PLS NOTES

JANUARY 2015

Published by Prisoners' Legal Services
Ten Winthrop Square, Boston, MA 02110
Executive Director: Leslie Walker
Editor: Peter Costanza
Phone: 617.482.2773 WATS: 800.882.1413

County Prisoner Collect: 617.482.4124
Massachusetts state prisoner calls: *9004#
Call in Mondays 1-4 PM, emergencies from segregation 9-11 or 1-4 every day or write PLS at 10 Winthrop Square, Boston, MA 02110
http://www.plsma.org

Hepatitis C Can Now Be Cured

The past year and a half have seen dramatic changes in treatment options for Hepatitis C, with new medications Sovaldi (sofosbuvir), Olysio (simeprevir), and Harvoni (a combination drug containing ledipasvir and sofosbuvir) arriving in the marketplace. These drugs have tremendous promise – they offer high cure rates, shorter treatment times, and in some cases, treatment regimens free of Interferon, whose side effects have for years deterred providers or patients from seeking treatment.

The catch is the cost. Treatments that use these new medications can run to more than $80,000 per patient. Not surprisingly, these costs may discourage any health care company from approving recommendations for treatment, including jail and prison medical contractors. Despite these costs, however, the new medications are being prescribed and paid for even by publicly funded medical programs like Medicare and Medicaid.

The Massachusetts Department of Correction's medical care provider, MPCH, has a protocol for treating Hepatitis C which includes these new medications. Although we are aware of at least one occasion in which MPCH prescribed them, we are concerned about MPCH and the DOC's commitment to treatment of this disease. Even before the arrival of these new medications, the number of state prisoners receiving treatment for Hepatitis C had been declining for years.

PLS advocates for Hepatitis C patients. If you or someone you know has questions or problems related to Hepatitis C, whether it has to do with screening, monitoring (blood work, liver biopsy, etc.), or treatment, please contact us. As with other issues, we cannot promise advocacy for every request we receive, but we will assess your individual situation to determine whether the prison providers and administration are meeting their obligations, and we will respond accordingly.

If there is widespread, unjustified denial of these new treatments, PLS will look beyond advocacy to other options, including litigation. Even if there is not a blanket denial of treatment, certain parts of the treatment protocol, such as the exclusion of prisoners with less than a year or two until release, or the exclusion of prisoners with certain types of disciplinary reports, may be challenged.

If You Are Pregnant And Incarcerated

Contact PLS for information about your rights.

In May 2014, Massachusetts passed a law, G.L. c. 127, § 118, making it illegal to shackle pregnant women for transportation in most circumstances, outlawing restraints on women in labor and

requiring correctional facilities that hold women to provide basic prenatal education and care. This law is very important in strengthening the rights of pregnant women incarcerated in Massachusetts. Its requirements apply to all women incarcerated in the state, regardless of what facility they are in.

PLS has a new project called **Keeping Promises to Women in Prison: Monitoring Implementation of the Massachusetts Law to Prevent Shackling and Promote Safe Pregnancies.** This project is sponsored by the **National Institute for Reproductive Health**.

If you are a pregnant woman incarcerated in Massachusetts, **please contact PLS for assistance in obtaining the rights provided by this law and to help us track and address any improper use of restraints on pregnant and post-partum women**. If you feel the correctional or medical staff are not following the requirements of the law, you should file a grievance (a medical grievance if it is medical staff who are not following the law, a facility grievance if it is the correctional staff not following the law) and be sure to appeal any denial of that grievance. You should file the grievance even if you also contact PLS for assistance.

If you are restrained while you are in labor, this office will advocate for you to be removed from restraints immediately. You can contact us from any DOC facility at *9004# or any county facility by calling collect at 617-482-4124. If you are unable to call, you can also ask your medical provider or your family to contact our office to report this problem. We will need your signed releases of information to get any information when we advocate, so **we will need releases of information on file with this office in advance if you think you will be incarcerated when you give birth. If you are expecting to give birth while incarcerated, please contact PLS in advance of your due date and discuss your situation with us.** Even if you don't want us to contact the facility regarding your situation, we would appreciate you contacting us to let us know what your experience was so that we can assess whether each facility is following the law.

PLS Supports FCC Caps on In-State Prison Phone Rates and Fees

PLS has urged the Federal Communications Commission to set strict limits on in-state prison telephone rates and consumer fees. As reported previously in PLS Notes, in September 2013 the Federal Communications Commission (FCC) set interim rates for interstate prison calls and sought comment on whether to regulate in-state calling as well. In October 2014, the agency announced its intention to regulate in-state rates, and sought comment on how those rates should be set; how to treat "site commissions" (kickbacks made by telephone companies to correctional facilities in order to secure contracts); and how to regulate the many fees that the phone companies charge consumers, which is fast becoming a new profit-center.

PLS filed comments on January 12, 2014 urging the FCC to set in-state rates based on the cost of providing telephone service, with no leeway for site commissions. PLS urged that consumers not be charged extra to reimburse correctional facilities for costs incidental to providing phone service, because "access to telephones is as necessary to a well-run prison as recreation space or a visiting room." Nor should maximum rates

be based on a 15-minute call, since that penalizes those who make shorter calls and those who have to re-initiate dropped calls. Consumers should not be asked to pay extra fees for services such as establishing an account or closing an account and obtaining unused funds. Other "convenience" fees – such as depositing funds to an account by credit card – should be limited to the provider's cost, rather than the outrageously high amounts now charged. The FCC must ensure that prisoners who are deaf or hard of hearing are provided equal access to phone communication such as video phones.

While the FCC considers regulation, PLS will also continue to pursue lower rates and better quality of service before the Department of Telecommunication and Cable (DTC), where a petition on behalf of Massachusetts prison telephone consumers is pending and in the discovery stage. So long as the outcome of federal regulation is unclear, the DTC proceeding must go forward.

PLS Seeks Information on DOC's Treatment of Deaf and Hard of Hearing Prisoners

PLS is looking for information about the experience of deaf and hard of hearing state prisoners in the DOC. For example, PLS would like to know more about any problems they have with: access to interpreters for medical appointments and administrative hearings, access to educational and rehabilitative programs, access to religious services, awareness of safety alarms and announcements, and their ability to communicate with their loved ones in the community. If you have any information that you would like to share with PLS, please write or call PLS and ask for **Tatum Pritchard** or **Lizz Matos**.

Donate to PLS!

Please consider donating to PLS. Every donation helps! Readers with internet access can go to PLS' website at www.plsma.org. The donation page is secure, and your donation is tax deductible.

Halt Commitments "For Treatment" of Women to MCI - Framingham Under Section 35

In Massachusetts, people who are addicted to drugs or alcohol and who are found to be at risk of "serious harm" may be committed by the Court for treatment under G.L. c. 123 § 35 ("Section 35"). For many women, though, commitment ends up a nightmare rather than a helping hand. If beds in the secure facility run under the Department of Public Health are full (as they very often are), the women are sent to MCI-Framingham, where they are treated as prisoners from the first strip search onward, and where they receive no addiction treatment beyond detox. Massachusetts is the only state in the nation that imprisons people for addiction treatment even though they have not been charged or convicted of a crime.

PLS has filed a class action lawsuit to stop this practice, together with the Center for Public Representation, the American Civil Liberties Union and the law firm WilmerHale. The lawsuit, *Doe et al. v. Baker et al.*, argues that incarcerating women who are civilly committed under Section

35 violates the constitutional right to due process and the Americans with Disabilities Act.

In the course of investigating and then preparing the complaint, PLS heard from numerous women traumatized by their stay in Framingham. With no criminal charges against them, they are subjected to all the rigors of prison life, from strip searches to coping with abusive correctional officers. They are housed with pretrial detainees who are often charged with serious crimes, but face even more austere conditions than those awaiting trial or convicted prisoners. Because women held at Framingham under Section 35 may not have contact with sentenced prisoners, they are entirely restricted to their unit, leaving only for medical and mental health appointments, visits (if they receive any), or perhaps for time in a small yard adjacent to their unit. While pretrial detainees eat meals together in a "chow hall," the "sectioned" women eat in a small dayroom in their unit or, mostly, alone in their cells.

These women not only are traumatized during one of the most vulnerable moments in their lives, they get no treatment for their addiction. This defeats the entire purpose of the statute - to make sure addicted people in danger receive help. Instead, women experience shame and humiliation, and believe their incarceration has made their addiction worse. Family members who file Section 35 petitions are often horrified, saying they would not have initiated the process if they had known their loved one would be sent to prison. The fact that many are forced to turn to Section 35 because they cannot otherwise find addiction treatment is a sad comment on the lack of addiction resources in Massachusetts. It should not take a lawsuit to stop Massachusetts from imprisoning women solely because they have a drug or alcohol addiction.

Reform of Treatment of Mentally Ill Prisoners Part One: Legislation

On January 6, Governor Patrick signed Chapter 446 of the Laws of 2014, which provides clinical protection for prisoners sent to segregation who are seriously mentally ill. This new law is a significant reform. It diverts those with serious mental illness from long-term segregation and requires that they be placed in specialized units that are staffed with both mental health clinicians and correctional officers.

The new legislation modifies Section 1 of chapter 127 of the General Laws with definitions of "qualified mental health professional," "residential treatment unit" (RTU) ,and "secure treatment unit" (STU). A new section 17A is added to G.L.c. 127 providing that the commissioner of correction "shall establish" residential treatment units for prisoners who are in need of mental health services but who do not require hospitalization. The population of these RTUs may be drawn from anywhere in the DOC.

The legislation requires that all correctional staff who work in the specialized units receive mental health training about the types and symptoms of mental illnesses, the goals of mental health treatment, medication and side effects, as well as de-escalation techniques, and training in how to safely manage prisoners with mental illness.

The legislation adds a new section, 39A, to G.L.c. 127, which requires that anyone sent to segregation gets a mental health screening to determine whether he or she can stand it.

The legislation goes on to provide, that

"Except in exigent circumstances that would create an unacceptable risk to the safety of any person, or where no secure treatment unit bed is available, segregated inmates diagnosed with serious mental illness in accordance with clinical standards adopted by the department shall not be housed in a segregated unit for more than 30 days, and shall be placed in a secure treatment unit. Such segregated inmates awaiting transfer to a secure treatment unit shall be offered additional mental health services in accordance with clinical standards adopted by the department."

Put simply, seriously mentally ill people who are being segregated, for whatever reason, should not be held in "regular" segregation for more than 30 days. After 30 days they should be in a Secure Treatment Unit which provides significantly more mental health treatment than what is involved with the two-minutes-at-the-cell door, aka "drive-by," counseling which is typical in regular segregation.

A major reason why this legislation was approved is that the DOC supported it. In the past few years DOC created RTU and STU units, and found that they contributed to a reduction in violence and a reduction of injuries to both prisoners and officers.

Approval of this legislation came in the wake of a lawsuit filed in 2007, *Disability Law Center v. Commissioner of Correction, et al*. That case challenged the practice of confining prisoners with mental illness in DOC segregation units, including the DDU. The attorneys for plaintiff DLC are PLS, the Center for Public Representation, Bingham McCutchen and Nelson Mullins. The judge is Mark Wolf. The parties signed a settlement agreement in November of 2011 that requires the DOC to maintain sufficient high security treatment units to house inmates with serious mental illness who would otherwise be in segregation. The case is now in post-settlement monitoring. Although the settlement agreement in the DLC case is considerably more detailed than the new legislation, it is helpful that some of the major features of the settlement (the creation of special units staffed by officers with mental health training, screening of everyone sent to segregation for serious mental illness, time limits on segregation in other than treatment units, and modification of mental health treatment) are included in the legislation.

Reform of Treatment of Mentally Ill Prisoners Part Two: Litigation

On December 29, 2014, the Superior Court granted preliminary approval to a settlement that should put an end to the routine and unlawful overuse of seclusion and restraint at Bridgewater State Hospital (BSH). The case is *Minich, et al. v. Spencer, et al.* It was filed in March of 2014 by Joanne Minich on behalf of her son and ward, a 32 year old man with schizophrenia who had been committed to BSH after allegedly assaulting staff at a DMH facility. The complaint asserts that Mr. Minich was subjected to prolonged seclusion and restraint under harsh conditions of confinement for punitive and disciplinary reasons in violation of G.L. c. 123, sec. 21 (the "Restraint Law") and federal and state civil rights laws. The complaint also alleged a violation of constitutional rights because of inadequate medical care. Plaintiff had been at BSH for fourteen months when the complaint was filed, during which he spent **6,400** hours in seclusion and **800** hours in mechanical restraints.

In April 2014, the court approved an interim settlement agreement concerning the use of seclusion and restraint, and Mr. Minich was

transferred to the infirmary at BSH, where he began receiving behavioral treatment. He suffered no further seclusion or restraint while at Bridgewater, and has been transferred to the Worcester Recovery Center, which is administered by the Department of Mental Health (DMH). He has not been secluded or restrained at the DMH facility.

An amended complaint was filed in May. It added two additional named plaintiffs who were Bridgewater patients, as well as class action allegations that there was a systemic pattern of unconstitutional restraint and seclusion at BSH. Records obtained by the plaintiffs showed that during 2013, between 300 and 350 BSH patients were secluded and restrained for a total of 148,000 hours, nearly 400 hours per patient.

In May, one of the added named plaintiffs requested a preliminary injunction seeking compliance with the Restraint Law by DOC and Massachusetts Partnership for Correctional Health Care (MPCH), the Department's for-profit medical and mental health provider. On July 2, the injunction issued.

In June, Governor Patrick released a plan calling for reform of BSH, including construction of a new DMH secure facility as a replacement for BSH for severely mentally ill patients who, like the named plaintiffs, are not serving criminal sentences. The governor also filed legislation to implement his plan. In the short term, the governor proposed an additional 130 full-time mental health clinicians for BSH, to be funded by a supplemental appropriation. As of the end of 2014, however, only 17 new clinician positions were actually funded. It is unclear how much, if any, of Governor Patrick's plan will be implemented by the new administration. In the light of this uncertainty, a settlement of the *Minich* case containing meaningful safeguards for BSH patients is particularly important.

Settlement Terms

The settlement agreement protects BSH patients' constitutional and statutory right to be free from prolonged, inappropriate, and non-emergency seclusion and restraint. It requires procedural safeguards to ensure that patients are not kept in seclusion or restraint any longer than necessary and are not held under unsafe or inhumane conditions of confinement. It also requires collection of data on the use of seclusion and restraint at BSH, and training of clinical and correctional staff to prevent improper use of seclusion and restrict restraint. Additionally, the settlement provides for an independent monitor to ensure compliance with the terms of the agreement, and provides a formal dispute resolution procedure which resorts to the court only after the parties prove unable to resolve problems themselves.

For example, the settlement agreement requires compliance with the Restraint Law and prohibits the use of seclusion or restraint in non-emergency situations. Restraint and seclusion "may only be used if an initial determination has been made and documented in writing that less restrictive alternatives . . . would be ineffective." This provision requires that less restrictive alternatives, such as Quiet Rooms, de-escalation, and redirection, be considered before imposition of restraints. Another provision, stemming from the death of a patient in 2013 from a blood clot after he had been in almost continuous restraint for three and a half days, mandates review of a patient's medical records before restraint is used. Vital signs must be monitored while restraints are in use.

The defendants have agreed that a nationally recognized medical consultant will review BSH mechanical restraint policies and prepare a report on the safe use of mechanical restraints at BSH. The consultant, Paul Zeizel, Psy.D., reviewed reports of seclusion and restraint at BSH and DMH for 2013 for purposes of comparison, and found that for 626 DMH patients in five state facilities that year total hours of seclusion and restraint were 2,568. For the same period of time, for the 300-350 patients in BSH, hours of seclusion and restraint totaled **148,763.** Adverse press attention and the pendency of litigation had a moderating effect on BSH during 2014. Between the second week of January and the first week of August of 2014, total restraint hours at BSH went from 357 to 7, and total seclusion hours for the same two sample weeks dropped from 3057 to 416. The defendants also agreed to produce monthly statistical data on the use of prolonged seclusion in individual cases, which supplements the overall statistical data with information that will enable plaintiffs' counsel and the monitor to identify individual cases where there may be excessive or illegal use of seclusion or restraint.

Other provisions of the settlement agreement cover cell hygiene, clean clothes, the right to receive visitors and to daily showers, reading material, phone calls, exercise, and use of listening devices to combat boredom.

The settlement improves the protocols for release of patients from restraint and seclusion. Patients may no longer remain in seclusion "voluntarily" or because clinical staff have not conducted a personal examination for release because the patient is asleep during daytime hours.

DOC and MPCH staff who work directly with secluded or restrained patients are to receive periodic training in these procedures, and will be tested on their training annually.

Although Bridgewater State Hospital is a DOC facility, DMH will develop training for DOC and MPCH staff working at BSH and will consult on and review policies designed to provide alternatives to seclusion and restraint, as well as on individual patient treatment plans for patients who are frequently restrained.

The agreement provides that the Disability Law Center will act as monitor of the settlement. DLC will have broad access to patients and staff at BSH as well as the right to get documents and records of seclusion and restraint at BSH. DLC will be free to tell plaintiffs' counsel if it believes that the defendants are substantially noncompliant with any section of the agreement. If, whether on its own or by information from the plaintiffs, DLC concludes that defendants are noncompliant with the agreement, the parties are obligated to meet to try to resolve the problem. If such resolution proves impossible, the plaintiffs may petition the court for orders to achieve compliance.

The agreement also addresses the problem of transfers of patients from DMH facilities to BSH. Typically this occurs when a patient assaults a DMH staff person, gets charged criminally, and is sent to BSH for evaluation. Although DMH disputes this, the perception has been that clearly incompetent patients were being charged criminally as a way to get around the prohibition against direct transfers from DMH facilities to BSH which is statutory as well as in the agreement in 1989 to settle *O'Sullivan v. Dukakis.* A current administrative directive from the commissioner of mental health requires consultation with senior DMH administrators before criminal charges can be filed against DMH patients by staff. The agreement in *Minich* required the commissioner of mental health to reiterate that directive to all DMH facility directors by the end of last year and

to impress upon them that admissions from DMH facilities to BSH should be kept to a minimum.

Finally, the agreement provides for improved family contact with BSH patients, including better provision of information about BSH patients to family members and guardians.

A final hearing on approval of the *Minich* settlement is scheduled for February 23, 2015. Counsel for the *Minich* plaintiffs are Eric MacLeish of Clark, Hunt, Ahern & Embry, the Mental Health Legal Advisors Committee, and PLS.

==========

PLS Notes (Apuntes de PLS) está disponible en español si pides recibirlo.

==========

PLS Seeks Information on Treatment of Prisoners with Mobility Disabilities

PLS is seeking information about the experience of persons with mobility disabilities in the DOC and county facilities. For example, PLS would like to know more about problems problems persons with mobility disabilities have with: accessible housing; mobility assistance devices (e.g., wheelchairs, walkers, canes, braces); access to medical appointments and administrative hearings; access to educational and rehabilitative programs; access to religious services; treatment in segregation; and safety. If you have any information that you would like to share with PLS, please write or call PLS and ask for **Maggie Filler**.

Wrongful Death, Deprivation of Psych Meds – Settlement

Pappargeris v. MHM Correctional Services, Inc., et al. – This is an action for wrongful death and civil rights violations brought by PLS for the family of a very mentally ill prisoner who committed suicide at Old Colony Correctional Center after all his medications were taken away. The defendants include Department of Correction staff who failed to take proper emergency measures after he was discovered hanging in his cell. The case was filed in July of 2013. Defendants removed the case to federal court, but it was sent back to state court. Separate settlements were then reached with the Department of Correction and the MHM defendants.

Attention Bristol County Prisoners

Prisoners' Legal Services is seeking information regarding prisoners who are housed in segregation units at Bristol County House of Correction who may have mental health diagnoses**.** PLS staff members have recently visited the Bristol County House of Correction as part of an effort to address problems with segregation practices at the North Dartmouth facility. The units of interest are EE, Max, EC, FB and HB. PLS is particularly interested in contacting prisoners who have been repeatedly placed in segregation or who have spent long periods of time in segregation and may have a mental illness. If you have any information you can share with PLS regarding this issue please write or call **Lizz Matos** or **Al Troisi**.

PLS Seeks Information on Cell Phone D-Reports

PLS is interested in hearing from or about prisoners who have received a category 2 disciplinary charge for cell phone possession. This includes, but is not limited to a 2-1, possession of an item likely to be used in an escape. PLS would also like to hear from prisoners who have received escape points, and/or been placed on level A status because of cell phone d-reports. If you have been convicted of a cell phone offense in the last two years, but not received escape points and/or level A status, PLS is also interested in hearing from you. Please call or write attorney **Lizz Matos** for more information.

Prisoners' Legal Services
10 Winthrop Square, 3d fl.
Boston, MA 02110

Esta publicación está disponible in español.
Pídela por escrito si quiere.