

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION**

ASHOOR RASHO, FAYGIE FIELDS, BRIAN NELSON)
and ROBERT BOYD, Individually and on behalf of the)
plaintiff class,)
)
Plaintiffs,)

v.)

NO.

DONALD N. SNYDER, JR. Director, Illinois Department of)
Corrections, WILLARD O. ELYEA, M.D., Medical Director,)
Illinois Department of Corrections; DR. DENNIS HOPKINS,)
Chief of Mental Health Services, Illinois Department)
of Corrections; GEORGE E. DeTELLA, Associate Director,)
Illinois Department of Corrections, GEORGE WELBORN,)
Warden, Tamms Correctional Center; MARVIN POWERS,)
M.D., Medical Director, Tamms Correctional Center;)
KELLY RHODES, Ph.D., Supervising Clinical)
Psychologist, Tamms Correctional Center, RAKESH)
CHANDRA, M.D., Psychiatrist, Tamms Correctional)
Center; and ILLINOIS DEPARTMENT of CORRECTIONS,)
a public entity,)
)
Defendants.)

JURY DEMAND

COMPLAINT

Plaintiffs Ashoor Rasho, Faygie Fields, Brian Nelson, and Robert Boyd, current and former prisoners at the closed maximum security facility at Tamms Correctional Center (“Tamms”), on their own behalf and on behalf of all seriously mentally ill prisoners who are now, have been before, or will be hereafter incarcerated at Tamms, for their complaint against defendants Donald N. Snyder, Jr., Director of the Illinois Department of Corrections (“the Department”); Willard O. Elyea, M.D., Medical Director of the Department; Dr. Dennis Hopkins, Chief of Mental Health Services of the Department; George E. DeTella, Associate

Director of the Department; George Welborn, Warden of Tamms; Marvin Powers, M.D., Medical Director of Tamms (“Dr. Powers”); Kelly Rhodes, Ph.D., Supervising Clinical Psychologist of Tamms (“Dr. Rhodes”); Rakesh Chandra, M.D., Psychiatrist at Tamms (“Dr. Chandra”) (collectively, the “individual defendants”); and the Department, a public entity, state as follows:

NATURE OF THE ACTION

1. This is a class action lawsuit brought pursuant to 42 U.S.C. § 1983 to redress violations of the plaintiffs’ rights (1) under the Eighth and Fourteenth Amendments to the U.S. Constitution to be free of cruel and unusual punishment while they are incarcerated at Tamms and (2) under the Fourteenth Amendment to receive individualized mental health treatment by professionals exercising professional judgment, and pursuant to the Americans with Disabilities Act (the “ADA”), 42 U.S.C. §§ 12131, et seq., and the Rehabilitation Act (the “Rehab Act”), 29 U.S.C. § 794, to be free of discrimination on account of their disabilities. Plaintiffs seek damages from the individual defendants, who are employees or agents of the Department; a judgment declaring the defendants’ acts unconstitutional and violative of the ADA and the Rehab Act; and an injunction directing them to halt their unlawful conduct.

INTRODUCTION

2. In this lawsuit, seriously mentally ill prisoners at Tamms seek relief for defendants’ deliberate indifference to their mental health needs and for the cruel and unusual punishment of requiring them to live under the harsh and psychologically injurious conditions at Tamms while they are seriously mentally ill, as well as relief for defendants’ failure to grant them individualized mental health treatment at Tamms and defendants’ failure to grant them their right to be free of discrimination on account of their disabilities under the ADA and the Rehab Act. The individual

defendants are the Department officials responsible for deciding which prisoners are sent to Tamms, establishing and maintaining conditions there, and providing medical and mental health services there. The Department, a public entity, is sued based on the ADA and the Rehab Act. Tamms is a so-called supermax prison that practices behavior modification through sensory deprivation based on the near-total isolation of the inmate – a practice whose destructive effects are well documented. As harmful as this experience is for most prisoners, it is more agonizing for the seriously mentally ill, many of whom reside in Tamms and who comprise the class of plaintiffs. For seriously mentally ill prisoners, the conditions at Tamms – extreme social isolation, restricted environmental stimulation, severely restricted movement, and harsh punishment for problematic behavior caused by their illnesses – bring tormenting pain. The damage done by these conditions is likely to be long-term and may be permanent. As such, it harms society as well as these prisoners. This is so because most of the seriously mentally ill prisoners at Tamms eventually will be released from prison and will return to the streets sicker, angrier, and more violent. In the end, society at large will pay the price for the unlawful treatment of seriously mentally ill prisoners at Tamms.

JURISDICTION AND VENUE

3. The court has jurisdiction of this cause pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4). Declaratory relief is sought pursuant to 28 U.S.C. §§ 2201 and 2202. Venue is proper in the Southern District of Illinois under 28 U.S.C. § 1391(b) because at least one of the defendants resides in the District and a substantial part of the events and omissions giving rise to plaintiffs' claims occurred in the District.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

4. On about October 22, 1999, to November 1, 1999, the named plaintiffs filed grievances complaining that the conditions and mental health treatment at Tamms violated the Eighth Amendment and that defendants' discrimination against them on account of their mental disabilities violated the ADA and the Rehab Act. The grievances particularized these complaints by attaching copies of the amended complaint in Boyd v. Snyder, 99 280 DRH (filed January 9, 1999, and dismissed without prejudice on June 6, 2000), which contains claims substantially similar to those in this lawsuit. Copies of the grievances are attached as Ex. A.

5. On March 24, 2000, plaintiffs' counsel sent a letter to Defendant Snyder asking him to act on these grievances. A copy of that letter is attached as Ex. B. On April 12, 2000, a representative of Defendant Snyder sent a letter to plaintiffs' counsel denying the grievances. A copy of the letter is attached as Ex. C.

6. Therefore, plaintiffs had exhausted their administrative remedies for all claims in this lawsuit.

CLASS ACTION ALLEGATIONS

7. This action is brought by the named plaintiffs on behalf of all prisoners who are now, have been before, or will be hereafter incarcerated at Tamms who have serious mental illnesses, defined as a substantial disorder of thought or mood which significantly impairs the judgment, behavior, and capacity to recognize reality or cope with the ordinary demands of life within the prison environment and is manifested by substantial pain or disability. A class action is proper pursuant to Rules 23(a), 23(b)(1), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure.

8. Members of the class on behalf of whom plaintiffs sue are so numerous that joinder of all members is impractical. Seriously mentally ill prisoners account for approximately 10 to 20 per cent of the population at Tamms, which today is approximately 270 and may rise to as high as 480. The class also includes at least 17 prisoners previously housed at Tamms who were transferred to the Department's mental health unit (at Dixon Correctional Center) because of serious mental crises they had while at Tamms. Adding to the impracticality of joinder is the constant change in the inmate population at Tamms and the undesirability of subjecting countless prisoners to similar conditions before a court could conduct trials on individual claims.

9. There are common questions of law and fact affecting the rights of seriously mentally ill prisoners to be free from unconstitutional cruel and unusual punishment. The claims of the class members involve common fact questions, as does the inquiry into the nature of the overall mental health care system. The common legal questions include whether the mental health care system comports with constitutional standards, whether subjecting seriously mentally ill prisoners to the conditions at Tamms constitutes cruel and unusual punishment, whether Tamms prisoners are receiving individuated mental health treatment, and whether defendants are discriminating against class members on account of their disabilities.

10. Plaintiffs' claims are typical of the claims of the class, and plaintiffs can fairly and adequately represent and protect the interests of the class.

11. Separate injunctive and declaratory actions maintained by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, thereby establishing incompatible standards of conduct for defendants. Adjudication regarding individual class members would, as a practical matter, be dispositive of

or impair the interests of other members not parties to the adjudication or substantially impair their ability to protect their interests.

12. Defendants have acted or refused to act on grounds generally applicable to the class that plaintiffs represent, thereby making final injunctive or corresponding declaratory relief appropriate for the class as a whole.

13. The questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

PARTIES

Plaintiffs

14. Plaintiff Ashoor Rasho has been incarcerated at Tamms since about March 26, 1998. He suffers from a serious mental illness and has done so for many years.

15. Plaintiff Faygie Fields has been incarcerated at Tamms since about March 11, 1998. He suffers from a serious mental illness and has done so for many years.

16. Plaintiff Brian Nelson has been incarcerated at Tamms since about April 27, 1998. He suffers from a serious mental illness that began while he was at Tamms.

17. Plaintiff Robert Boyd was incarcerated at Tamms from about April 1, 1998, to on or about July 22, 1999, when he was transferred to the mental health unit at Dixon Correctional Center. He suffers from a serious mental illness and has done so for many years.

Defendants

18. The Department is an Illinois State department that is responsible for the care, custody, treatment, and rehabilitation of all persons committed to its custody, and for all Illinois correctional institutions.

19. Defendant N. Donald Snyder, Jr. is Director of the Department and has overall responsibility for the administration of all correctional facilities within the state. He has personal, first-hand knowledge of the operations of Tamms. He resides in Springfield, Illinois.

20. Dr. Elyea is the Medical Director of the Department and, as such, has overall responsibility for providing health care to prisoners of Tamms, including mental health care. He resides in Chicago, Illinois.

21. Dr. Hopkins is Chief of Mental Health Services of the Department and, as such, has overall responsibility for providing mental health care to prisoners of Tamms. He resides in Cook County, Illinois.

22. George E. DeTella is Associate Director of the Department and, as such, has overall responsibility for deciding who is transferred into Tamms. Defendant DeTella has personal knowledge of most transfer decisions, including the decision to transfer many of the seriously ill prisoners who have been sent to Tamms.

23. George Welborn is the Warden of Tamms. Warden Welborn is the chief administrative officer of Tamms and, as such, has ultimate responsibility for the entire operation of the institution, including implementing all state laws and the Department policies, practices, and procedures affecting prisoners confined at Tamms.

24. Dr. Powers is the Medical Director of Tamms. He oversees the Health Care Unit at Tamms, which is responsible for providing medical and mental health services for prisoners.

25. Dr. Rhodes is the Supervising Clinical Psychologist at Tamms. She provides mental health services to prisoners at Tamms and oversees the staff of approximately five social workers who serve as the prison's mental health professionals.

26. Dr. Chandra is the Psychiatrist at Tamms. He provides mental health services to

prisoners at Tamms and administers psychotropic drugs to them.

27. At all times relevant to this action, defendants acted under the color of the laws, regulations, and customs of the State of Illinois. All defendants are sued in both their individual and official capacities. The defendants' actions constituted "state action" as defined under federal law.

ALLEGATIONS OF FACT

A. As Defendants Are Aware, Tamms Houses Many Prisoners Who Are Seriously Mentally Ill.

28. Tamms is a newly built free-standing facility specially designed to manage and control violent or seriously disruptive prisoners. It is located at the southern tip of Illinois, near a small town of the same name. Its first six prisoners arrived on March 9, 1998. Today, approximately 270 prisoners reside there. The facility is built to house 480 prisoners as well as the state's new execution chamber.

29. The decision about which of Illinois' 43,000 prisoners will be transferred to Tamms is made by Defendant DeTella with input from five deputy directors who work under his supervision and from Defendant Welborn. Defendants Snyder and Welborn have said that placement at Tamms will last at least a year. Informally, defendants are telling some prisoners they will stay at Tamms for the remainder of their incarceration terms, which may be a matter of decades.

30. The prisoners selected for placement at Tamms are those defendants deem the most violent and or potentially disruptive. It is well known that many seriously mentally ill prisoners exhibit violent and assaultive behavior. Although "mental health concerns" are one of the factors considered in deciding whether an inmate should be placed at Tamms (Ill. Adm. Code Tit. 20 § 505.40), there is no bar to placing seriously ill prisoners at Tamms. Defendants do not

screen prisoners adequately when they are transferred to Tamms to determine if they are seriously mentally ill, they do not prohibit the transfer of prisoners to Tamms when they know them to be mentally ill, they do not examine them adequately as they continue to reside at Tamms to determine if they have decompensated to a greater degree than they would have at another facility, and they do not remove prisoners from Tamms even when they know that the prisoner's placement at Tamms has caused him to decompensate mentally. Because of this, a high percentage of the prisoners residing at Tamms are in fact seriously mentally ill.

31. At Tamms, prisoners are subjected to near total social isolation in an extraordinarily restricted environment. These conditions are known to cause serious psychological problems in some prisoners, notably those who have serious pre-existing mental illnesses, including chronic long-standing depression, schizophrenia, and other long-standing, severe mental illnesses; those with certain pre-existing disorders such as borderline personality disorders and, in some cases, those with no pre-existing disorder. The psychological problems displayed by at-risk prisoners include symptoms such as perceptual disturbances (for example, hallucinations), hypersensitivity to external stimulation, aggressive fantasies, overt paranoia, problems with concentrating and with controlling impulses, anxiety/panic disorder, and overt psychotic disorganization, as well as attempted suicide and physical trauma including self-mutilation.

32. Prisoners who begin to experience these serious psychological injuries are caught in a cycle that worsens their illnesses. Their illnesses makes them act destructively toward themselves, their environment, or the staff. In response, defendants ignore their illnesses and punish their conduct. This punitive treatment exacerbates their illnesses, which increases their destructiveness. Day after day, certain seriously mentally ill prisoners at Tamms cut their arms, necks, and abdomens. Repeatedly, some of these prisoners attempt to hang themselves or

attempt to swallow razors or broken pieces of mirror. One of these prisoners has been known to create large red wounds on his shoulders from biting himself; another has been observed eating his own flesh.

33. Defendants respond to this deranged behavior with punishments such as the so-called cell extraction, a procedure in which members of a tactical team, armed with batons and protected with plastic shields, spray burning chemical substances in the inmate's face and then forcibly "extract" him from his cell. They order prisoners' cells to be stripped of all property (even their mattress and blanket) and force the men to live in this bereft environment, often without clothes or a blanket, for days at a time. They order Plexiglas shields to be placed in front of the prisoners' doors, or black boxes placed over the slot where food is passed, making any communication even more difficult. They order prisoners' centrally controlled water supply to be shut off for hours at a time.

34. Mentally ill prisoners also are punished by the use of excessive force by prison guards. Although defendants presumably do not officially sanction this conduct, they unofficially condone it by creating an atmosphere of terror and brutality at Tamms; failing to fully investigate prisoner's complaints of excessive force; failing to punish the guards who use excessive force; and punishing of prisoners who complain about it.

35. Mentally ill prisoners also are given mental health treatment that in fact is punishment and not treatment. They are forcibly and against their will given injections of medicine to sedate them. They are bound in four-point restraints sometimes for hours at a time and sometimes while they are completely naked. They are stripped of all their clothes and held in cold "strip cells" in the Health Care Unit, which are barren of anything except a cement bed and a toilet, where they can earn the right to get their clothes back only by promising they will

not try to kill themselves.

B. The Conditions at Tamms Are Designed to and Do Cause Psychological Damage.

36. Seriously mentally ill prisoners enter Tamms at their peril, for the conditions there are designed to and do cause psychological damage. At Tamms, control is exercised through extreme social isolation, severely restricted movement, and an environment that severely restricts stimulation. A centralized control booth operates all lights and doors and the water supply, video cameras provide visual surveillance, and intercoms provide communication without human contact and allow guards to eavesdrop on prisoners.

37. Tamms consists of eight self-contained cell blocks, called pods, each holding six wings of ten cells. To restrict the movement of prisoners, each pod is a self-contained living unit that holds an exercise area, showers, a small law library, a nurses' station, a "multipurpose room" used by the medical and mental health staff, and a central control booth for corrections staff. Movement between the pods is through an underground tunnel. At Tamms, each inmate spends 23 to 24 hours a day, seven days a week, in a single 80-square-foot concrete cell. Each cell contains only a concrete bed, a stainless steel combination sink and toilet, a mirror, a shelf that serves as a desk, and (for some inmates) two boxes for storing personal property. Each cell has a narrow window placed high up on the wall, making it possible for defendants to say that the cell has natural light but impossible for the inmate to see anything unless he stands on his bed. The door to the cell is made of heavy gauge steel perforated with dime sized holes that are difficult to see through. Each door contains a slot for food, called a chuck hole. The prisoners' view through the perforated steel mesh is of a raw concrete wall and the occasional Department employee who passes by; prisoners cannot see each other.

38. Prisoners do not leave these cells for meals, which are served on plastic trays

pushed through the chuck hole; the trays and utensils must be placed back in the chuck hole within 30 minutes. Prisoners do not leave to visit with other prisoners; such contact is forbidden. They do not leave for communal religious services, educational programs, or jobs, none of which exist at Tamms. Those who can read (many prisoners at Tamms have only rudimentary reading and writing skills) may keep some books in their cells.

39. Most prisoners cannot listen to the radio or watch television, which are provided only for the prisoners in administrative detention who have advanced to “Behavior Level 3,” something few mentally ill prisoners can do. (Prisoners at Tamms are either in administrative detention, which is ostensibly a non-disciplinary status of confinement that removes an inmate from general population, or disciplinary segregation, resulting from punishment ordered after a rule infraction).

40. Prisoners cannot see or socialize with other prisoners, except by yelling into the wing, where the extreme echoing effect makes it hard to hear and understand. On nearly every wing, one or two prisoners scream and bang on cell walls throughout the day and night, so that other prisoners often cannot sleep.

41. Prisoners regularly leave their cells only to exercise or take a shower one to four times a week. Occasionally, they visit the satellite law library or go to the multipurpose room to see a social worker; only rarely do they travel outside the pod to the Health Care Unit or the Visitors’ Room. At no time, are two or more prisoners on a wing allowed outside their cells at the same time.

42. Whenever an inmate leaves his cell for any purpose except exercise and shower, and each time he returns, he must submit to a full body cavity search. First he removes his clothes and hands them to the guard. Standing naked, he must display his ears, feet, hands.

Then he must bend over, his back to the guard, and spread his buttocks. He must raise his penis so the guards can examine his testicles. He may be ordered to expose the groove around the tip of his penis or, if he is not circumcised, to pull back the foreskin.

43. After dressing, he is handcuffed and then, kneeling or lying on the floor, his legs are shackled by guards wearing latex or leather gloves. If he is moving outside his pod he is surrounded by two or three guards, who place their arms on his chest and shoulders, and his movements may be tracked by a guard who has access to a semi-automatic rifle. These punitive and humiliating exchanges are the only times a Tamms inmate feels another person's touch, except when he is examined by a doctor, which usually takes place while the inmate's legs are shackled and his arms are held by guards.

44. Exercise takes place in concrete "yard," about 15 by 30 feet in diameter, placed at one end of each pod. The yard contains no basketball hoop, no drinking fountain, and no toilet. The only equipment is a small rubber ball available to prisoners who purchase it. A stainless steel plate covers one-half of the yard; the remaining half gives the inmate his only glimpse of natural light and the outside world, except what he can see through his cell window. Yet many seriously ill prisoners go for weeks without going to the yard because their privileges have been removed for disciplinary reasons or because their mental illnesses make them fearful of leaving or too depressed to move.

45. The inmate's contact with family and friends outside prison is infrequent, uncomfortable, and without physical contact. Telephone calls are limited to emergencies such as the death of a family member (legal calls also are limited to "extraordinary circumstances"). Visits are cumbersome, expensive, short, and inhospitable. Except for visits by lawyers, each visit must be arranged weeks in advance for a specific time and is forfeited if the visitor is late.

Most visitors must make an overnight car trip, since Tamms is 370 miles from Cook County, where the families of most prisoners reside. Non-legal visits last only two hours. A thick glass shield separates the visitor and the inmate, who talk through a microphone that distorts voices and cuts off a conversation if one person talks or laughs while the other is talking. All conversation (except between attorney and client) is recorded. The prisoner's legs are shackled and chained to a bolt in the floor. If the prisoner is in segregation status, he wears handcuffs attached by a short chain that makes it difficult for him to gesture or even to scratch his face.

46. For some prisoners, these conditions of social isolation, restricted movement, and restricted external stimulation may be bearable. For seriously mentally ill prisoners, however, the conditions cause suffering that amounts to cruel and unusual punishment.

C. Defendants Have Acted With Deliberate Indifferent to Plaintiffs' Serious Mental Illnesses.

1. Defendants' deliberate indifference to plaintiffs' serious mental health need is shown by systemic deficiencies in the mental health care system at Tamms.

47. The deliberate indifference of defendants to the serious mental health needs of plaintiffs and the plaintiff class is demonstrated by systemic deficiencies in the staffing, facilities, and procedures of the mental health care system at Tamms which make unnecessary suffering inevitable. In creating and then failing and refusing to cure the systemic deficiencies, defendants have acted with deliberate indifference to the serious mental health needs of plaintiffs and the plaintiff class and, in doing so, have unnecessarily and wantonly inflicted severe pain on them. These systemic deficiencies, which are the overall responsibility of Defendant Snyder and the particular responsibility of Defendants Drs. Elyea, Powers, Rhodes, Hopkins, and Chandra, are as follows:

a) Although “mental health concerns” must be considered when a prisoner is transferred to Tamms, there is no requirement that mentally ill prisoners be excluded and there is no adequate systematic program for screening and evaluating the mental health status of prisoners being proposed for transfer. In fact, prisoners known to have histories of serious mental illness are transferred to Tamms.

b) There is no requirement that prisoners who decompensate at Tamms be removed from the facility and no adequate systematic program for identifying such prisoners. Instead, defendants ignore the obvious signs of prisoners’ mental deterioration, despite their knowledge that the environment at Tamms tests even the strongest inmate.

c) There is no adequate systematic program to provide care at Tamms for seriously mentally ill prisoners. Instead, the mental health system operates as an adjunct to the harsh punishment system, by “treating” prisoners with techniques that are, in intent and purpose, methods of punishment which will make seriously ill prisoners sicker, not better. These techniques include (i) ordering the suicidal inmate to undergo extreme isolation while lying naked in cold, stripped cells, sometimes while bound in four-point restraints and while injected with mind-numbing drugs against his will; (ii) allowing guards to handle an inmate more roughly than is necessary while in the Health Care Unit or while bringing him to the Unit; (iii) withholding talking therapy from an inmate because he is demonstrating disruptive behavior that is directly caused by his mental illness; and (iv) denying prisoners the right to send or receive mail (including legal mail) and the right to basic toiletries such as a toothbrush, toothpaste, and deodorant while they are in the Health Care Unit.

d) Mental health treatment at Tamms lacks the commitment of a psychiatrist to identify and treat in an individualized manner those prisoners suffering from serious mental disorders.

Instead, the prison has been served by a series of psychiatrists whose main function is to prescribe drugs instead of to oversee the individual monitoring, evaluation, and treatment of prisoners.

e) Defendants Rhodes and Chandra routinely allow security concerns to compromise their duties to prisoners who are their patients. For example, they breach their promise of confidentiality to patients by sending written mental health reports to non-medical personnel, and they allow security personnel to dictate that mental health sessions be conducted while the prisoner sits uncomfortably with his feet shackled to the floor and his hands cuffed behind his back, in a room where guards can overhear the conversation.

f) Defendants have established three “elevated security” wings where a high percentage of the seriously mentally ill prisoners are unjustifiably isolated. No special mental health treatment is provided and the conditions are even more harsh and isolating than they are elsewhere at Tamms. The high noise level and the sense of danger and chaos on the wings, combined with the reluctance of mental health and other medical personnel to venture there, make the experience of living on these wings even worse than the experience of living elsewhere at Tamms.

g) Accurate, complete, and confidential records of the mental health treatment process are not maintained. The records Tamms receives from other prisons are inaccurate and incomplete and often arrive long after the inmate does; the records Tamms maintains are incomplete and disorganized, and the confidentiality of the prisoners’ communications is breached repeatedly.

h) The assessment and treatment of seriously mentally ill or decompensating prisoners sometimes is delayed unacceptably. These delays are caused, among other reasons, by (i)

Tamms' receipt of sketchy records from other institutions; (ii) the repetitive, deliberate failure of correctional officers to respond to mental health emergencies, and (iii) the systematic refusal of Tamms mental health workers to identify and treat the high percentage of prisoners who arrive at Tamms seriously mentally ill or who decompensate there.

i) Behavior-altering medications are prescribed and administered in dangerous amounts, by dangerous methods, or without appropriate supervision and periodic evaluation.

j) Prisoners are punished for behavior that is directly and obviously a consequence of their serious mental illnesses. This punishment includes: (1) discipline meted out informally, such as taunting a prisoner with a ferocious dog or spraying caustic chemicals in his eyes because, in a plea for attention, he refuses to give up his food tray; (2) discipline imposed through the formal prison disciplinary procedure such as punishing a prisoner for destroying state property because he tried to swallow a piece of mirror or attempted to hang himself with a noose fashioned from a state-owned sheet; and (3) criminal charges caused to be brought for relatively minor events that normally are overlooked or resolved through the prison disciplinary procedure.

k) Physical restraints are used improperly to punish rather than to treat and protect mentally ill prisoners.

l) Isolation in a cold stripped cell is used to punish rather than to treat and protect mentally ill prisoners.

m) Talking sessions with mental health professionals are used not to treat prisoners but to reward them for submissive conduct that may be harmful to their mental state and that often is impossible for them to achieve.

n) The mental health care program fails to identify, treat, and supervise prisoners with

suicidal tendencies.

2. Defendants' deliberate indifference to plaintiffs' serious mental health needs also is shown by a serious of incidents of mistreatment.

48. The deliberate indifference of defendants to the serious mental health needs of plaintiffs is demonstrated by a series of incidents of mistreatment occurring closely together in time. The incidents are described in the statements about the class plaintiffs set forth below.

49. In creating and then failing and refusing to cure the conditions that allowed these incidents to occur, defendants have acted with deliberate indifference to the serious mental health needs of plaintiffs and the plaintiff class and in doing so, have unnecessarily and wantonly inflicted severe pain on them.

A. Class Plaintiff Ashoor Rasho

50. Ashoor Rasho is a 25-year-old man from Cook County, Illinois, who has been at Tamms since March 1998. He was been incarcerated in institutions run by the Department since 1996, originally on a charge of burglary; his tentative release date is 2008.

51. Mr. Rasho came to Tamms with an extensive history of psychiatric problems, as defendants knew. Throughout his incarceration, Mr. Rasho has suffered from a serious mental illness that has caused him to hear voices and to have other auditory perceptual disturbances. As a consequence of his illness, he has attempted suicide and mutilated his body by cutting and slashing his arms, neck, and abdomen many times. While incarcerated at the Department before coming to Tamms, Mr. Rasho was treated with psychotherapy and extremely high doses of the antidepressant and anti-anxiety medicine Sinequan, a drug that is medically appropriate for people suffering from serious mental illnesses. Several times before coming to Tamms, Mr. Rasho has been sent to health care unit of the prison for mental health reasons.

52. Mr. Rasho's mental problems are compounded by grave medical problems that must be taken into account when administering drugs to him. These problems have included asthma and a severe recurring bleeding ulcer, which may have been caused by the excessively high doses of Sinequan.

53. For the ten months before he was transferred to Tamms, Mr. Rasho had visited monthly with a psychiatrist at Pontiac Correctional Center, and had been taking Sinequan. Mr. Rasho had a good relationship with the Pontiac psychiatrist, and the two of them believed that Mr. Rasho was doing fairly well, except when he did not take his medication. On February 25, 1998, because Mr. Rasho had been doing well but had stopped taking his medication without informing his doctor, the doctor discontinued the prescription for Sinequan, while determining that Mr. Rasho required supportive therapy and close monitoring "for any breakthrough anxiety, as well as mood lability and dysregulation." The doctor's promise of watchfulness was noteworthy, because Mr. Rasho's good relationship with this doctor was important to his mental well being.

54. On or about March 26, 1998, Mr. Rasho was transferred to Tamms. Defendants did not immediately restart the Sinequan and they provided no supportive relationship. Immediately, the signs that the Pontiac doctor had warned about – anxiety and mood lability and dysregulation – began to appear.

55. Within a week of his transfer to Tamms, Mr. Rasho warned mental health workers that he was having problems and asked to take Sinequan again. He told social worker Katie Lingle he was "depressed, frantic, paranoid, can't think straight." He showed her a live spider that he kept in his asthma inhaler as a pet, and said he was hearing voices telling him to snap, to

throw something at the guards, to tear up his cell. He said he was seeing his dead brother (who had been murdered two years earlier).

56. Mr. Rasho made similar statements to part-time psychiatrist Dr. Kenneth Gilbert, who dismissively noted that his symptoms were “[a]ll very transient and may be considered manipulative.” Dr. Gilbert offered the primary diagnosis, never before advanced, that Mr. Rasho suffered from attention deficit disorder and a “[l]ife-long problem of being easily bored.” Nevertheless, psychiatrist Gilbert prescribed the antidepressant Wellbutrin (another psychiatrist discontinued it six weeks later because he concluded that it was ineffective and possibly dangerous) as well as the drug Risperdal, whose only recognized use is for treating psychoses.

57. Over the next six weeks, Mr. Rasho’s conduct became disruptive and violent. In response, he was placed on property restrictions, taunted with a German shepherd specially trained by the Department “K-9” team, gassed with a chemical spray that was especially hazardous to him because of his asthma, and several times placed in a stripped cell for days.

58. On approximately June 15, 1998, Mr. Rasho was transferred to an elevated security wing. There, his condition has continued to worsen. By late September 1998, the staff had noted self-inflicted lacerations on his arms, wrists, and abdomen that occurred on June 25, July 3, July 20, August 2, August 4, August 20, September 6, and September 17. By September 1998, Mr. Rasho’s arms and wrists were brightly marked with the many slashes he had made to them; one arm was swollen from infection. By then, and through today, Mr. Rasho talks frequently about killing himself. He has been placed on suicide watch in the Health Care Unit many times, once after being found in his cell with a rope around his neck. While on suicide watch, like Mr. Boyd, Mr. Rasho has been stripped naked, placed in four-point restraints against his will, and forcibly injected with powerful mind-altering medications against his will.

59. Many times Mr. Rasho has made alarming statements about his state of mind directly to mental staff professionals. On July 22, 1998, he told psychiatrist Dr. Frank Hayes, “The only way I am leaving Tamms is in a body bag.” (Dr. Hayes succeeded Dr. Gilbert as Tamms’ psychiatrist. Dr. Gilbert worked at Tamms part-time from approximately April to June; before that, beginning when Tamms opened, the facility had no psychiatrist on duty. After Dr. Gilbert’s departure, Dr. Hayes worked full-time, on contract, from about June to September 1998. Then, Dr. James Adams, who is an internist and not a psychiatrist, visited Tamms twice a month to oversee the care of prisoners with mental problems. In about April 1999, Defendant Dr. Chandra became the psychiatrist at Tamms.) On August 2, 1998, after Mr. Rasho was admitted to the Health Care Unit vomiting blood, he told mental health worker Jill Stevens, “I been seeing the future . . . It fucks with me. It hurts my head. I’m sick. I’m starting to throw up blood again. I’m paranoid, nervous.”

60. Yet consistently, the attitude of the Tamms staff, including the mental health staff, is to ignore these obvious serious danger signals and to interpret Mr. Rasho’s cries for help as being manipulative and his motive to be sadistic, despite the fact that the person he is harming is himself. For example, several times when he wrote to Defendant Dr. Rhodes asking to talk to her, she sent back a message several days later asking him to send a formal written request.

61. Correctional and mental health staff even ignore acts of self-destruction that pose the risk of serious physical harm to Mr. Rasho. On August 20, 1998, with his arms already swollen from infected self-inflicted wounds, Mr. Rasho again cut his arm and began eating small pieces of his own flesh in front of a correctional officer. The officer ignored the medical emergency and also ignored Mr. Rasho’s pleas to speak with someone from the mental health unit. Eventually Mr. Rasho was removed from the cell and his arm was stitched. Despite the

obvious danger Mr. Rasho posed to himself, he was returned to the same cell and left unattended (and evidently still in possession of a dangerous instrument); again he cut himself, again requiring stitches to close the wound. Three days later, Jill Stevens came to visit and pronounced his primary diagnosis to be malingering. A day later, left in isolation and unwatched, Mr. Rasho pulled the stitches out of his arm and lost more than a half pint of blood before he was discovered bleeding in his cell.

62. Despite the disdain of defendants for Mr. Rasho's serious mental problems, the psychiatric staff has not hesitated to medicate Mr. Rasho heavily. Since coming to Tamms, he has received various combinations of Prozac and Wellbutrin (which are antidepressants), Sinequan (an anti-depression and anti-anxiety drug); BuSpar, (an anti-anxiety drug); valproic acid (a medication for seizures); and Risperdal, Thorazine, and Haldol (behavior-altering antipsychotic drugs).

63. Most recently, Mr. Rasho has been transferred to a newly-created "Specialized Treatment Unit" at Tamms, where he and four other seriously mentally ill prisoners receive therapy calculated to modify their behavior but not to treat their underlying illnesses.

64. The combination of insensitive, hostile treatment, and haphazard administration of potent mind-altering drugs has been devastating for Mr. Rasho, who wishes everyday to be released from Tamms.

B. Class Plaintiff Faygie Fields

65. Faygie Fields is a 41-year-old man from Cook County, Illinois, who has been incarcerated in a facility run by the Department since approximately 1986 and at Tamms since March 1998. Mr. Fields was sent to prison for murder and is scheduled to be released in 2024. Mr. Fields has a long history of serious mental problems dating back to his pre-adolescence

when he was diagnosed with paranoid schizophrenia. At the trial for the murder of which he was convicted in 1984 (when he was 26), Mr. Fields's mental health was raised (albeit unsuccessfully) as a defense to his guilt and in connection with his sentencing. At that time, he was diagnosed as having chronic schizophrenia, a diagnosis that undoubtedly is accurate today.

66. One of the most painful events in Mr. Fields's life was the death of his mother in 1997. When he was denied the right to attend his mother's funeral while incarcerated at Stateville, Mr. Fields became violent and had a fight with a guard and the warden.

67. On or about March 11, 1998, Mr. Fields was transferred to Tamms; in approximately October 1998, he was transferred to an elevated security wing. The intense isolation at Tamms has exacerbated Mr. Fields's delusions and feelings of persecution, symptoms that typify his schizophrenia. Over the months he has been at Tamms, Mr. Fields has come to believe that Tamms staff members are trying to kill him in retaliation for his outburst at Stateville. He thinks they are putting drugs in his food trays, which he believes give him migraine headaches and "cramped stomach pains with stress and emotion." He believes that Tamms was built on a burial site where spirits are resting. He believes that the spirits visit him; but they are not friendly. He is increasingly afraid to visit his lawyer, for fear another inmate will kill him.

68. Many times Mr. Fields has tried to harm himself or his surroundings at Tamms on account of his active psychosis, and he has been punished for his actions. For example, twice after he attempted suicide by swallowing a piece of his mirror, he was found guilty of damaging or misusing state property. When guards found him with a homemade rope around his neck attempting to hang himself, they gave him a ticket for destroying the sheet he had torn to make a

rope; the Adjustment Committee found him guilty and ordered him to pay restitution for the torn sheet.

69. All people with serious mental illnesses deteriorate when they are subjected to sensory deprivation and punished for problematic behavior caused by their illnesses, as systematically occurs at Tamms. But these conditions are especially horrific for someone with deteriorated schizophrenia, like Mr. Fields. As a consequence of the anti-treatment he is receiving at Tamms, Mr. Fields is losing whatever tenuous hold he now has on reality, and is sliding into a world of near continual delusions.

C. Class Plaintiff Brian Nelson

70. Brian Nelson is a 35-year-old man from Cook County, Illinois, who has been under the Department's jurisdiction since he was 18. He was sent to prison for murder and armed robbery and is scheduled to be released in 2015.

71. Although Mr. Nelson was not seriously mentally ill before he came to Tamms, in the time he has been there, he has become so.

72. The intense isolation at Tamms, combined with the incessant screaming of some prisoners (who likely are seriously mentally ill) has meant that for many nights Mr. Nelson has been unable to sleep, sometimes causing such alarming symptoms that he has been moved to the Health Care Unit. Also fueling his depression is Mr. Nelson's sense that his transfer to Tamms and his treatment there reward misbehavior and punish good conduct. Mr. Nelson had earned his share of tickets in the early years of his incarceration. But that changed when, in early 1997, he was transferred to a medium security facility in New Mexico under the jurisdiction of the state of Illinois (pursuant to the Interstate Corrections Compact). His good conduct in the New Mexico prison earned him the right to live in the general population – not segregation – and a job

as a tailor. On or about April 27, 1998, defendants transferred Mr. Nelson to Tamms on administrative detention status and then quickly put him in disciplinary segregation, which they justified by a ticket he received in 1996 before going to New Mexico. Mr. Nelson's good conduct at Tamms has garnered him no extra segregation time. But when he finished serving segregation time on his 1996 ticket, he was transferred to administrative detention status at Tamms. Defendants have told Mr. Nelson that he probably will not leave Tamms until his incarceration ends many years from now.

73. As is typical for many seriously mentally ill prisoners, while at Tamms Mr. Nelson's physical problems have worsened. Mr. Nelson has a long-standing history of seizures and headaches that were for the most part controlled by medication. Since being at Tamms, his seizures and headaches have increased in frequency and intensity. Adding to the problem is the staff's failure to take the seizures seriously and to institute prompt, appropriate medical intervention. For example, in early November, 1998 without notifying him, defendants gave Mr. Nelson a substitute pill for the Dilantin he has taken for ten years to control seizures. The new medicine knocked him out; he was taken to the Health Care Unit, where he had excruciating headaches, blurred vision, dangerously high blood pressure, and a feeling of unsteadiness and numbness on one side, symptoms that understandably alarmed him. The symptoms continued, but Mr. Nelson did not see a physician for more than ten days. Then, Dr. Powers chose only to prescribe Inderal, an inexpensive antihypertensive agent that should not be given to Mr. Nelson because it can trigger or exacerbate a serious depression. Medical care workers offered Mr. Nelson confusing and contradictory explanations for the change in medicine and told him that his symptoms were psychological. Defendant Dr. Rhodes minimized the importance of Mr. Nelson's symptoms and said that their cause was physical, not mental.

74. Today, Mr. Nelson has a major depressive illness and serious medical symptoms that require investigation. He cannot sleep or concentrate while awake; he cries often and feels hopeless and lonely. The sense he had in New Mexico of doing something constructive that would lead to a productive life after prison has been replaced with feelings of anger and violence. Mr. Nelson expects that he will not survive to leave Tamms, and he is receiving no treatment that might convince him otherwise.

D. Class Plaintiff Robert Boyd

75. Robert Boyd is a 24-year-old man from Cook County, Illinois, who was a prisoner at Tamms from about April 1, 1998, until his transfer on or about July 22, 1999, to the Department's mental health unit, located at Dixon Correctional Center. Mr. Boyd has been incarcerated in institutions run by the Department since 1993, initially on a charge of auto theft. He is scheduled to be released in 2014.

76. Before coming to Tamms, Mr. Boyd had an extensive psychiatric history that defendants knew about. As a juvenile, he was incarcerated at the Cook County Juvenile Temporary Detention Center, where a long stay in segregation status precipitated massive psychological problems that led to a year-long hospitalization at the Illinois State Psychiatric Institute. After that, while incarcerated at institutions run by the Department, Mr. Boyd attempted suicide several times, cut himself many times on the arms and neck, and acted aggressively toward staff and other prisoners, thereby triggering his placement in the health care unit of a prison for mental health reasons at least four times. During much of his incarceration, Mr. Boyd has been given massive doses of psychotropic drugs, including the major tranquilizers Serenil and Thorazine and the drug lithium carbonate (used to treat manic episodes of bipolar

affective disorder, also known as manic depression). In addition, for many years Mr. Boyd has been treated for a seizure disorder diagnosed at least once as grand mal epilepsy.

77. Nevertheless, for several months before he was transferred to Tamms, Mr. Boyd had gone without receiving any tickets for disciplinary infractions, without requiring anti-seizure medication or behavior-altering drugs, and without requiring other intervention by mental health staff.

78. On or about April 1, 1998, Mr. Boyd was transferred to Tamms. He immediately began to have psychological problems. Within the first month of his stay, Mr. Boyd was unable to sleep, he began hearing voices, and he experienced extreme anxiety. In addition, he engaged in self-defeating acts of rebellion, such as withholding his food tray and tearing the cover off his mattress and destroying his light and call button, all acts that triggered punishment that increased his mental problems.

79. Soon Mr. Boyd began hallucinating. He screamed and talked to imaginary people in his cell, once explaining to staff that he was busy having a party. Another time, he saw demons crawling out of his toilet and walls. He sat in a tent he had made from his blanket, explaining that he was hiding from five drunken correction officers who had threatened him. He began to think his food was being poisoned, that the walls were closing in on him, that the guards were conspiring with one of the prisoners to kill him.

80. Eventually, Mr. Boyd became violent toward himself. He repeatedly cut his arms and neck, bit his shoulders, and bashed his head into a wall.

81. The reaction of the Tamms correctional, medical and mental health staff to Mr. Boyd's pain ranged from annoyance to anger. Once, after he returned from suicide watch on the Health Care Unit, one of the guards winked at him, pretended to blow kisses, and told him, "Cut

yourself,” which, he did. Another evening, when Mr. Boyd had cut his neck and arm very badly, Defendant Dr. Powers refused to stitch up the cuts until morning many hours later, when the wounds required approximately 26 stitches.

82. Other times, in response to Mr. Boyd’s aggressiveness, guards maced him and pushed him in his cell. They bruised his shoulders and arms while placing him in restraints against his will. They slammed his head into a wall and broke open his forehead.

83. A time of grave crisis came for Mr. Boyd in late October 1998, when he learned that his father had died suddenly. Mr. Boyd became acutely suicidal and was placed on suicide watch, a procedure in which the sole treatment consists of being placed in isolation in a cold, stripped, cell, without clothes and without conversation, for several days in a row. Throughout his stay at Tamms, Mr. Boyd was placed on suicide watch many times. At times, while in the isolation of suicide watch, Mr. Boyd was placed in four-point restraints for hours at a time and forcibly injected with high doses of a tranquilizer that made him unaware of his surroundings. Other times he was simply observed, naked, by the guards and nurses. Rarely was there an attempt at therapeutic conversation; the mental health workers told him that talking to them was a privilege that he must earn by agreeing not to kill himself. Instead of talking to Mr. Boyd, mental health workers observed him from another room while he lay naked and alone, until he could win his clothes back, a piece at a time, by agreeing not to hurt himself. At the same time, these mental health professionals made no effort to address the underlying problems that accounted for Mr. Boyd’s suicidal feelings.

84. Because of his many trips to the Health Care Unit, the punishment he has received for his conduct, and his own fears, Mr. Boyd rarely went out of his cell to exercise. In September 1998 he was transferred to an elevated security wing, a section of Tamms (called the

“cuckoo ward” by the guards) which is saved for prisoners who are acutely mentally ill and those who are especially willfully disruptive – the mad and the bad. No special mental health treatment was provided for Mr. Boyd or other prisoners on the elevated security wing; to the contrary, the noise level is so high and the sense of danger and chaos so great, that mental health workers visit prisoners on those wings less frequently than other wings.

85. Mr. Boyd tried to counter the harmful isolation of Tamms through consultation with mental health workers; but a series of stratagems prevented this from happening. First, no psychiatrist was available to talk; the doctor, when he was available for an appointment, did not engage in talking therapy. Next, the non-physician mental health workers told Mr. Boyd that he did not need their services because he was not sick; they even expressed skepticism about whether he was ever hospitalized in a psychiatric setting. (This fact should have been easy to confirm, but it was not, because Mr. Boyd’s psychiatric records are incomplete, disorganized, and knowingly crafted to avoid documenting the extensiveness and severity of his psychiatric history.) Then, when Mr. Boyd tried to see Defendant Dr. Rhodes, she told him she did not believe his symptoms were real, or she sent a social worker to talk. When he tried to talk to the social worker, she would say that talking to her was a privilege that she would not grant as long as he kept threatening suicide or cutting himself and bashing his head – that is, as long as he was sick. When he finally did get to talk to someone, usually a social worker, he was taken to a room where he was seated with his legs shackled to the floor and his arms handcuffed in back. Often guards were standing nearby, making private conversation impossible. If the guards were near, Mr. Boyd typically asked for and obtained a promise of confidentiality, but repeatedly he realized the promise had been broken when a guard teased him about something he has said in confidence to the social worker.

86. Despite defendants' knowledge of the seriousness of Mr. Boyd's symptoms, the diagnoses the mental health staff advanced for him seemed random and trivial. He was variously described as being an "immature, energetic, adolescent male"; as having a mixed personality disorder with antisocial and narcissistic traits; as having post-traumatic stress disorder; as having an intermittent explosive disorder; and as suffering from poor adjustment to Tamms and ineffective coping. Despite Mr. Boyd's trivial diagnoses, while at Tamms he was treated with Prozac for depression, valproic acid and Tegretol for seizures, and Thorazine and Haldol for acute psychosis.

87. Beginning in March 1999, Mr. Boyd was in the Health Care Unit nearly as much as he was out of it. Although the mental health staff continued to describe him as manipulative and deceitful, he continued to harm himself by cutting his body and banging his head against the cell walls and doors. On July 12, 1999, he injured himself so seriously he was transferred to a private hospital for emergency care. On or about July 22, 1999, he was transferred from Tamms to the Department's mental health unit at Dixon Correctional Center. On October 6, 1999, he was transferred from Dixon to Menard Correctional Center. Since leaving Tamms, Mr. Boyd's mental and physical health and behavior have improved significantly, but defendants maintain that they may transfer him back to Tamms at any time.

3. Defendants have unnecessarily and wantonly inflicted severe pain on plaintiffs by exposing them to the conditions at Tamms.

88. Defendants are aware that the excessively harsh and psychologically damaging conditions at Tamms exacerbate existing mental illnesses and trigger serious mental illnesses in prisoners who previously were not seriously ill. Despite this knowledge, they continue to send severely mentally ill prisoners to Tamms, allow them to remain there for long periods of time as

their illnesses worsen, and allow other prisoners to remain after the conditions at Tamms have triggered serious mental illnesses in them. In exposing these prisoners to the conditions at Tamms, defendants have unnecessarily and wantonly inflicted pain on them.

COUNT I

(Deliberate Indifference to Serious Mental Health Needs in Violation of the Eighth and Fourteenth Amendments)

1-88. Plaintiffs reallege paragraph 1-88 as if fully set forth herein.

89. In demonstrating deliberate indifference to the plaintiffs' mental health needs as described above, the individual defendants violated the rights of plaintiffs and the plaintiff class to be free of cruel and unusual punishment under the Eighth and Fourteenth Amendments to the U.S. Constitution.

COUNT II

(Unconstitutional Conditions for Seriously Mentally Ill Prisoners in Violation of the Eighth and Fourteenth Amendments)

1-88. Plaintiffs reallege paragraphs 1-88 as if fully set forth herein.

89. In subjecting plaintiffs to the unconstitutional conditions described above, the individual defendants violated the rights of plaintiffs and the plaintiff class to be free of cruel and unusual punishment under the Eighth and Fourteenth Amendments to the U.S. Constitution.

COUNT III

(Violation of State-Created Liberty or Property Interest Under the Fourteenth Amendment)

1-88. Plaintiffs reallege paragraphs 1-88 as if fully set forth herein.

89. Pursuant to 405 ILCS 5/2-102, seriously mentally ill prisoners, as recipients of services for purposes of the Illinois Mental Health And Developmental Disabilities Code, are entitled to be provided with adequate and humane care and services in the form of mental health treatment by mental health professionals who exercise their professional judgment in delivering

this treatment. The right created by the state Mental Health Code is a liberty or property interest protected under the due process clause of the Fourteenth Amendment.

90. In acting in the manner described above, the individual defendants violated the rights of plaintiffs and the plaintiff class to these state-created liberty or property interests under the Fourteenth Amendment to the U.S. Constitution.

COUNT IV
(Violation of the ADA)*

1-88. Plaintiffs reallege paragraphs 1-88 as if fully set forth herein.

89. Tamms is operated under the control of the Department, which is a public entity as that term is defined in 42 U.S.C. § 12131.

90. Each named plaintiff and each member of the plaintiff class is an otherwise qualified individual with a disability as defined under the ADA and its implementing regulations.

91. The Department has discriminated against the plaintiffs on account of their disabilities in the following ways:

a) Causing plaintiffs to suffer unjustified isolation by sending them to Tamms and keeping them there despite defendants' knowledge that they suffered from serious mental illnesses;

b) Failing to reasonably accommodate the class members' disabilities and instead discriminating against them in ways that increase the severity of their illnesses by such methods as adjudicating disciplinary charges without reference to relevant mental health records and by

* Plaintiffs' counsel are aware that the Seventh Circuit has held that Congress lacks authority to enact Title II of the ADA, authorizing liability against a public entity, Walker v. Snyder, 2000 WL 626752. See also Erickson v. Board of Governors for Northeastern Illinois University, 207 F.3d 945 (7th Cir. 2000). Many courts have held otherwise, however, (see Erickson, 207 F.3d at 948). The U.S. Supreme Court has approved Title II ADA claims (see, for example, Olmstead v. L.C., 119 S.Ct. 2176 (1999)), and is likely to consider the constitutionality of Title II soon (see 68 U.S.L.W. 1577). Plaintiffs' counsel believe that the Court likely will decide that Congress did not exceed its authority in enacting the ADA, and therefore a claim based on the ADA is included here.

failing to assist mentally ill inmates in the grievance process and instead acting to thwart their efforts to file grievances and pursue them through the administrative process;

c) Denying class members access to programs, activities, and services of the Department granted at Illinois prisons other than Tamms such as contact with other prisoners or access to prison jobs, rehabilitative or educational programming, group therapy, outdoor exercise, communal religious programming, an adequate law library, the use of art supplies and other personal property that could enrich the quality of their lives, the ability to talk to friends and relatives by telephone, and an appropriate setting for contact visitation; and

d) Segregating some class members at Tamms on the elevated security wings, which are especially chaotic, noisy, isolated and less mental health treatment than offered elsewhere at Tamms.

92. In acting in the manner described above, the Department has unlawfully discriminated against plaintiffs in violation of the ADA.

COUNT V
(Violation of Section 504 of the Rehab Act)

1-88. Plaintiffs reallege paragraphs 1-88 as if fully set forth herein.

89. The Department receives federal financial assistance, thus making it subject to Section 504 of the Rehab Act, 29 U.S.C. § 794.

90. Each named plaintiff and each member of the plaintiff class is an “otherwise qualified individual with a disability” as defined in the Rehab Act and implementing regulations.

91. Plaintiffs reallege paragraph 91 of Count IV, as if fully set forth herein.

92. In acting in the manner described above, the Department has unlawfully discriminated against plaintiffs, in violation of the Rehab Act.

COUNT VI

(Declaratory Relief)

1-88. Plaintiffs reallege paragraphs 1-88 as if fully set forth herein.

89. There is an actual controversy between the parties requiring the court to declare the rights and other legal relations of the parties.

COUNT VII
(Injunctive Relief)

1-88. Plaintiffs reallege paragraphs 1-88 as if fully set forth herein.

89. Unless enjoined from doing so, defendants will continue to willfully violate the rights of plaintiffs and the plaintiff class. These continuing violations constitute irreparable injury for which plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs request this Court to grant the following relief:

A. Certify the plaintiff class of all seriously mentally ill prisoners who are now, have been before, or will be hereafter incarcerated at Tamms.

B. Declare that the actions and inaction of defendants described herein have violated and continue to violates the plaintiffs' rights under the Eighth and Fourteenth Amendments to the U.S. Constitution.

C. Enjoin defendants from engaging in any action or conduct, or from failing to act in any way, that violate the plaintiffs' above-mentioned rights.

D. Order defendants to take all action necessary to remedy the violations of their above-mentioned rights.

E. Award plaintiffs a judgment against defendants separately and jointly for compensatory damages in an amount deemed proper by the fact-finder.

F. Award plaintiffs a judgment against defendants separately and jointly for punitive damages in an amount deemed proper by the fact-finder.

G. Award plaintiffs a judgment against defendants separately and jointly for their attorneys' fees and costs.

H. Award plaintiffs a judgment against defendants separately and jointly for any other relief that the Court deems just and proper.

Respectfully submitted,

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Individually and on behalf of the plaintiff class

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