



## **Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism**

**Testimony Submitted to the Senate Committee on Judiciary; United States Senate;  
Wednesday, November 6, 2013 at 10 a.m.**

The National Disability Rights Network (NDRN) would like to thank Senators Leahy and Grassley, and the Senate Committee on the Judiciary, for focusing their attention on efforts to reduce recidivism and provide effective re-entry programs. NDRN is the national membership organization for the Protection and Advocacy (P&A) System, the nationwide network of congressionally mandated, legally based disability rights agencies. A P&A and CAP agency exists in every U.S. state and territory. P&A agencies have the authority to provide legal representation and other advocacy services, under all federal and state laws, to all people with disabilities. The P&A network is the largest provider of legally-based services for people with disabilities in the country.

P&A's around the country represent people with disabilities in the criminal justice system to ensure that they receive appropriate individualized treatment, evidence-based programming, and re-entry support, three things that are key to preventing recidivism. P&As maintain a presence in all facilities that house people with disabilities, where they monitor, investigate and attempt to remedy adverse conditions, including prisons, jails and detention centers. The P&A's work in these settings often involves helping prisoners obtain accommodations so they are not prevented from equal participation in programming and received needed treatment.

Recent P&A cases include *Harold Cunningham and Center For Legal Advocacy, D.B.A. The Legal Center For People With Disabilities And Older People, Colorado's Protection And Advocacy System v. Federal Bureau Of Prisons*, Civil Action No. 12-Cv-01570-Rpm, filed in a U.S. District Court in Colorado. This case involves the failure by the Bureau of Prisons (BOP) to provide treatment to prisoners with serious mental illness at the United States Penitentiary Administrative Maximum in Florence, Colorado ("Supermax") facility. The lack of mental health services places the inmates at greater risk of being unstable upon release, and increases the possibility that they will reoffend. Studies have shown that intensive case management upon reentry is more likely to prevent people with mental illness from returning to prison.<sup>1</sup> The P&A network helps ensure that people with mental illness receive this treatment.

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<sup>1</sup> See, e.g., Yamatani, H., "Overview Report of Allegheny County Jail Collaborative Evaluation Findings," Center on Race and Social Problems, School of Social Work, University of Pittsburgh, retrieved 11/13/13 from <<http://www.alleghenycounty.us/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=23760>>.

We listened with great interest to the hearing testimony at the November 6 hearing, and were struck by how little of the discussion focused on the needs of individuals with disabilities, a large and increasing population in prisons and jails nationwide. Individuals with disabilities, including mental illness and cognitive disabilities, are prevalent in the federal system.<sup>2</sup> The programming needed to prevent a return to the prison system differs in some significant ways from other types of prisoners.

We were pleased to hear Director of the Federal Bureau of Prisons, Charles Samuels testimony regarding the “Skills” and “Stages” programs, which address the needs of two subpopulations of prisoners with disabilities, prisoners with Axis II diagnoses of Borderline Personality Disorder and prisoners with major mental illness and cognitive impairments. However, participation in those programs appears low,<sup>3</sup> and there are other sub populations that could benefit from specialized programming. As Director Samuels states in his written testimony,<sup>4</sup> empirical research and testing have proven that BOP programs that prevent recidivism are effective.

The vast majority of prisoners in the federal system will eventually be released, and withholding needed treatment from those with significant mental illness will neither prevent recidivism nor help to ensure public safety. Programming should be provided from the beginning of the period of confinement so that it has time to be fully effective by the time of re-entry. The corrections system must work with community-based service providers to ensure continuity of care as appropriate to ensure that the prisoner does not re-offend.

The provision of mental health treatment not only makes sense from a policy perspective, it may also be a necessary element of medical treatment that the BOP must provide to inmates who require it.<sup>5</sup>

We were pleased to hear the testimony of Director Samuels that the use of solitary confinement (“SHU”) is being reduced and that the Bureau maintains the highest level of quality of care when someone is in isolation. Solitary confinement has a disproportionately negative impact on individuals with particular types of disabilities, including mental illness and cognitive disabilities. Despite this, people with mental illness and cognitive disabilities are disproportionately placed in solitary confinement.<sup>6</sup> Researchers estimate that, on average, about thirty percent of the prisoners held in solitary confinement have a mental

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<sup>2</sup> According to the GAO’s recent study (United States Bureau of Prisons, “Timelier Reviews, Plan for Evaluations, and Updated Policies Could Improve Inmate Mental Health Services Oversight,” July 2013, available at <<http://www.gao.gov/assets/660/655903.pdf>>) male inmates with mental health issues in the Federal system alone totaled **150,452** on February 9, 2013. See

<sup>3</sup> According to the GAO report above (page 49) in 2012 only 17 federal prisoners nation-wide participated in the “Stages” program and 2 were on a waiting list. Other programs designed for this population include the “Challenges” “Step Down” and “Resolve” programs. These also appear to have insufficient space to meet the need.

<sup>4</sup> Page 5.

<sup>5</sup> See for example, *Brown v. Plata*, 131 S. Ct. 1910 (2011)

<sup>6</sup> Craig Haney, *Mental Health Issues in Long-term Solitary and “Supermax” Confinement*, 49 CRIME & DELINQUENCY 124, 127 (2003)

illness.<sup>7</sup> Many people in solitary confinement are prisoners who have broken rules or created a nuisance for staff, not people who have engaged in violent activity. Other methods should be used successfully to ensure safety and order within the facility.

NDRN and the P&A network are eager to work with the Senate Judiciary Committee to explore strategies for the reduction of the use of solitary confinement and to encourage appropriate treatment of people with disabilities in the criminal and juvenile justice systems. As a nationwide network of agencies, NDRN and the P&As have numerous examples of the critical work that P&As have performed to advocate for people with disabilities and reduce recidivism.

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<sup>7</sup> James Ridgeway, "Locking Down the Mentally Ill," Feb. 18, 2010, available at <<http://www.thecrimereport.org/archive/locking-down-the-mentally-ill>>.