days. As discussed below, excessive DHS delays have caused Philadelphia’s criminal justice system to adopt a work-around to keep the waiting list from ballooning even further but which has prolonged many Class A plaintiffs’ actual wait times even beyond those wait times described above.

60. Data provided to Plaintiffs’ counsel in response to a Right-to-Know Law request indicates that from January 2014 through December 2014, wait times for Class A Plaintiffs and Members to gain admission to Torrance after the court order to competency restoration treatment were as high as follows:

**TORRANCE FORENSIC ADMISSION WAIT TIMES —
BY COUNTY**

County	Longest Wait Times (Jan 2014-Dec 2014) <i>from every weekly DHS list</i>
Adams	65
Allegheny	77
Bradford	72
Cambria	58
Cumberland	70
Dauphin	119
Elk	71
Erie	80
Fayette	67
Franklin	84
Indiana	70
Jefferson	99
Northumberland	88
Potter	93
Snyder	78
Somerset	72
Tioga	70
Westmoreland	58
York	78

61. The wait times shown on the Torrance and Norristown wait lists maintained by DHS frequently under-report the actual wait times, sometimes by two months or more.

62. Upon information and belief, this under-reporting is due to the fact that DHS does not assign patients a “Referral Date” corresponding to the date of the court commitment order. Rather, it assigns a “Referral Date” on the date when Norristown and Torrance receive all necessary paperwork from the transmitting county. A sample drawn from four Philadelphia Plaintiffs showed that Norristown’s assigned “Referral Date”—the only date used on its waiting lists—was an average of *44 days* past the date of the court’s initial court order.

i. Philadelphia’s Unique Effort to Compensate for the Long DHS Admission Delays Has Resulted in Many Philadelphia Class A Plaintiffs and Members Having to Wait Substantially Longer Than Is Shown on DHS Waiting Lists.

63. In Philadelphia, the actual wait time from the date a court finds a criminal defendant incompetent and in need of treatment is even longer than the nearly 400-day average because of a unique practice utilized in Philadelphia to keep the waiting lists from ballooning still further and to keep waiting times shorter for the most needy and ill patients.

64. Several years ago, when wait times for transfer to Norristown began increasing to several months, the Philadelphia criminal courts started committing some of the more mentally stable patients who were declared incompetent to the Philadelphia Detention Center, also known as either the Detention Center Forensic Unit (the “DCFU”) or the Prison Health Services Wing

(the “PHSW”). These commitments just to the DCFU are referred to as “single commitments” or “solo commits.”

65. The DCFU is not a DHS forensic unit, and it does not provide competency restoration treatment. The DCFU is a licensed hospital inside the Philadelphia Detention Center -- and the only licensed hospital inside a jail in the Commonwealth of Pennsylvania. The only mental health service the DCFU provides, however, is medication. It does not provide individual counseling and group therapy for the purpose of moving patients toward competency.

66. Attorneys with the Philadelphia Public Defender had hoped that some of the patients might improve by simply taking prescribed medications. In some cases, the patients had stopped taking these medications before arrest, and this cessation often caused mental impairment to worsen and often proximately caused the alleged criminal behavior. The attorneys’ hope was that, by keeping some patients who might be restored to competency with medication alone off of the lists for Norristown, that the sickest patients would be admitted to Norristown sooner and that DHS would address the delays to decrease the excessive wait times.

67. The single commitment strategy ultimately has not worked for most Philadelphia-based Plaintiffs and class members, and in some cases has worsened their predicament.

68. Several reasons contribute to the single-commitment effort’s failure. First, the DCFU had insufficient capacity to house all patients ordered into their care. Consequently, few patients committed to the DCFU were actually

housed there. Instead, most patients committed to the DCFU were housed in the jail's general population, where, due to their mental status problems, they are at greater risk of victimization from other inmates. Many other patients committed to the DCFU were also housed in segregation units, largely due to disciplinary issues caused by their illnesses or disabilities. As a result, notwithstanding a commitment order to the DCFU, most patients are incarcerated in the regular jail population, or in solitary confinement, receiving little or no mental health treatment.

69. Each commitment under the MHPA could last 60 to 90 days, but the Philadelphia courts often reissued the single commitment two and three times or more, meaning that the incompetent patient would remain in the Philadelphia Detention Center for two to eight months before the court converted the commitment to include Norristown.

70. If the patient had not improved during that time, the court changed the order to a "dual commitment," meaning that the patient was committed to both the DCFU and Norristown.

71. As a result, the wait times for admission of Class A Plaintiffs and Members to Norristown are calculated from no sooner than the first date that Norristown is listed on the commitment order.

72. A consequence of the Philadelphia courts' solo commitments to the Philadelphia Detention Center, before adding a Norristown commitment, is that the actual delay between the court order declaring incompetency and directing competency restoration treatment and eventual transfer to Norristown is about two to eight months longer than shown on the Norristown waiting list. In reality,

therefore, many Philadelphia patients wait between one and two years from date of court-ordered treatment to admission by DHS to Norristown.

73. Upon information and belief, Pennsylvania's wait times for inmates to receive competency restoration treatment are the longest of any state in the United States.

74. Defendants Dallas, McCutcheon, and Snyder are well aware of the long wait times for admission to Norristown and Torrance, as well as the delays in transferring out of the forensic unit, discussed *infra*.

D. Class A Plaintiffs and Members in Jails and Prisons Awaiting Admission to Norristown and Torrance Receive No Competency Restoration Treatment, Minimal, if Any, Mental Health Care, and Often Live in Solitary Confinement.

75. Norristown and Torrance are *hospitals* with forensic centers, Ex. L (Mader Aff. ¶ 13), and thus are profoundly different from county prisons and jails in terms of restrictions, staffing, and services.

76. Norristown and Torrance forensic centers are staffed by a full-time psychiatrist, a psychologist, a mental health specialist, a recreation counselor, a social worker, a mental health technician, and nurses. They are statutorily required to provide "a course of treatment designed and administered to alleviate a person's pain and distress and to maximize the probability of his recovery from mental illness." 50 Pa. Cons. Stat. Ann. §§ 7102, 7104.

77. Under the MHPA and corresponding regulations, these professionals work to assess an individual's special needs and develop a comprehensive treatment plan to meet those needs. These treatment plans require

careful and ongoing medication evaluation and management, as well as individual and group psychotherapy.

78. In addition to assessment, medication evaluation and management, and individual and group psychotherapy, Norristown and Torrance provide competency restoration treatment patients with legal skills training to help them learn about the law, pleas, and returning to court. Legal skills training combined with mental health services is designed to restore a person to competency so that they can stand trial for their criminal charges.

79. Most Pennsylvania jails provide little more than medication management to stabilize an individual's mental health condition.

80. Individuals found incompetent are often overtly psychotic and require special housing or segregation. They are unpredictable and disruptive, taking up valuable resources needed for the care of other inmates. If they refuse to take medications (which they are permitted to do and which they often do as a result of their paranoia), they often decompensate rapidly.

81. In jails, the very sick patients awaiting competency restoration treatment are often confined in their cells for 23 hours a day (or all day if they refuse to leave their cells, as many do) because of behavior related to their underlying impairment or because of policies that simply require segregation of anyone with apparent psychiatric disabilities. Not only does the patient remain untreated, but the isolation causes the patient to decompensate, exacerbating the mental health condition.

82. It is well-documented that jails are an inadequate substitute for inpatient mental health treatment. *See* Maureen C. Olley et al., *Mentally Ill Individuals in Limbo: Obstacles and Opportunities for Providing Psychiatric Services to Corrections Inmates with Mental Illness*, 27 *Behav. Sci. Law* 811, 819 (2009) (“[W]e know from decades of research that correctional settings are not generally well equipped nor are they necessarily the most appropriate source of mental health services.” (citation omitted)).

83. Studies reveal that individuals with major mental illnesses, as a group, face a substantial likelihood of incurring serious harm in prison, and are substantially more likely to suffer serious harms than non-ill prisoners. E. Lea Johnston, *Vulnerability and Just Desert: A Theory of Sentencing and Mental Illness*, 103 *J. Crim. L. & Criminology* 159-60 (2013). *See also* Olley et al., *supra*, at 818 (“Inmates with mental health problems are more likely to be charged with breaking facility rules (19%) than inmates without mental health problems (9%). They are four times more likely (8%) to be involved in a verbal or physical assault than non-[mentally ill individuals] (2%) and three times more likely to have been injured in a fight since admission to the local jail.”).

84. Confining severely mentally ill patients “in close quarters with (and without adequate protection from) large numbers of antisocial persons with excess time and few productive activities results in bullying and predation.” Johnston, *supra*, at 150. For instance, these individuals are “more susceptible than non-ill persons to physical and sexual assault in prison.” *Id.* at 151; *see also id.* at 161-69 (describing research on increased likelihood of physical and sexual

assault); *see also* Nancy Wolff and Jing Shi, *Victimisation and Feelings of Safety Among Male and Female Inmates with Behavioural Health Problems*, 20 *J. Forensic Psychiatry & Psychology* S56-77 (Apr. 2009) (exploring characteristics of individual with mental illnesses who are victimized inside prisons).

85. Furthermore, because these individuals often lack the skills to cope with a prison environment, they are more prone to accrue disciplinary violations. Johnston, *supra*, at 151; *see also id.* at 169-78 (describing higher incidence of disciplinary infractions and solitary confinement). This can lead to harsh punishments such as solitary confinement, where such persons “are especially susceptible to decompensation, psychotic breaks, and suicide ideation.” *Id.* at 151. “These experiences — the trauma of physical and sexual victimization and conditions of solitary confinement, either alone or in combination — may aggravate inmates’ psychiatric symptoms and even precipitate the onset of new mental disorders. Inadequate mental health treatment available in many prisons . . . compounds this psychiatric deterioration.” *Id.* at 160-61.

86. For patients deemed incompetent to stand trial because of other mental impairments, such as intellectual disability, traumatic brain injury, or dementia, jails cannot and do not provide adequate treatment in settings that do not pose the threat of causing them further harm.

87. Accordingly, jails do not and cannot provide the kind of treatment and restorative environment that the Class A Plaintiffs desperately need and to which they are entitled.

E. Defendants' Failure to Timely Accept Class A Plaintiffs and Members into Treatment at Norristown and Torrance Inflicts Suffering and Can Prolong Detention Time.

88. Class A Plaintiffs and Members are all, or will be in the future, charged with a crime in the State of Pennsylvania, and who: (a) are adjudged by a court to be mentally incompetent to stand trial; (b) are committed to Defendants for competency restoration treatment; and (c) have not been admitted by Defendants for such treatment within seven (7) days of the date of the court's commitment order. Class A Plaintiffs and Members are also all persons with disabilities as defined under the ADA.

89. Defendants' failure to accept Class A Plaintiffs and Members committed to their care in a timely way causes Class A Plaintiffs and Members to suffer in prisons and jails by depriving them of needed mental health treatment, causing them to live in a far more restrictive environment and, in some cases, in complete isolation from other human beings, and sometimes prolonging the time they spend involuntarily detained.

90. A patient recently detained at the Philadelphia Detention Center awaiting bed space for treatment at Norristown died. In 2013, a 20-year-old Bengali man committed suicide after waiting for nearly six months in the Philadelphia Detention Center for a bed to become available at Norristown. Both a guard and his cell mate noted to his attorney that the man's mental health had deteriorated during his confinement in the Detention Center.

91. In April 2015, another Philadelphia man awaiting a bed at Norristown was murdered by blunt trauma to the head at the Philadelphia

Industrial Correctional Center by his cell mate. *See* Matt Gelb, *Philly Inmate Charged with Killing Cellmate*, Phila. Inquirer (Apr. 30, 2015), http://www.philly.com/philly/news/20150501_Philly_inmate_charged_with_killing_cellmate.html?c=r.

92. Many other prisoners waiting in county jails for transfer to Norristown or Torrance degenerate mentally, as evidenced by Plaintiffs' plight.

93. Plaintiff J.H. exemplifies one type of mentally ill offender who circulates through the competency-restoration process, often more than once. He is a non-violent, low-level offender who has spent time in jail awaiting transfer to Norristown without adequate mental health treatment. He has gotten sicker during his time in jail.

94. J.H. is a chronically homeless man in Philadelphia who suffers from schizophrenia. He has been charged repeatedly with crimes typically related to homelessness, such as retail theft and trespassing. His thefts involve stealing food or personal care items from convenience stores and low-cost retailers.

95. J.H.'s most recent saga began when he was arrested for retail theft from a Wawa convenience store in January 2012 and then detained in the Philadelphia Detention Center. This arrest violated a probation sentence from 2011 on another retail-theft charge.

96. The Philadelphia Court of Common Pleas declared J.H. incompetent to stand trial and committed him into competency restoration treatment at Norristown on June 14, 2012.

97. Norristown did not have an available bed for J.H. until September 6, 2012. His nearly three-month wait time after being ordered to treatment was short relative to today's Norristown wait times, but his commitment occurred before the delays began growing substantially longer later that year.

98. After nearly a year of competency restoration treatment in the forensic unit, on September 4, 2013, Norristown's doctors concluded that J.H. was unlikely to be restored to competency.

99. In mid-June 2014, J.H. was released on probation and bond to a community services center in Philadelphia run by Volunteers of America ("VOA").

100. Within a few days of leaving Norristown and moving into his new community placement, however, J.H. walked away from the facility and set up his own shelter in the parking lot located behind the VOA center. J.H. later explained that he left the placement because he "just wanted to be free."

101. On July 21, 2014, J.H. was arrested and charged with another retail theft crime, this one for allegedly stealing three Peppermint Pattie chocolates from a Dollar General store.

102. On November 13, 2014, the Philadelphia Court of Common Pleas yet again declared J.H. incompetent to stand trial, again ordered him to undergo competency restoration treatment, and committed him to both the Philadelphia Jail and to Norristown.

103. Norristown incorrectly lists J.H.'s referral date as January 12, 2015, which is two months after he was in-fact referred. The court's commitment

order, J.H.'s court docket, and his public defender's contemporaneous notes all indicate that he was committed by the court to Norristown on November 13, 2014, two full months before he shows up on the Norristown waitlist.

104. More than eleven months have elapsed since the court's commitment order, and Norristown still has not admitted J.H. He remains confined in the Philadelphia Detention Center. As of September 25, 2015 J.H. was still only number 13 on the Norristown waitlist.

105. J.H. has received no competency restoration treatment during his eleven months at the Philadelphia Detention Center.

106. J.H.'s mental state has visibly deteriorated over the past eleven months in jail. Prior to his most recent detention, J.H. never displayed hostility, was relatively engaged during conversations, and was willing and able to answer simple questions. Now, he is visibly agitated, hostile, and unable or unwilling to engage in conversation.

107. Plaintiff L.C. is an African-American female in her mid-20's whose mental health has deteriorated during her ongoing confinement in the Philadelphia Detention Center awaiting available space at Norristown.

108. On November 13, 2014, L.C. was declared incompetent and issued a single commitment to the DCFU. L.C. was not, however, immediately moved to the DCFU. She was detained in a general population unit between August 25 and September 2 of this year.

109. On February 12, 2015, the court changed L.C.'s singled commitment to a dual commitment, ordering her to treatment in Norristown. Since

Norristown refused to admit L.C., the court re-issued commitment orders in April, June, and August of 2015.

110. L.C.'s mental state has deteriorated substantially during her stay at the Philadelphia Detention Center. In November, 2014, L.C. was not competent but she was conversant with her public defender. In December, L.C. was screaming answers to questions, seemingly trying to talk over whatever she was hearing. By February 2015, L.C. had declined severely. She still screamed answers to her lawyer's questions, but now the answers did not make sense. She also could not remain seated. In early June, she refused to see her lawyer at all. By late June, she sat through an interview sucking her thumb, refusing to make eye contact, and staring blankly. In late August, L.C. would not respond to any questions from her lawyer.

111. L.C. remains detained at the Philadelphia Detention Center, more than eleven months after she was first declared incompetent, and more than eight months after she was committed to Norristown, awaiting an opening. As of September 28, she was number 14 on the Norristown waiting list.

112. Plaintiff R.J.A., an African-American male in his mid-40's who is diagnosed with paranoid schizophrenia, also has shown a marked decline in mental health in the seven-plus months he has been detained in the Philadelphia Detention Center awaiting an available bed at Norristown.

113. The court deemed R.J.A. incompetent and dually committed him to Norristown and the DCFU on February 11, 2015. The court re-issued the commitments to Norristown on April 8, May 6, and August 5, 2015.

114. During this entire period and despite the court's commitment of R.J.A. to the DCFU, R.J.A. has remained in general population at the Philadelphia Detention Center. R.J.A. has received no treatment during his detention.

115. R.J.A.'s mental health has deteriorated severely, with his paranoia increasing. Shortly after his arrest, R.J.A. met his father for visits, kissed him, told his father that he loved him, and conversed. By around March, R.J.A. showed anger toward his father, cursing at him, blaming him for his situation, and stating that he would "piss on" his father's grave. By August, R.J.A. refused visits from both his father and attorney. He has become delusional, speaking nonsense, and quite obviously not exercising basic hygiene.

116. R.J.A. has now been detained in general population at the Philadelphia Detention Center for more than eight months since his incompetency determination and commitment to Norristown on February 11, awaiting an opening. As of September 25, R.J.A. was number 39 on the Norristown waiting list.

117. Plaintiff Jane Doe is an African American woman in her early 40's who has a mental impairment.

118. Jane Doe was declared incompetent to stand trial for assault charges in January 2014. She was then declared competent in March 2014, but again found her incompetent on May 2, 2014 and committed to the DCFU. On June 26, 2014, the Court dually committed Jane Doe to DCFU and Norristown.

119. To date, Jane Doe awaits transfer to Norristown. Jane Doe's mental and physical health has deteriorated in the nearly 16 months she has been

waiting. She has lost noticeable weight. Prior to her most recent confinement at the Philadelphia Detention Center, Jane Doe would have discussions with her lawyer about her case. For the past year or more, she has refused to discuss the case and instead talks about having aliens and space ships in her body, and about being married to Jesus Christ. She has become much more delusional.

120. Jane Doe has now been confined for nearly 16 months, more than 460 days, in the Philadelphia Detention Center awaiting transfer to Norristown.

121. Plaintiff A.B. is an African-American male in his late-30's who suffers from paranoid schizophrenia. During a hospital stay due to his condition, the hospital had him arrested on August 25, 2015 and turned over to law enforcement for aggravated and simple assault, and tampering with property. Shortly after his arrest, A.B. was found incompetent to stand trial and ordered to Torrance for competency restoration treatment. A.B. is being held in the restricted housing unit of the Beaver County Jail awaiting transfer to Torrance.

122. While in jail, A.B. has not taken any of the medication needed to treat his schizophrenia, and his condition has deteriorated significantly. He is no longer communicating with family and he has ceased taking care of his personal hygiene. Due to the nature of his condition, the longer A.B. goes without medication, the greater the chance that he can become resistant to treatment.

123. Plaintiff S.S. is white male in his mid-20's from Erie who is estranged from his family. He has been held in the mental health unit at the

Allegheny County Jail in solitary confinement since his arrest on August 4, 2015. He refuses to leave his cell, even for the one hour he is allowed out per day.

124. It has now been many weeks since September 3, 2015, when the court committed S.S. for treatment to Torrance. He remains at the Allegheny County Jail, in isolation, awaiting admission to Torrance. He is receiving no treatment. Based on recent wait times for other Allegheny County Jail inmates awaiting admission to Torrance, S.S. can expect to wait for two or more months before Torrance accepts him for court-ordered treatment.

125. Defendants' refusal to accept Class A Plaintiffs and Members for treatment in a timely fashion has caused, and continues to cause, them to suffer physical and mental distress, remain confined in a penal institution without adequate mental health care, and in some cases prolong their total period of confinement.

126. Class A Plaintiffs' and Members' confinement in jail, where they do not receive competency restoration treatment, bears no relationship to the purpose for which they were committed: namely, the treatment they are not receiving.

127. The undifferentiated confinement of all Class A Plaintiffs and Members in county jails warehouses them in the least community-integrated, most segregated, and most restrictive possible housing setting, in contravention of the ADA and RA's non-discrimination and "integration mandates." Those mandates require public entities like Defendants to, *inter alia*, house and care for individuals with disabilities "in the most integrated setting appropriate to the needs of" those

individuals. 28 C.F.R. §§ 35.130(d), 35.152(b)(2). Thereunder, Defendants are disallowed from warehousing Class A Plaintiffs and Members “in inappropriate security classifications because no accessible cells or beds are available” or “in facilities that do not offer the same programs as the facilities where they would otherwise be housed.” 28 C.F.R. § 35.152(b).

F. Defendants Have Failed to Place Class B Plaintiffs and Members in the Least Restrictive and Most Integrated Setting Appropriate to Their Needs After Determining They Are Unlikely to Regain Competency.

128. Class B Plaintiffs and Members are now, or will be in the future, charged with a crime in the State of Pennsylvania, and who: (a) are adjudged by a court to be mentally incompetent to stand trial; (b) are committed to Defendants for treatment; (c) have been found by Defendants to be unlikely to become competent or to no longer be making progress towards competency; and (d) continue to be detained in a forensic unit by Defendants for more than thirty (30) days after the determination that the person is unlikely to become competent. Class A Plaintiffs and Members are also all persons with disabilities as defined under the ADA.

129. Some patients who receive treatment at Norristown and Torrance become competent and are returned to the committing county for resumption of criminal proceedings.

130. Other patients, however, including Class B Plaintiffs and Members, cannot be made to become competent. The mental health professionals at Norristown and Torrance have determined that, even with additional treatment,

they are unlikely to regain competency within a reasonable time or that they are no longer making progress towards competency.

131. At Norristown, clinicians sometimes say that a patient has “reached his maximum benefit” as a euphemism to mean the patient is unlikely to become competent within a reasonable time.

132. After a clinical determination is made that the patient is unlikely to become competent within a reasonable time or is no longer making progress toward competency, the Fourteenth Amendment to the United States Constitution and § 7403(d) of the MHPA require that the patient either be discharged or committed civilly, which would occur under Article III of the MHPA. 50 Pa. Cons. Stat. Ann. §§ 7301, *et seq.*

133. Under the ADA and the RA, Defendants are required to (a) effectively assess all Class B Plaintiffs and Members to determine their community support needs; and (b) develop and implement a viable integration plan with specific timelines and discharge benchmarks to offer and provide adequate alternative community-based treatment programs, supports, and services. Class B Plaintiffs should only be discharged into civil beds when individualized community support needs assessments indicate that civil commitment is the most integrated *appropriate* placement—not merely the only available placement.

134. Defendants’ continued detention of Class B Plaintiffs and Members in a forensic unit -- as opposed to in a community placement or a civil unit if appropriate -- serves no legitimate purpose. Further, it does not save money or increase public safety. On information and belief, appropriate community

placements are generally substantially less expensive than forensic beds. Also, community-based placements meeting a wide range of treatment and security needs are already regulated and licensed by Defendant DHS. See Southeast Regional Mental Health Services, *Regional Resource Guide*, 4-6 (Oct. 2011), available at <http://www.fivecountymh.org/images/documents/RegionalServices/RegionalGuide.pdf>.

135. Class B Plaintiffs and Members have not been convicted of a crime and have not had an opportunity to contest their charges in court. They have often been involuntarily committed for years by the time of the relevant clinical findings, and they are entitled to treatment—not to punishment.

136. Defendants' confinement of Class B Plaintiffs and Members in forensic units is a form of unjustifiable institutional isolation of persons with disabilities, which is a form of unlawful discrimination. The main goal of forensic commitment is competency restoration for the purposes of standing trial. Forensically committed individuals remain subject to the criminal justice system. Their privileges and freedoms are still controlled directly by a criminal court judge.

137. The main goals of civil commitment, on the other hand, are to maximize capabilities, adjust to disabilities, and gradually increase an individual's quality of life. Civilly committed individuals' care, progress, privileges, and freedoms are controlled not by a criminal court judge, but by medical professionals.

138. Class B Plaintiffs and Members are entitled to separate themselves from the oversight of the criminal justice system and start working

towards new goals, be it through appropriate placement in a suitably supportive community-based facility or through required placement in a civil hospital unit.

139. Currently, Defendants detain Class B Plaintiffs and Members in Norristown and Torrance's forensic unit for months or years after clinicians determined the individual is unlikely to become competent or after clinicians have found that the patient is not making progress towards the goal of becoming competent.

140. Nothing changes for Class B Plaintiffs and Members at Norristown or Torrance following the clinical finding that competency restoration is unlikely or that progress is not being made. They remain confined in the high security forensic unit, behind a wall surrounded by two stories of chain-linked fencing, and with the same extreme limitations on contact with the outside world that they had when involuntarily committed under a forensic commitment order.

141. Furthermore, given the range of activities and community contact provided to people housed even in Norristown and Torrance's civil units, civilly-committed incompetent individuals' continued confinement in the forensic units is a form of punishment. Class B Plaintiffs and Members are forbidden outgoing telephone calls, incoming calls and visits are heavily restricted, patients must wear institutional garb, and patients cannot leave the facility.

142. Norristown has two civil units (referred to as Buildings 1 and 10) which provide a secure setting for civilly committed patients, but they are perpetually full. The two units hold a total of 122 patients.

143. Even though Norristown's two civil units are locked on the outside and between units, they afford patients much more freedom than does the forensic unit. The civil units have day rooms with televisions, pool tables, and games. There is a café, a swimming pool, and a library. There are a variety of programs, including life skills, arts and crafts, wood working, exercise, bingo, movie nights, plays, dances, karaoke, and concerts by visiting musicians. There are jobs where patients can earn some money. Patients also can have grounds privileges, wherein they are allowed to walk outside on the grounds of the civil unit's campus, first with an escort and then possibly unescorted. They may have field trips into the community for ice cream and meals. In short, the civil units are a treatment setting that is far less restrictive and more community-integrated than is the Norristown forensic unit even though neither are as integrated as community-based settings.

144. Both Norristown and Torrance maintain "Transfer Waiting Lists" of forensic patients who are cleared for transfer out of the forensic unit but who are confined there while awaiting placement at a "different facility or site"—a civil unit or community placement. Ex. L (Mader Aff. ¶ 14). These transfer waiting lists include some—but not all—Class B Members. Class B Members are patients who Defendants have found are unlikely to become competent, or are no longer making progress towards competency. While many Class B Members have commitment orders for transfer out of a forensic unit—thus their inclusion on transfer waiting lists—some Class B Members do not, and so are not waitlisted for a transfer.

145. As of January 23, 2015, Norristown's transfer waiting list had 41 patients on it, all of whom were awaiting a civil unit placement. As of January 2015, 68% of patients on the wait list had already waited over one year from their civil unit referral date, 83% had waited for six months or more, and 93% had waited three months or more. Patients from five counties were represented on the list. Their overall average wait time as of the list date was 511 days, with the longest waiting individual from each county having already waited 1,175 days (Philadelphia), 714 days (Chester), 596 days (Delaware), 588 days (Montgomery), and 533 days (Bucks).

146. The transfer waiting list has continued to grow. As of September 30, 2015, the length of the list of Philadelphia patients alone awaiting a civil bed was approximately 41 patients, approximately 28 of whom had already waited over a year. Their average wait time since civil commitment as of September was 540 days with a high of 1,054 days. At least some of these patients could be appropriately housed in the community, but Defendants are making no attempt to provide them appropriately integrated placements.

147. Defendants have failed to transfer Class B Plaintiffs and Members at Norristown and Torrance out of the forensic unit and into a less restrictive, more therapeutically appropriate placement.

148. Plaintiff G.C. is an African-American male in his mid-60's who has been diagnosed with schizophrenia. On September 29, 2011, Philadelphia police arrested G.C. on a burglary charge after he allegedly broke a door knob on an apartment unit located one floor directly below his apartment. When he

allegedly walked inside and saw the tenant, he seemed to realize his error and he walked out, without threatening or harming anyone or taking anything.

149. On November 1, 2011, the court declared G.C. incompetent to stand trial on his charges and committed him to the Philadelphia DCFU. He never received treatment while in jail.

150. On April 30, 2012, the Philadelphia court committed G.C. to Norristown. However, due to a shortage of beds, Norristown did not accept him until November 29, 2012, seven months after the commitment order.

151. On December 11, 2013, the court committed G.C. to a civil unit after the court concluded that he was unlikely to regain competency. That was almost two years ago.

152. To this day, Defendants have failed to transfer G.C. to either a civil unit or an appropriate community placement. G.C. has remained in the forensic unit since his initial placement there on November 29, 2012, which is nearly three years ago. He remains there now more than 675 days after the court ordered him to the civil unit.

153. Plaintiff R.M. is a mid-40's Latino male. He suffers mental impairment caused by a traumatic brain injury.

154. The Philadelphia police arrested R.M. on September 6, 2011, for allegedly swinging a knife near someone in a construction zone. He was charged with aggravated assault and using an instrument of a crime. The court set his bail at \$2,500.

155. The court found R.M. incompetent to stand trial on his charges and committed him to the DCFU on March 13, 2012. He was recommitted to the DCFU on May 10, 2012. R.M. was not moved to the DCFU.

156. On July 12, 2012, the court dually committed R.M. to the DCFU and to Norristown.

157. Due to a shortage of beds, Norristown did not accept R.M. until October 6, 2012.

158. On February 28, 2013, the court committed R.M. to the civil side based on Norristown clinicians' determination that R.M. was unlikely to regain competency.

159. Defendants continue to confine R.M. in Norristown's forensic unit more than 960 days after the court ordered him transferred to the civil side.

160. Plaintiff P.S. is a Caucasian man in his late 50's whose long history of mental illness dates back to his teen years. P.S. has been in and out of various hospitals, half-way houses, and psychiatric facilities, and has been on medication for most of his adult life.

161. In early April 2011, the court found P.S. incompetent to stand trial on charges of various hospitals, half-way houses, and psychiatric facilities. He was not moved to Norristown to receive competency services, however, until a year later, on April 4, 2012.

162. In early April 2013, the court ordered P.S. to be transferred to the civil side of Norristown as a result of his lack of progress towards becoming competent.

163. Defendants continue to confine P.S. in Norristown's forensic unit more than 900 days after the court ordered him transferred to the civil side. He remains in Norristown's forensic unit as of the date of this filing, more than two and a half years after he was court ordered to the civil side, and almost three months since a report from P.S.'s attending psychiatrist and chief forensic executive at Norristown's forensic unit stated that it is highly unlikely that P.S. will make any significant gains toward meeting the competency criterial in the foreseeable future.

164. Plaintiff T.S. is a Caucasian man in his mid-50's who is deaf and who suffers from paranoid schizophrenia. In October 2005, the court found T.S. incompetent to stand trial on charges of murder for allegedly shooting two family members. The joint forensic psychiatric expert retained for T.S.'s incompetency proceedings reportedly testified at that time that psychiatric treatment might not ever render T.S. competent.

165. On October 7, 2005, the court committed T.S. to Mayview State Hospital. T.S. was most likely then transferred to Torrance when Mayview closed in 2008. If not in 2008, then T.S. was transferred to Torrance in February 2012 at the latest, as supported by a criminal court docket entry copying Torrance on a commitment order.

166. Despite being involuntarily committed for competency restoration treatment at Mayview and Torrance for a decade, T.S. is still not competent to proceed on the criminal charges. He is still experiencing auditory and visual hallucinations that are strikingly similar in content to those that he

reportedly experienced ten years ago. He still expresses grave concern over similar delusions as those from which he suffered when first found incompetent to proceed. He still believes he is being pursued by Russians and Germans, that a wide range of spirits and ghosts speak to and interact with him, and that some of his relatives' bodies are frozen.

167. T.S. recalls being taught information relating to how the criminal justice system works years ago. He does not believe that anyone has spoken to him about this for many years. Nor does he believe that anyone has spoken to him about going to trial or residing anywhere else but Torrance. Yet he still resides at Torrance, as he has for at least the past 20 months, but more likely since 2008.

168. Plaintiff M.S. is an African-American man in his mid-50's who suffers from schizophrenia and also appears to be substantially mentally disabled with very low motor functioning. He appears to have difficulty holding more than very simple conversations, he has been observed allowing saliva and mucus to drip onto his clothing, and he moves and speaks extremely slowly.

169. The court found M.S. incompetent to stand trial on charges of simple assault, disorderly conduct, public drunkenness, and obstruction of highways in October 2014 stemming from an incident in late December 2013 where he was reportedly found intoxicated and laying on a sidewalk, and then reportedly briefly struggled while being strapped into an ambulance. Prior to this alleged incident, M.S. had no public record of violence in his history.

170. M.S. was committed to Torrance for competency restoration treatment in October 2014. He still remains at Torrance's forensic unit, now a full year later, despite his apparent lack of progress towards becoming competent. M.S. has expressed a willingness and ability to be treated in a more integrated setting.

171. Defendants' detention of G.C., R.M., P.S., T.S., and M.S. in forensic units no longer bears any relationship to the purpose of their commitment, namely, competency restoration treatment.

172. The forensic unit is not the least restrictive placement, for G.C., R.M., P.S., T.S., and M.S., and amounts to unjustified institutional isolation.

173. Torrance has a similar transfer waiting list for patients who will not regain competency, but who remain in Torrance's forensic unit. There were 23 waitlisted forensic patients who were transferred to alternate placements between February 2014 and January 2015. Patients from eleven counties were represented, the longest-waiting from each county being 1,112 days (Dauphin), 665 days (York), and 417 (Lycoming).

174. Torrance's commitment of Class B members in an unnecessarily restrictive unit causes them harm.

175. Torrance has recently detained as least one individual in the forensic unit well past the time he stopped making progress toward competency, and continued to detain him in the forensic unit even when community placement was warranted.

176. Specifically, E.M is an African-American male in his mid-20's who was diagnosed several years ago with a psychotic disorder. In June 2012, police arrested E.M. for public drunkenness, reportedly patting a teenager on the behind, and other misdemeanors. E.M. was detained at the Allegheny County Jail, evaluated for competency, and then, about a month after his arrest, deemed incompetent and ordered into treatment. He was not permitted to see his family during his stay at the jail.

177. After waiting nearly three months for transfer, E.M. was finally moved to Torrance around September 2012, and his family was finally able to visit him upon his arrival at the facility. They found him unkempt, dirty, and more disoriented than they had ever seen him before. He did not recognize his family members and could barely speak. He was unable to carry on a conversation, and only mumbled or giggled to himself.

178. E.M.'s physical and mental condition improved after several months at Torrance. However, by the end of 2013, a Torrance psychiatrist told E.M.'s family that E.M. was not making progress and that they believed he could not be restored to competency. Nonetheless, Torrance refused for over a year to transfer E.M. to the civil unit or to a community placement. Finally, in March 2015, after being at Torrance for almost two and a half years, Torrance transferred E.M. to the civil unit. In doing so, Torrance fought the family's effort to return E.M. to a community placement. Eventually a lawsuit resulted in an order that E.M. be released into the community. This occurred in August 2015, nearly three years after he was first deemed incompetent.

179. Torrance's refusal to release E.M., and active resistance to his release, even after its clinicians determined that he could not be restored to competency, violated E.M.'s rights under the Fourteenth Amendment's due process clause and the ADA. Upon information and belief, Torrance treats other Class B members in similarly illegal fashion.

180. As individuals with disabilities, Class B Plaintiffs and members are entitled to housing and care in the most integrated setting appropriate to their individually assessed needs. Because Class B Plaintiffs and members are unnecessarily institutionalized persons with disabilities living in state-operated facilities, Defendants must develop and implement viable and specific integration plans to address their community placement needs. Finally, as persons protected by the Constitution of the United States, Class B Plaintiffs are entitled to freedom from punishment and to freedom from conditions of confinement that amount to punishment absent conviction.

V. CLASS ACTION ALLEGATIONS - CLASS A

181. Plaintiffs J.H., L.C., R.J.A., Jane Doe, A.B., and S.S., by and through their next friends, (collectively, the "Class A Plaintiffs") bring this action pursuant to Fed. R. Civ. P. 23(a) and (b)(2) on behalf of themselves and all others similarly situated (collectively, the "Class A Members") as members of the following proposed plaintiff class ("Class A"):

All persons who are now, or will be in the future, charged with a crime in the State of Pennsylvania, and who: (a) are adjudged by a court to be mentally incompetent to stand trial; (b) are committed to Defendants for

competency restoration treatment; and (c) have not been admitted by Defendants for such treatment within seven (7) days of the date of the court's commitment order.

182. Class A Members seek class-wide equitable, declaratory and injunctive relief pursuant to Fed. R. Civ. P. 23(b)(2).

183. Class A Members are suffering, and will continue to suffer, irreparable harm that cannot be adequately compensated at law unless this court grants injunctive relief, preliminary and permanent thereafter.

184. On information and belief, Class A consists of at least 175 individuals, and new people are added to the class continually as criminal courts order people into treatment, making individual joinder of all members impractical. The identities of Class A Members are ascertainable through records held by Defendants and/or the courts from which the evaluations or restorations of competency were ordered. Members of Class A may be informed of the pendency of this class action by use of contact information in the possession of Defendants as well as from court records.

185. There are questions of law and fact common to Class A, but are not limited to:

- a. Whether Defendants' failure to admit the Class A members, each of whom has been found incompetent and has been ordered transferred for competency restoration, within a reasonable period of time to Norristown or Torrance violates the Fourteenth Amendment;

- b. Whether Defendants' failure to admit the Class A members 7 days from when a court has ordered them transferred for competency restoration to Norristown or Torrance violates the Fourteenth Amendment;
- c. Whether Defendants' failure to admit the Class A members, each of whom has been found incompetent and has been ordered transferred for competency restoration, within a reasonable period of time to Norristown or Torrance violates the Americans with Disabilities Act and the Rehabilitation Act;
- d. All Class A Members are detainees in Pennsylvania jails who were found incompetent to stand trial, their criminal proceedings stayed, and an order issued by a Pennsylvania judge for competency restoration services;
- e. All Class A Members continue to wait in jail without receiving competency restoration services;
- f. The appropriate class-wide remedy.

186. These common questions of law and fact predominate over any questions affecting only individual Class A Members.

187. Class A Plaintiffs' claims are typical of the claims of Class A because Defendants have uniformly failed to provide timely competency evaluation and/or competency restoration services to Class A Plaintiffs and to Class A in the same manner.

188. Class A Plaintiffs will fairly and adequately protect interests of Class A members. There are no conflicts of interest between the Class A Plaintiffs and other Class A Members. The Class A Plaintiffs will vigorously prosecute this action on behalf of Class A.

189. The Class A Plaintiffs are represented by competent counsel with considerable skill and experience in civil rights and class action litigation, who will vigorously prosecute this case on behalf of Class A.

190. Defendants have acted or refused to act on grounds generally applicable to the entire class, to wit, failing to provide adequate facilities and resources to accept class members after commitment by a court for competency restoration treatment within a constitutionally reasonable time period, i.e., less than seven days.

191. The claims asserted herein are capable of repetition while evading review. There is a continuing and substantial public interest in these matters.

192. The class action is the best available method for the efficient adjudication of these legal issues because individual litigation of these claims would be impracticable, and individual litigation would be unduly burdensome to the courts. Further, individual litigation has the potential to result in inconsistent or contradictory judgments. A class action in this case presents fewer management problems and provides the benefits of single-adjudication, economies of scale, and comprehensive supervision by a single court.

VI. CLASS ACTION ALLEGATIONS - CLASS B

193. Plaintiffs G.C., R.M., P.S., T.S., and M.S., by and through their next friends, (collectively, the “Class B Plaintiffs”) bring this action pursuant to Fed. R. Civ. P. 23(a) and (b)(2) on behalf of themselves and all others similarly situated (collectively, the “Class B Members”) as members of the following proposed plaintiff class (“Class B”):

Class B Plaintiffs and members are now, or will be in the future, charged with a crime in the State of Pennsylvania, and who: (a) are adjudged by a court to be mentally incompetent to stand trial; (b) are committed to Defendants for treatment; (c) have been found by Defendants to be unlikely to become competent or to no longer be making progress towards competency; and (d) continue to be detained in a forensic unit by Defendants for more than thirty (30) days after the determination that the person is unlikely to become competent.

194. Class B Members seek class-wide equitable, declaratory and injunctive relief pursuant to Fed. R. Civ. P. 23(b)(2).

195. Class B Members are suffering, and will continue to suffer, irreparable harm that cannot be adequately compensated at law unless this court grants injunctive relief, preliminary and permanent thereafter

196. On information and belief, Class B consists of at least 55 individuals making individual joinder of all members impractical. The identities of Class B Members are ascertainable through records held by Defendants.

197. There are questions of law and fact common to Class B, but are not limited to:

- a. Whether Defendants' continuing detention of Class B members in a forensic unit after psychiatric officials have determined the individual is unlikely to regain competency within a reasonable period of time violates the Fourteenth Amendment;
- b. Whether Defendants' failure to move these individuals within 30 days of that determination into a less restrictive setting violates the Fourteenth Amendment.
- c. Whether Defendants' failure to either civilly commit, place in an appropriate community facility, or release individuals who cannot be restored to competency violates the Americans with Disabilities Act and the Rehabilitation Act;
- d. Whether Defendants' failure timely to move these individuals into a less restrictive setting violates the American with Disabilities Act and the Rehabilitation Act.
- e. All Class B Members have received treatment at Norristown or Torrance;
- f. All Class B Members have received a determination by Defendant DHS that they are unlikely to regain the competency to stand trial;
- g. All Class B Members, being unable to regain competency to stand trial, must be civilly committed, released, or

transferred to an appropriate community setting under the ADA, the RA, and the United States Constitution;

h. The appropriate class-wide remedy.

198. These common questions of law and fact predominate over any questions affecting only individual Class B Members.

199. Class B Plaintiffs' claims are typical of the claims of Class B because Defendants have uniformly: (a) continued to detain these individuals in a forensic unit despite a psychiatrist's determination that they are unlikely to regain competence; and (b) failed to place Class B members in the least restrictive setting.

200. Class B Plaintiffs will fairly and adequately protect interests of Class B. There are no conflicts of interest between the Class B Plaintiffs and other Class B Members. The Class B Plaintiffs will vigorously prosecute this action on behalf of Class B.

201. The Class B Plaintiffs are represented by competent counsel with considerable skill and experience in civil rights and class action litigation, who will vigorously prosecute this case on behalf of Class B.

202. Defendants have acted or refused to act on grounds generally applicable to the entire class.

203. The claims asserted herein are capable of repetition while evading review. There is a continuing and substantial public interest in these matters.

204. The class action is the best available method for the efficient adjudication of these legal issues because individual litigation of these claims

would be impracticable, and individual litigation would be unduly burdensome to the courts. Further, individual litigation has the potential to result in inconsistent or contradictory judgments. A class action in this case presents fewer management problems and provides the benefits of single-adjudication, economies of scale, and comprehensive supervision by a single court.

VII. CAUSES OF ACTION

COUNT 1 - CLASS A

(Violation of the Fourteenth Amendment to the United States Constitution (42 U.S.C. § 1983))

205. The allegations of paragraphs 1 to 204 above are incorporated herein.

206. Due process requires that the nature and duration of confinement must bear a reasonable relation to the purpose for which a person is committed.

207. Once an individual is found unable to aid and assist in his own defense, the only lawful purpose for confinement is to treat for the purpose of restoring competency.

208. Individuals found unable to aid and assist have a constitutional right to such individualized treatment as will give each of them a realistic opportunity to be cured or to improve their mental condition.

209. City and county jails do not have the capacity to provide the restorative mental health treatment required by the United States Constitution.

210. Acting under color of state law, Defendants have violated and caused violations of the Class A Plaintiffs' due process rights pursuant to the Fourteenth Amendment of the United States Constitution.

211. Unless enjoined by the Court, Defendants will continue to violate and cause the violation of the constitutional rights of the Class A Plaintiffs and the Class A Members.

COUNT 2 - CLASS A

(Violation of the Americans with Disabilities Act (42 U.S.C. § 12132 et seq.) and the Rehabilitation Act (29 U.S.C. § 794, et seq.))

212. The allegations of paragraphs 1 to 211 above are incorporated herein.

213. Class A Plaintiffs and Class A Members are "qualified disabled persons" as defined in the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132 *et seq.*, and the Rehabilitation Act ("RA"), 29 U.S.C. § 794, *et seq.*

214. As "qualified disabled persons," Defendants must provide reasonable accommodation to Class A Plaintiffs and Class A Members, which includes: (i) ensuring that Class A Plaintiffs and Class A Members shall "not, because a facility is inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity; (ii) ensuring that Class A Plaintiffs and Class A Members are "housed in the most integrated setting appropriate to the needs of the individuals," including not placing them "in inappropriate security classifications because no accessible cells

or beds are available,” not placing them “in designated medical areas unless they are actually receiving medical care or treatment,” not placing them “in facilities that do not offer the same programs as the facilities where they would otherwise be housed,” and not depriving them “of visitation with family members by placing them in distant facilities where they would not otherwise be housed;” and (iii) ensuring that Class A Plaintiffs and Class A Members shall be “housed in a cell with the accessible elements necessary to afford the inmate access to safe, appropriate housing.” 28 C.F.R. § 35.152(b).

215. Also, as qualified disabled persons, no Plaintiff “shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a).

216. By housing Class A Plaintiffs and Class A Members in jails that are unable to provide the necessary treatment and safe facilities called for under the ADA, Defendants have failed to comply with the integration mandates of the ADA and the RA and have failed to provide reasonable accommodation of the disability of Class A Plaintiffs and Class A Members.

217. Unless enjoined by the Court, Defendants will continue to violate and cause the violation of the ADA and RA rights of the Class A Plaintiffs and the Class A Members.

COUNT 3 - CLASS B

(Violation of the Fourteenth Amendment to the United States Constitution (42 U.S.C. § 1983))

218. The allegations of paragraphs 1 to 217 above are incorporated herein.

219. Due process requires that the nature and duration of confinement must bear a reasonable relation to the purpose for which a person is committed.

220. Once an individual is found unable to aid and assist in his own defense, the only lawful purpose for confinement is to treat for the purpose of restoring competency.

221. Individuals found unable to aid and assist have a constitutional right to such individualized treatment as will give each of them a realistic opportunity to be cured or to improve their mental condition.

222. Once it is determined, however, that an individual is unlikely to become competent in the foreseeable future or that he or she is not making progress towards the goal of becoming competent, Defendants are required to appropriately discharge the patient into the community or to civilly commit the individual only if he or she meets the statutory civil commitment requirements, and Defendants cannot hold that individual in the criminal justice system indefinitely.

223. Acting under color of state law, Defendants have violated and caused violations of the Class B Plaintiffs' due process rights pursuant to the Fourteenth Amendment to the United States Constitution.

224. Unless enjoined by the Court, Defendants will continue to violate and cause the violation of the constitutional rights of the Class B Plaintiffs and the Class B Members.

COUNT 4 - CLASS B

(Violations of the Americans with Disabilities Act (42 U.S.C. § 12132 et seq.); and the Rehabilitation Act, (29 U.S.C. § 794, et seq.))

225. The allegations of paragraphs 1 to 224 above are incorporated herein.

226. Class B Plaintiffs and Class B Members are qualified disabled persons as defined in the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132 et seq., and the Rehabilitation Act (“RA”), 29 U.S.C. § 794, et seq.

227. As “qualified disabled persons,” Defendants must provide reasonable accommodation to Class B Plaintiffs and Class B Members, which includes ensuring that they are “housed in the most integrated setting appropriate to the needs of the individuals,” including not placing them “in inappropriate security classifications because no accessible cells or beds are available,” not placing them “in facilities that do not offer the same programs as the facilities where they would otherwise be housed,” and not depriving them “of visitation with family members by placing them in distant facilities where they would not otherwise be housed.” 28 C.F.R. § 35.152(b).

228. By continuing to hold Class B Plaintiffs and Class B Members in the forensic units of Defendants Norristown and Torrance, by failing to effectively assess their community support needs, by failing to provide them with

viable integration plans that include specific timelines and discharge benchmarks for developing community alternatives, and by failing to house and care for Class B Plaintiffs and members in the most integrated setting appropriate to their individually assessed needs, Defendants have failed to comply with the integration mandates of the ADA and the RA, and have failed to provide reasonable accommodation of the disability of Class B Plaintiffs and Class B Members;

229. By failing to effectively assess Class B Plaintiffs and Class B Members to determine their community support needs and by failing to develop and implement a viable integration plan to offer and provide Class B Plaintiffs and Class B Members with adequate alternative community-based treatment programs, supports, and services, Defendants have violated the ADA and the RA integration mandate, requiring that viable integration plans include specific timelines and discharge benchmarks in order to develop community alternatives for unnecessarily institutionalized persons with disabilities who lived in state operated facilities.

230. Unless enjoined by the Court, Defendants will continue to violate and cause the violations of the ADA and RA rights of the Class B Plaintiffs and the Class B Members.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

- A. For certification of Class A as defined above;
- B. For certification of Class B as defined above;
- C. For a declaration that Defendants are depriving Class A Plaintiffs, Class A Members, Class B Plaintiffs, and Class B Members of their due process rights pursuant to the Fourteenth Amendment of the United States Constitution and their rights under the Americans with Disabilities Act and the Rehabilitation Act;
- D. For the issuance of preliminary and permanent injunctions restraining Defendants from violating the Fourteenth Amendment of the United States Constitution, the Americans with Disabilities Act, and the Rehabilitation Act by inappropriately confining individuals involuntarily committed for restorative treatment;
- E. For the issuance of preliminary and permanent injunctions requiring Defendants to promptly accept physical custody of Class A Plaintiffs and Class A Members within a reasonable period of time, not to exceed seven days from the date they are committed to Norristown or Torrance for restorative treatment;
- F. For a declaration that Defendants must accept physical custody of Class A Plaintiffs and Class A Members within a reasonable period of time, not to exceed seven days from the date they are committed to Norristown or Torrance for restorative treatment;
- G. For the issuance of preliminary and permanent injunctions restraining

Defendants from violating the Fourteenth Amendment to the United States Constitution, the Americans with Disabilities Act, and the Rehabilitation Act when an individual committed for competency restoration is found to be unlikely to become competent in the foreseeable future or to not be making progress towards the goal of achieving competency;

H. For the issuance of preliminary and permanent injunctions requiring Defendants to effectively assess the community support needs of Class B Plaintiffs and Class B Members and to develop and implement viable integration plans with specific timelines and discharge benchmarks to facilitate their prompt transfer out of the forensic unit;

I. For the issuance of preliminary and permanent injunctions requiring Defendants to transfer Class B Members out of forensic units and into the most integrated placement appropriate to their individually assessed needs within a reasonable period of time, not to exceed thirty days from the date it is determined or is determinable that they are unlikely to become competent in the foreseeable future or that they are not making progress towards the goal of competency;

J. For a declaration that Defendants must transfer Class B Members out of forensic units and into the most integrated placement appropriate to their individually assessed needs within a reasonable period of time, not to exceed thirty days from the date it is determined that they are unlikely to become competent in the foreseeable future or that they are not making progress towards the goal of competency;

K. For an award of Plaintiffs' costs and attorneys' fees; and

L. For such other and further relief as the Court may deem just and proper.

Dated: October 22, 2015

ACLU OF PENNSYLVANIA

/s/ **Witold J. Walczak**

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** Pro Hac Vice Application Forthcoming*