U. S. Department of Justice

Civil Rights Division

Assistant Attorney General

Washington, D.C. 20530

APR 14 2016

The Honorable Tom Wolf
Office of the Governor
225 Main Capitol Building
Harrisburg, Pennsylvania 17120

Re: Investigation of the Pennsylvania Department of Corrections' Use of Solitary Confinement on Prisoners with Serious Mental Illness and/or Intellectual Disabilities

Dear Governor Wolf:

This refers to the Department of Justice's investigation into the Pennsylvania Department of Corrections' ("PDOC") use of solitary confinement on prisoners with serious mental illness or intellectual disabilities ("SMI/ID"), pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997.[1] Two years ago, we issued our findings that PDOC subjected prisoners with SMI/ID to solitary confinement under conditions that violated their constitutional rights and their rights under Title II of the Americans with Disabilities Act, 42 U.S.C §§ 12131-12134. In light of the significant improvements in PDOC's policies and practices regarding solitary confinement for this vulnerable population, we are pleased to report that we are closing our investigation.

PDOC has demonstrated significant commitment to reforming its use of solitary confinement on prisoners with SMI/ID. It worked quickly to address concerns that we flagged starting with our initial onsite tours in August 2013. Notably, PDOC had already initiated some changes before we even issued our findings. To be sure, institutional change takes many years to fully implement, but nearly three years after we began our statewide investigation, PDOC's leadership remains committed to seeing slated reforms through to completion.

Today, PDOC is headed in the right direction.[2] In deciding to close this investigation, we considered the following factors: (1) PDOC worked closely with the Department of Justice and our experts to change policies and procedures that lay the groundwork for protecting prisoners with SMI/ID from inappropriate and harmful solitary confinement that violates their rights under federal law; (2) PDOC implemented initial reforms, and we confirmed its efforts through site

[1] We opened this statewide investigation in May 2013 after our initial 2011 investigation of the State Correctional Institution at Cresson revealed statewide concerns.

[2] Indeed, several of the reforms PDOC has instituted are in line with the Department of Justice's guiding principles on the use of restrictive housing. *See* U.S. Dep't of Justice, *Report and Recommendations on the Use of Restrictive Housing* 94–103 (2016), https://www.justice.gov/dag/file/815551/download.

visits and document review; and (3) PDOC addressed—or provided sufficient plans to address—our primary concerns about those initial reforms. The improvements we have seen since our February 2014 findings, together with PDOC's commitment to sustainable reform, give us confidence that the same pattern or practice of violations we found early in our investigation does not exist today.

PDOC's reforms include a number of positive changes that go to the heart of our investigation.

1. **Solitary Confinement and Discipline.** PDOC now works to ensure that prisoners with SMI/ID are not subjected to solitary confinement.[3] Instead, prisoners are diverted to specialized treatment units. For serious misconduct charges, prisoners with SMI/ID are also now evaluated by mental health staff to consider mitigated sanctions. For non-violent misconduct charges, prisoners with SMI/ID no longer face discipline hearings at all because resolutions are reached informally. And, prisoners are no longer permitted to be disciplined for self-injurious behavior as they were in the past.

2. **Out-of-Cell Options.** PDOC has begun implementing new procedures that require its prison personnel to offer out-of-cell activities and treatment to prisoners with SMI/ID for 20 hours per week,[4] and often more, to meet each prisoner's individual treatment needs. Prisoners receive these out-of-cell options in the specialized treatment units that are now less stark than in the past and feature colorful murals and recovery-based messages. During our site visits, prisoners appeared to be succeeding in these units, as demonstrated by fewer incidents of harm, increased medication compliance, and greater participation in offered treatment. Prisoners have even graduated from these specialized units to continue their treatment in less restrictive general population units.

3. **Mental Health Diagnosis and Classification.** PDOC has expanded its mental health[5] diagnostic and classification processes so that thousands more prisoners benefit from its treatment units. In the past, prisoners could be subjected to solitary confinement as long as they were not experiencing *active* mental health symptoms. Today, all prisoners with a current or past serious mental illness diagnosis are diverted to treatment units and thus protected from the harmful effects of solitary confinement.

4. **Mental Health Care Delivery.** PDOC has begun streamlining its delivery of mental health care by designating certain facilities to specialize in treatment for prisoners with disabilities. Now, prisoners with SMI/ID experience concentrated mental health services, therapeutic

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[3] We use the term solitary confinement to refer to all forms of restrictive housing. The Department of Justice's report defined restrictive housing as any type of detention that involves three basic elements:

- Removal from the general population, whether voluntarily or involuntarily;
- Placement in a locked room or cell, whether alone or with another inmate; and
- Inability to leave the room or cell for the vast majority of the day, typically 22 hours or more.

Id. at 3.

[4] PDOC requires that out-of-cell activities be offered on weekends as well.

[5] Prisoners with intellectual disabilities will be discussed separately below.

activities, and specialized mental health staff. This streamlining allows prisoners to utilize expanded specialized treatment and general population units specifically designed to support prisoners with SMI/ID. Also, prisoners now have the benefit of nearly 100 new mental health staff to support their needs.

5. **Training.** PDOC has trained hundreds of corrections officers and peer specialists to reinforce the efforts of mental health staff and to support prisoners in need of treatment. Today, prisoners interact with officers who are specifically trained in suicide prevention and assessment of risks, mental illness symptoms and management of those symptoms, the impact of solitary confinement on prisoners with SMI/ID, and communication and de-escalation techniques. Also, more than 500 prisoners have reportedly been certified as peer specialists. During our site visits, prisoners told us that these officers and peer specialists have served as valuable resources to them by helping them understand their mental illness and manage their symptoms.

During 2015, we conducted onsite tours to monitor PDOC's initial reforms following our findings. Those tours revealed several areas where continued improvement is needed. In response to our concerns, PDOC assured us that it will continue to implement further reforms in the areas discussed below:

1. **Specialized Treatment Units.** PDOC should ensure that the newly developed specialized treatment units do not devolve into restrictive housing style units. This requires full implementation of systems to encourage meaningful participation in out-of-cell activities and monitor prisoners who are not participating to determine whether they need a higher level of mental health care. And it requires sufficient staffing levels to enhance the out-of-cell treatment. PDOC should also ensure that staff members do not inappropriately restrict access to structured and unstructured programming. Structured programming is especially important for prisoners whose behaviors are a result of their mental illness, and PDOC should ensure that these prisoners receive the treatment they need instead of receiving room confinement as punishment for their symptoms.

   While PDOC has made changes to the physical structure of some of these units, it should continue these efforts to create the necessary therapeutic environment. It should also monitor a prisoner's entire length of stay in some of these units, not just when a prisoner has been on *administrative custody status* for an extended period of time, to avoid possible mental health deterioration.

2. **Restraint Use.** While PDOC appears to be using the restraint chair less frequently overall, it should do more to reduce restraint chair use on prisoners with mental health issues specifically. To that end, PDOC should fully implement its new policies that emphasize de-escalation and require appropriate oversight to restraint chair placements. This implementation and oversight will help PDOC continue the downward trend, especially for prisoners with SMI/ID.

3. **Mental Health Staffing.** Mental health and support staff positions should continue to expand to accommodate the increased needs of PDOC's system. While PDOC has a plan to

add 140 new positions through fiscal year 2017, it should continue to evaluate its staffing needs to reach sustainable reforms.

4. **Mental Health Recordkeeping.** PDOC should improve its mental health recordkeeping, which continues to impede continuity of care and successful treatment. To that end, it should fully implement initial steps begun in July 2015 to automate all aspects of medical and mental health recordkeeping through an electronic system, and evaluate its effectiveness in improving treatment.

5. **Mental Health Commitments.** PDOC should ensure that prisoners are afforded the level of mental health care they need, including mental health commitments. Although PDOC is implementing expanded commitment units, clinicians should be able to recommend those units based solely on clinical judgment that is not influenced by the high threshold set by Pennsylvania commitment laws. And PDOC should continue to evaluate its mental health commitment capacity to achieve sustainable reforms.

6. **Identification of Prisoners with Intellectual Disabilities.** PDOC should appropriately identify prisoners with intellectual disabilities. This is especially important for those *without* a co-occurring serious mental illness to ensure that these prisoners are protected under PDOC's new procedures against the harmful effects of solitary confinement. While PDOC has initiated a review of prisoners who scored *below* 70 during intellectual screening to examine the prisoner's adaptive functioning, it should expand these reviews to prisoners with IQ scores of *70 and above*, consistent with standards set by the American Psychiatric Association.[6]

7. **Quality Assurance.** Quality assurance mechanisms should be expanded to better analyze data and execute corrective action plans. While PDOC continues to develop more sophisticated tracking measures to identify individual and systemic concerns related to mental health issues—including waitlists for specialized programs, self-injurious or suicidal behavior trends, out-of-cell time, and restraint chair usage—it should continue to refine these measures to monitor and implement its reforms.

In addition to these seven areas, PDOC has also committed to work towards diverting people with mental illness from the front door of the criminal justice system through supporting mental health courts and participating in the state's new Forensic Interagency Task Force.[7] And, PDOC has assured us that it will continue to expand re-entry programs that address the system's back door by partnering with residential group homes and ensuring prisoners can access the state's Medical Assistance health benefits program prior to release.

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[6] *See* American Psychiatric Association, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 37 (5th ed. 2013) ("IQ test scores are approximations of conceptual functioning but may be insufficient to assess reasoning in real-life situations and mastery of practical tasks. For example, a person with an IQ score above 70 may have such severe adaptive behavior problems in social judgment, social understanding, and other areas of adaptive functioning that the person's actual functioning is comparable to that of individuals with a lower IQ score.").

[7] The Forensic Interagency Task Force brings together law enforcement and treatment agencies to work collaboratively on diverting people with mental illness from the criminal justice system and correctional facilities.

We are confident that, through the reforms PDOC has initiated and with its committed pursuit of reforms going forward, thousands of prisoners with SMI/ID throughout PDOC's system will experience improvements in their treatment and care.

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Though we are closing our investigation, we will continue to receive and review any complaints regarding conditions within the Pennsylvania Department of Corrections prison system, and we will closely scrutinize allegations related to the housing and treatment of prisoners with SMI/ID. Please be advised that if we have reasonable cause to believe that PDOC engages in a pattern or practice of unconstitutional violations in the future, we have the authority to open another CRIPA investigation to pursue injunctive remedies and corrective action.

We would like to thank Secretary of Corrections John Wetzel and his staff for their cooperation throughout our investigation. For any questions about this letter, please contact Steven H. Rosenbaum, Chief of the Civil Rights Division's Special Litigation Section, at (202) 616-3244.[8]

Sincerely,

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Principal Deputy Assistant Attorney General
United States Department of Justice
Civil Rights Division

David J. Hickton
United States Attorney
United States Attorney's Office
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cc: John E. Wetzel
Secretary
Pennsylvania Department of Corrections

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[8] Please note that this letter is a public document, and it will be posted on the Civil Rights Division's website.