



# DAI Settlement

## History

Disability Advocates, Inc. (DAI), a not-for-profit public interest advocacy and law organization that works to protect the rights of the disabled, sued the state in 2002 to compel improved treatment of mentally ill state prison inmates.

The Department of Correctional Services (DOCS) and the Office of Mental Health (OMH) entered into a private settlement agreement with DAI to resolve the lawsuit. The agreement was approved by U.S. District Judge Gerald E. Lynch on April 27, 2007.

The settlement agreement attempts to balance the need for treatment of inmates' mental illness with the need to maintain safety in correctional facilities, particularly in relation to mentally ill inmates with disciplinary issues.

## Target Inmate Population

Inmates designated by OMH as seriously mentally ill are those with schizophrenia, delusional disorder, schizophreniform disorder, schizoaffective disorder, brief psychotic disorder, substance-induced psychotic disorder (excluding intoxication and withdrawal), psychotic disorder not otherwise specified, major depressive disorders, and bi-polar disorder.

The seriously mentally ill designation also includes actively suicidal inmates or those who recently seriously attempted suicide, and inmates who commit self-harming or harmful acts motivated by breaks with or perceived breaks with reality, or caused by an organic brain syndrome, psychosis or depression. As of Nov. 1, 2007, OMH had identified 2,825 inmates as seriously mentally ill (SMI) and subject to the settlement's terms.

## Requirements of the Settlement

### Heightened Level of Care

Virtually all seriously mentally ill inmates confined to a Special Housing Unit (SHU) for an aggregate disciplinary sanction of more than 30 days will receive between two and four hours per day, five days per week, of structured, out-of-cell therapeutic programming and/or mental health treatment, in addition to exercise.

DOCS will construct and operate a 100-bed Residential Mental Health Unit (RMHU) at the existing S-block site at Marcy Correctional Facility where inmate participants will receive at least four hours per day of out-of-cell treatment and programming. Congregate exercise will be permitted for certain inmates and will count toward out-of-cell therapeutic programming for those who qualify.

The heightened level of care will become fully operational policy once the appropriate programs and facilities are completed (anticipated in March, 2009). At that time, inmates with mental health needs who receive disciplinary sanctions will be offered the heightened level of care and transferred to an appropriate program within 30 days. Between now and March 2009, DOCS and OMH will be implementing many new treatment programs designed to meet the needs of the targeted inmates.

Inmates subject to Keeplock confinement of more than 60 days, and who are serving that sanction in a separate Keeplock unit, will get at least two individual, out-of-cell clinical sessions per month in a private setting with their pri-

mary therapist, and one such session with an OMH psychiatrist or nurse practitioner. A mental health and suicide prevention assessment will be conducted upon assignment to SHU and designated Keeplock units.

Such inmates will receive preference for the Intensive Intermediate Care Program (IICP) at Wende Correctional Facility (Erie County) and will be eligible for the RMHU.

### Disciplinary Limitations

As a general rule, SHU or Keeplock confinement will not be imposed on inmates who display self-harming behavior or threats of self-harm.

Informational reports as currently used in Behavior Health Units jointly managed by DOCS and OMH will replace some misbehavior reports in Intermediate Care Programs (ICPs), Transitional ICPs, Special Treatment Programs (STPs) and the RMHU. And misbehavior reports will not be issued for refusal to take medication or treatment, though disciplinary sanctions or informational reports can be issued for refusing to show up at the location where medication or treatment is provided.

When mental health is at issue in disciplinary hearings, restricted diets will only be used as a sanction for safety and security reasons. Absent exceptional circumstances, any restricted diet won't last more than a week.

OMH will strive to limit observation cell stays to four days, though clinical determinations

will guide length of stay. For stays longer than a week, the Central New York Psychiatric Center (CNYPC) director or designee must be consulted.

Clinical staff will see inmates confined in observation cells five days per week in an interview room outside the cell, unless that would pose an unacceptable security risk, and nursing staff on two shifts will see the inmates every day.

### Reviews

Upon implementation, DOCS will conduct a one-time, system-wide review of seriously mentally ill (SMI) inmates in SHU or Keeplock confinement to identify those whose confinement sanctions should be reduced and those who can be safely housed and treated elsewhere.

Regular reviews of such inmates' housing status will occur at least every 90 days with an eye toward less restrictive housing if clinically appropriate and not a threat to safety or security.

Correctional facility superintendents and OMH staff will review, on an ongoing basis, disciplinary sanctions for seriously mentally ill inmates.

A Central Office Committee made up of high-level staff from DOCS and OMH will meet twice a month to conduct two-hour video conference meetings with correctional facilities' Joint Case Management Committees, on a rotating basis, to review the disciplinary sanctions of seriously mentally ill inmates in SHUs and their clinical treatment, and to ensure that the settlement requirements are being implemented as envisioned.

Where mental health was an issue in a disciplinary hearing, facility superintendents will conduct an automatic review in consultation with OMH within a week of the hearing for any inmate who receives a SHU confinement order of more than 60 days – or whose accumulated SHU or Keeplock confinement sanctions reach more than 120 days.

### Assessments

OMH staff have been added to DOCS reception centers to provide mental health screening for all new inmates to identify those with mental health program needs at the beginning of their incarceration.

SHU confinement orders will trigger a mental health assessment within a day at OMH Level 1 and 2 facilities and suicide prevention screening within a day of admission to SHU.

### Physical Changes

DOCS is converting double-celled space at Marcy (Oneida County) to a 100 single-cell RMHU to provide heightened level of care to seriously mentally ill inmates serving disciplinary sanctions. Double-celling will be permitted if OMH determines it to be therapeutically beneficial to the inmates. DOCS is also constructing an adjoining facility for program areas and clinical staff offices. Target completion date is December 2008.

DOCS will expand its Special Treatment Program (STP) and Intermediate Care Program (ICP), adding 90 STP beds to bring the total to 133, and 91 ICP beds to supplement the previously existing 572. DOCS is

also creating 215 Transitional ICP beds to help seriously mentally ill inmates transition to general population.

DOCS is also constructing open therapeutic cubicles for group and individual therapy sessions and some small classroom work to enhance visibility and communication.

The agency is replacing solid cell doors in RMHU, STP, SHU and designated Keeplock cells with new security doors that allow more visibility and communication between inmates and others. Cell shield orders will still be allowed.

Corcraft (DOCS' correctional industry program) has manufactured specialized "Re-Start" security chairs for use in therapy sessions, affording inmates more freedom of movement while maintaining safety and security for DOCS and OMH staff.

OMH is adding a 20-bed hospital ward at the Central New York Psychiatric Center for DOCS inmates.

DOCS and OMH will conduct a September 2008 assessment to determine whether additional treatment space and programs are necessary to comply with the terms of the settlement.

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