



Department of Justice

STATEMENT OF

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BEFORE

SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

AT A HEARING ENTITLED

“HUMAN RIGHTS AT HOME: MENTAL ILLNESS IN U.S. PRISONS AND JAILS”

PRESENTED

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**Hearing before
the Subcommittee on Human Rights and the Law
Committee on the Judiciary
United States Senate**

**Entitled
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Samuel Bagenstos
Deputy Assistant Attorney General
Civil Rights Division**

Chairman Durbin, Ranking Member Coburn, and Members of the Subcommittee, it is an honor to appear before you today to discuss the Civil Rights Division’s enforcement of the Civil Rights of Institutionalized Persons Act (CRIPA) to protect the rights of incarcerated persons with mental illness.

Congress adopted the Civil Rights of Institutionalized Persons Act in 1980. The statute was a response to an unfortunately widespread record of state and local violations of the rights of incarcerated and institutionalized persons. The Senate Judiciary Committee report recommending passage of CRIPA pointed to a number of cases in which the Civil Rights Division of the Department of Justice had been forced to litigate to ensure that jails and prisons would accord the most basic of constitutional rights to inmates. *See* S. Rep. No. 96-416 (1979), as reprinted in 1980 U.S.C.C.A.N. 787.

CRIPA gives the Division authority to investigate and bring complaints against state and locally operated residential facilities, including jails and prisons, juvenile correctional facilities, nursing homes, mental health facilities and facilities for individuals with developmental disabilities. As especially relevant here, the statute authorizes us to seek judicial remedies for any pattern or practice of conduct that violates the constitutional rights of persons with mental illness who are incarcerated in prisons and jails. In order to carry out this authority, the Division’s Special Litigation Section reviews individuals’ complaints, conducts investigations, monitors and enforces court orders, litigates complex institutional reform cases, and writes amicus briefs on issues of national importance. The Section works closely with nationally recognized experts to evaluate institutional conditions by touring facilities, observing relevant practices and procedures, evaluating records, and interviewing residents, staff, and other individuals knowledgeable about the conditions at the institutions.

In the nearly three decades since the enactment of CRIPA, the Division has investigated more than 430 facilities across the country in an effort to protect the federal rights of the individuals in these institutions, and has been able to improve conditions for tens of thousands of individuals housed in state and local facilities. The Division currently has 24 ongoing CRIPA

investigations involving jails and prisons, and is enforcing compliance with consent decrees and other agreements covering 21 correctional facilities nationwide.

Jail and prison inmates with mental illness retain a number of important constitutional rights under prevailing case law. Accused defendants who are held in jail prior to standing trial retain a Fourteenth Amendment right to be free from conditions that amount to punishment. See, e.g., *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). They also retain a Fourteenth Amendment right to be free from exposure to conditions or practices that are not reasonably related to the legitimate objectives of safety, order and security. See *id.* at 538-540. Convicted inmates retain the Eighth Amendment's right to be free from cruel and unusual punishment. The Supreme Court has consistently held that these constitutional guarantees impose an affirmative duty on jail and prison officials to provide humane conditions of confinement, including access to adequate medical and mental health care. See, e.g., *Farmer v. Brennan*, 511 U.S. 825, 832-833 (1994). And they impose a duty to protect jail and prison inmates from self-inflicted injury where jail and prison officials know or have reason to know of potential suicide risks.

Inadequate mental health care in the nation's jails and prisons poses a critical problem for inmate safety, and can stand in the way of real rehabilitation for those incarcerated without access to treatment. In our CRIPA enforcement, we have uncovered systemic deficiencies in mental health care in jails and prisons across the Nation. We have aggressively pursued reforms to ensure that inmates are afforded their constitutional rights.

Deficiencies in Mental Health Care and Treatment

Where our investigations of jails and prisons reveal constitutional deficiencies, we commonly find that the deficiencies involve inadequate mental health care for inmates with mental illness. These deficiencies range from inadequate training for corrections staff to a lack of procedures to detect suicide risk. In some matters, our investigation, findings, and resolution have focused entirely on the inadequacy of mental health treatment.

We have discovered deficiencies in mental health treatment at every phase of incarceration, from initial intake and screening to services provided throughout an inmate's incarceration.

Suicide Prevention

Perhaps the most urgent issue jails and prisons encountered is the lack of adequate procedures for the detection of suicide risk, and the concomitant lack of measures for suicide prevention. Often, we find that jails and prisons process and house inmates without regard to suicidal history or mental health history. In one instance, we discovered that a jail had failed to take the proper precautions and observe an inmate with a known history of suicidal thoughts, despite a specific alert from his family. The inmate committed suicide within hours of his arrest.

Other deficiencies have included the failure to remove features in cells that have proven conducive to suicide. These features include objects that protrude from cell walls or ceilings and are thus easy for inmates to hang themselves from.

Division investigators have also encountered situations where supervision of suicidal inmates was insufficient. In one facility, corrections officials discovered that an inmate who had attempted to commit suicide by cutting himself had kept 30 disposable razors in his cell. Yet four months later, another inmate was able to commit suicide by cutting himself with a razor. In other facilities, correctional officers lacked adequate safety equipment, such as cut-down tools, to quickly respond to suicide attempts.

Isolation, Restraint and Excessive Force

Our investigations frequently find that jail and prison staff use harmful methods of isolation, seclusion or restraint as a substitute for mental health treatment, often in response to behaviors that inmates cannot control.

In one facility we investigated, detainees were regularly placed on "suicide watch," which involved isolation for 23 hours a day, sometimes for days or weeks at a time. Detainees did not receive adequate assessment or treatment. They sometimes waited days for an initial evaluation. Several times, detainees placed in isolation injured themselves due to psychosis-related behavior. One inmate used a blanket as a buffer when slamming his body into the door of his cell. Staff responded by taking away the blanket.

We also find that inmates with mental illness are often vulnerable to attack by other inmates, yet jail and prison officials fail to provide adequate protection. In one jail, we found that inmates killed two fellow inmates who had mental illness. One victim had exhibited behavior symptomatic of early dementia, which made him the target of violent assaults. In the other incident, the assailant himself had mental illness, and had experienced psychiatric problems just days before the incident, but the jail failed to protect his fellow inmate.

Other deficiencies

Many of the deficiencies our investigations uncover stem from two basic problems: the failure to commit sufficient resources to provide adequate care; and the failure to provide adequate training to jail and prison staff.

One facility we investigated housed 217 detainees receiving psychotropic medications and 110 detainees in units reserved for inmates with the most serious mental illnesses. But the facility had only two part-time psychiatrists on staff, and it often resorted to lock-down because of staff shortages.

In some instances, staff members who are not trained to deal with inmates with mental illness respond with excessive and inappropriate use of force. An investigation at one facility revealed that a group of corrections officers physically punished an inmate with mental illness who exposed himself to a female officer. They took the inmate to a secluded room, handcuffed him, and beat him—causing severe head trauma.

Investigations frequently reveal that facilities lack a program for consistent evaluation of inmates to identify those who need mental health care, or that they consistently fail to provide adequate and timely treatment or therapy.

Remedies Sought

When our investigations of prisons and jails reveal constitutional violations in the treatment of inmates with mental illness, the Civil Rights Division works closely with expert consultants to devise specific measures to address the deficiencies. CRIPA requires that the Division notify the jurisdiction of its findings in a detailed findings letter at least 49 days before any lawsuit can be filed. Such findings must set forth for the jail or prison the conditions at the facility that violate constitutional rights, the supporting facts giving rise to the findings of constitutional violations, and the minimum remedial measures that will resolve the violations. The Attorney General must personally sign any CRIPA complaint, and he must certify that reasonable efforts at informal, voluntary correction of the constitutional violations have not succeeded.

The Special Litigation Section has been successful in resolving the vast majority of the violations we discover through voluntary agreements, without contested litigation. The types of reforms for mental health care deficiencies that we seek include:

- Policies and procedures regarding adequate suicide screening and detection, paying close attention to factors which may warrant close observation, such as suicidal thoughts, severity of criminal charges, and so forth;
- Appropriate housing in suicide resistant housing units;
- Adequate suicide prevention observation, including staggered rounds;
- Training for all correctional staff in detection of mental health needs and referral for treatment;
- Adequate staffing of mental health professionals including psychiatrists and psychologists;
- Policies and procedures to ensure adequate mental health treatment, including counseling and other treatment plans;
- Policies and procedures to ensure that isolation and restraints are not used as a substitute for appropriate mental health treatment;
- Policies and procedures to prohibit the use of chemical restraints for punitive measures or convenience of staff; and

- Policies and procedures to ensure that inmates with mental illness are not victimized by other inmates and are not punished for behavior beyond their control.

For example working cooperatively with the State of Wisconsin, we entered into a memorandum of agreement in September 2008 with the state to address deficiencies with respect to inmates with mental illness in Taycheedah Correctional Institution, Wisconsin's only women's prison. The memorandum lays out the specific remedies that the state will take to ensure adequate mental health screening and treatment. The detailed action plan includes requiring at least eight hours of mental health training for new security officers hired, and three hours of continuing training each year. The agreement also required the facility to hire new psychiatric staff, to adopt adequate mental health screening procedures and to implement counseling and treatment programs for inmates with mental illness. Those programs include access to psychiatry appointments and group therapy as determined necessary.

The State of Wisconsin has been a cooperative partner with us in implementing our agreement concerning mental health treatment at Taycheedah, and that agreement has already led to tangible improvements. For example, in the year since we entered the agreement, there have been no suicides in the prison. That agreement, as with all of our agreements under CRIPA, is closely monitored to ensure compliance. Access to sufficient mental health care is a critical need in jails and prisons across the nation, and the Civil Rights Division is committed to ensuring inmates with mental illness receive adequate treatment, in safe conditions.

Thank you again for the opportunity to testify before you today.