

THE STATE OF SOLITARY: RESTRICTIVE HOUSING AND TREATMENT OF INCARCERATED DELAWAREANS WITH MENTAL ILLNESS



COMMUNITY LEGAL AID SOCIETY, INC.
DISABILITIES LAW PROGRAM
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EXECUTIVE SUMMARY

The Disabilities Law Program (DLP) of Community Legal Aid Society, Inc. (CLASI) serves as Delaware's Protection and Advocacy (P&A) system, charged with protecting the legal rights of people with physical and mental disabilities. Under federal law, P&A systems have the authority to conduct monitoring and investigative activities in a variety of settings where people with disabilities live and receive services, including correctional facilities.

Conditions in correctional facilities are of great concern to CLASI and to other P&A systems around the country, due to the overrepresentation of people with disabilities, including mental illness, in correctional settings. Research also suggests that the experience of incarceration, and of segregation or solitary confinement in particular, can cause mental health problems and also exacerbate existing mental illness.

History of CLASI's Interventions on Behalf of Incarcerated People with Mental Illness Held in Solitary Confinement

In 2013, CLASI and the ACLU of Delaware became troubled by reports they were receiving about the placement of individuals with serious mental illness in solitary confinement, meaning that they were confined to cells for at least 22 hours per day, often for extended periods of time. After investigation, in 2015 CLASI, the ACLU, and Pepper Hamilton LLP filed a federal lawsuit, *CLASI v. Coupe*, against the Delaware Department of Correction (DDOC), which detailed concerns about the treatment of individuals with mental illness placed in restrictive housing environments, including solitary confinement. These concerns included minimal out-of-cell time, lack of access to mental health treatment, and conditions for individuals placed on suicide watch.

The parties settled the suit in 2016, and DDOC agreed to make several changes related to the use of restrictive housing. These included: increased mental health staffing; minimum requirements for out-of-cell time; establishing that individuals could not be placed in disciplinary detention for more than 15 consecutive days; requiring a break of at least 15 days between disciplinary detention sanctions; and that no individual classified as seriously mentally ill could be placed in disciplinary detention for any period of time unless they presented an immediate danger and there was no reasonable alternative.

The terms of the settlement were effective for five years and concluded in 2021. While the settlement was

in effect, CLASI monitored DDOC's progress by reviewing data, meeting regularly with DDOC leadership, and conducting on-site facility visits with an expert monitor.

CLASI's Recent Monitoring of Correctional Facilities and Treatment of Individuals with Mental Illness

In the spring of 2023, CLASI retained two experts to assist its staff in conducting updated monitoring, in order to assess current conditions at DDOC facilities with a specific focus on restrictive housing units, including designated mental health units and units housing individuals in disciplinary detention.

CLASI's monitoring found areas where DDOC appeared to remain in compliance with the policy changes agreed to as part of the *CLASI v. Coupe* settlement. It also found areas where additional progress had been made, particularly in the implementation of Residential Treatment Units (RTUs) for individuals with mental illness at two facilities.

However, the monitoring also identified several major areas of concern. These areas included: suicide prevention practices, the need to expand RTUs, the continuum of mental health services and crisis intervention practices, substance abuse treatment protocols, and the use of punitive point and classification systems and privilege sanctions as "backdoor" methods to restrict and isolate incarcerated individuals, now that more traditional disciplinary detention practices, such as solitary confinement, have been reformed.

CLASI is particularly concerned with the need for increased transparency and data sharing to enable it to effectively assess current conditions and carry out its obligations as the P&A. During the monitoring process, DDOC unfortunately denied many of CLASI's requests for more specific data and information, which made it difficult to assess how DDOC's current practices compare with those reported while the *CLASI v. Coupe* settlement was in effect. There is a particular need for more transparency with respect to DDOC's practices surrounding the use of points-based classification, privilege restrictions, and administrative segregation.

CLASI urges DDOC to review the findings and specific recommendations in this report, summarized below, to ensure that incarcerated Delawareans with mental illness are treated fairly and humanely. We also urge DDOC to increase transparency by collecting and making available data regarding the length of restrictions, use of point-based classification, privilege restrictions, and administrative segregation in its facilities.

2023 MONITORING: KEY FINDINGS AND RECOMMENDATIONS

1. Overhaul Psychiatric Close Observation and Suicide Prevention Practices

Individuals are placed on Psychiatric Close Observation (PCO) status when they are assessed to be at risk for suicide or self-injury, and are placed in suicide precaution cells where they are monitored by staff. CLASI's monitoring found problems with PCO practices, including individuals in PCO status being placed in inappropriate medical infirmary settings, and PCO status being unnecessarily punitive and restrictive.

PCO Status in Medical Infirmary Settings

The report notes that placing individuals who are in mental health crisis and on PCO status in the same area as medical infirmary patients can compromise their treatment. For example, infirmary cells do not

generally allow for regular out-of-cell contact with mental health staff. DDOC should:

- Ensure adequate care for people on PCO status, by not intermingling their cells with those of medical infirmary patients; instead there should be a separate set of cells for mental health watch or PCO;
- Ensure that PCO cells in proximity to the medical infirmary have space for out-of-cell encounters with mental health staff.

PCO Is Unnecessarily Punitive and Restrictive

Currently, individuals on PCO status are placed in locked isolation cells, which can exacerbate symptoms and make clinical engagement extremely challenging. The practice of removing clothing, leaving the individual naked except for a suicide smock, is another barrier to mental health care. DDOC should:

- Provide individuals on PCO status with confidential clinical encounters outside of their cells;
- Give individuals on PCO status access to recreation and group therapy, programming, and video visitation;
- Consider creating dorm settings for individuals on PCO status, so they don't face locked cell isolation just for having a mental health crisis;
- Transfer individuals into and out of PCO status based on clinical decisions and ensure that any patient placed on PCO status as the result of an on-call or remote encounter is seen in a face-to-face encounter within 6 hours.

2. Expand the Use of Residential Treatment Units

Two of the correctional facilities monitored had a separate Residential Treatment Unit (RTU) with mental health staff, services, and programming for individuals requiring that level of care for a mental health condition, while two did not. The experts found that the RTUs had many strengths as therapeutic housing areas, and recommended they be expanded. DDOC should:

- Create at least one RTU in each facility, with a priority placed on opening adequate RTUs to allow for some clinical specialization and reduction of inter-facility transfers;
- Collect and track data on fights, uses of force, medication compliance, self-harm, and other basic metrics across facilities as more RTUs are implemented, and make the data publicly available;
- Provide dedicated nursing staff to each RTU, given the high medical acuity of patients with serious mental illness.

3. Improve the Continuum of Mental Health Services and Crisis Intervention Processes

The report finds that more mental health services of variable intensity must be available to individuals across settings within the correctional facilities. For example, there is a sharp drop-off in mental health services after leaving an RTU. A continuum of care must be developed; because there is no intermediate level of care, such as an intensive outpatient model, individuals who leave the RTU can quickly deteriorate, and either end up back in the RTU or in disciplinary detention because of behaviors. DDOC should:

- Ensure that each facility has at least one RTU area;
- Provide on-site programs in step-down units, including group therapy;

- Develop an intensive outpatient model of care that can identify and support patients who are able to live in general population settings, but who require additional support and more frequent care;
- Enable patients in all settings to speak with a mental health professional during a mental health crisis, at any time.

4. Reform Substance Abuse Treatment Practices

The report finds that individuals on medications for an opiate use disorder (MOUD) are not consistently getting treatment when they go through intake. DDOC policies on MOUD from 2023 do not reflect basic clinical standards of care, by time-limiting access to buprenorphine to the first six months of incarceration. Naloxone should be distributed in housing areas and discharge planning units and not stored away from where incarcerated people are likely to be, and staff need to be better educated on its use. DDOC should:

- Screen all individuals currently in DDOC custody and all new arrivals for a substance use disorder;
- Offer evidence-based care including medications for opiate use disorders;
- Consider placing intranasal naloxone in all housing areas with direct access by incarcerated people and placing intranasal naloxone in all discharge planning kits.

5. End the Use of Punitive Point and Classification Systems, Privilege Sanctions, and Administrative Segregation as Backdoor Methods to Restrict and Isolate Incarcerated People

The monitoring revealed a number of concerns related to punitive disciplinary practices. While DDOC policies still reflect limits on the imposition of discipline agreed to as part of the *CLASI v. Coupe* settlement—e.g., that placement in disciplinary detention cannot exceed 15 days at one time and stays in disciplinary detention must be separated by a minimum of 15 days—DDOC appears to be using a point system, lengthy privilege restrictions, and administrative segregation as “backdoor” methods to subject individuals to more restrictions outside of the confines of traditional disciplinary detention, and for longer periods of time. DDOC should:

- Evaluate the overall time individuals are spending in any type of maximum or restricted custody level, including disciplinary detention and administrative segregation;
- Analyze sanction data over time to assess whether frequency and duration of privilege restrictions have increased since changes in policy to limit the use of disciplinary detention;
- Create additional due process safeguards for the placement of individuals in administrative segregation.

6. Increase Activities in Restrictive Housing

Programming and group activities appeared to be very limited in many of the restrictive units. Group activities benefit individuals by reducing isolation, and aid correctional professionals in assessing individuals’ behavior and interpersonal interactions. Certain programming can also help reduce the likelihood of incarcerated people re-offending. DDOC should:

- Develop a plan to bring more programming and opportunities to restricted housing units;
- Create paths for people to work their way out of restricted housing units sooner.

7. Replace Outdated Inhumane Practices Affecting Wellbeing

The monitors noted that DDOC persists in utilizing interventions that are no longer generally accepted in correctional settings across the country. This includes the use of large, aggressive dogs for security, which is an archaic and inhumane practice, especially for individuals in mental health crisis. DDOC policy also authorizes use of “loaf” meals (ground up food put into a loaf shape) for disruptive behavior. This practice is not favored or used in many other states. DDOC should:

- End the use of security dogs and instead develop a service animal training program for incarcerated people;
- End the use of “loaf” meals for disruptive behavior and use alternatives to feed people who misuse food and related items.

The full report, which contains more detailed findings and recommendations, can be found [here](#).